

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO NO. 219 OF 1996 (O&M)
DECIDED ON : 19.08.2015**

Mohinder Kaur and others

...Appellants

versus

Raman Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. S. C. Nagpal, Advocate,
for the appellants.

Mr. Vishawjit Bedi, Advocate,
for respondent No.3.

None for respondents No.1 and 2.

K. C. PURI, J. (ORAL)

This is an appeal directed by the claimants against the Award dated 24.03.1995 passed by Shri I. C. Aggarwal, Motor Accident Claims Tribunal, Chandigarh, vide which the claim petition was partly accepted and ₹25,000/- was allowed regarding no fault liability only.

Briefly stated, Mohinder Kaur-widow, Harpal Singh, Hardeep Singh, Ranjit Singh and Surjit Singh sons of deceased filed claim petition claiming compensation on account of death of Manohar Singh in a motor vehicular accident.

The case of claimants as set forth in the claim petition is that on 12.03.1993 at about 4.20 PM, deceased Manohar Singh was coming back from his office in the Government press on his Moped bearing registration No. CH01-A-3656 and was on the road dividing sectors 17/18-A. Respondent No.1 who was also driving a Moped at that time, came riding the vehicle on the wrong side of the road at a very fast speed and in a rash and negligent manner and struck against him, due to which, the deceased fell down and received multiple injuries including injury on his head. He succumbed to his injuries later on. It was further pleaded in the claim petition that the deceased was drawing a monthly salary of ₹3500/- and all the claimants were dependent upon him.

Respondents No.1 and 2 filed written statement admitting the factum of accident. However, it was pleaded that the accident had caused due to rash and negligent driving by the deceased as he banged his moped into respondent No.1. The other averments were denied.

Respondent No.3 filed separate written statement taking preliminary objections regarding validity of driving licence. The other averments were denied.

From the pleadings of parties, following issues were framed :-

- 1) Whether the accident in question was caused by respondent No.1 by driving moped bearing No. CH01-A-2507, rashly and negligently ? OPP

- 2) To what amount of compensation ? If any, the claimants are entitled and from whom ? OPP
- 3) Whether the application is time barred ? OPR
- 4) Relief.

In order to prove their case, claimant Mohinder Kaur herself appeared in the witness box as PW-1 and examined Rajinder Kumar as PW-2 and closed the evidence.

On the other hand, respondent No.1 himself stepped into the witness box as RW-1 and closed the evidence.

The learned Tribunal, after appraisal of evidence on record, returned the findings on Issue No.1 against the claimants and held that the claimants have failed to prove the factum of negligence. However, the factum of accident was admitted. While returning findings on Issue No.2, a sum of ₹25,000/- as no fault liability was allowed as compensation. Issue No.3 was decided against the insurance company. Issue No.4 was decided in favour of the claimants. In this manner, the claim petition was partly accepted and a sum of ₹25,000/- was allowed as compensation towards no fault liability.

Feeling dissatisfied with the above said Award dated 24.03.1995 passed by Motor Accident Claims Tribunal, Chandigarh, the claimants have preferred the present appeal for enhancement of compensation.

Learned counsel for the appellants has submitted that PW-2 has supported the case of claimants on all material aspects. The Tribunal has discarded the testimony of Rajinder Kumar PW-2 on the ground that Jagdish Kumar-author of the FIR in question has not been examined. It is further submitted that reasoning given by the Tribunal is incorrect. Although he was a sales man at Sector-17, Chandigarh but according to his testimony, he was on his moped. So, his testimony coupled with the FIR should have been accepted. The bald statement made by RW-1 Raman Kumar cannot be accepted. More so, when he is facing criminal case under section 304-A of the Indian Penal Code.

Learned counsel for the Insurance Company has supported the Award and has submitted that findings of the Tribunal are correct. Jagdish Kumar-author of the FIR has not been examined. Rajinder Kumar-PW2 has been introduced later on. So, his testimony cannot be taken into consideration.

I have considered the submissions made by learned counsel for the parties and have gone through the records of the case.

No doubt Jagdish Kumar-author of the FIR has not been examined but the claimant has produced on record the FIR. No reasoning has been given by respondent No.1 why FIR has been registered against him in case he was not driving the offending vehicle. So, the testimony of PW-2 Rajinder Kumar should have been accepted by the Tribunal. The bald statement

made by respondent No.1-Rajinder Kumar is not sufficient to disprove the factum of negligence on his part. Consequently, the findings returned by the Tribunal on Issue No.1 stands reversed and it is held that the accident had taken place due to rash and negligent driving of moped by respondent No.1-Raman Kumar.

The next surviving issue is regarding quantum. As per salary certificate Exhibit P-3 placed on file, the deceased was earning ₹3462/- per month. The claimants are four in number. So by deducting 1/4th in respect of personal expenses, the monthly dependency comes to ₹2596.50. The yearly dependency comes to ₹31,158/-. According to authority "**Sarla Verma and others vs. Delhi Transport Corporation and anr.**" 2009 (3) RCR (Civil) 77, the multiplier applicable at the age of 56 is 9. So by applying that multiplier, the amount of compensation comes to ₹2,80,422/-. A sum of ₹10,000/- stands allowed in respect of last rites. Another sum of ₹30,000/- stands allowed in respect of consortium to the widow. The remaining claimants are held entitle to claim ₹30,000/- in respect of loss of love and affection. The above said amount has been allowed keeping in view the price index of the year 1995 when the accident took place. In this manner, the claimants are held entitle to claim ₹3,50,422/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of application till its realisation. The liability to pay the amount shall remain the same as ordered by the Tribunal. The amount of ₹25,000/- paid under no fault liability shall be adjusted

towards the said amount.

Consequently, the appeal stands partly accepted in the manner discussed above.

AUGUST 19, 2015
shalini

(K. C. PURI)
JUDGE