

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

**FAO No.1051 of 2004 (O&M)
Date of decision: 03.11.2015**

Smt. Krishna Kumari and others

....Appellants

Versus

Dunger Lal and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Jitender Dhanda, Advocate
for the appellants.

Mr. Puneet Dagar, Advocate
for Mr. Sunil K. Dhanda, Advocate
for respondents No.1, 7 and 8.

None for respondent No.6.

Mr. R.N. Singal, Advocate
for respondent No.9.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimants-appellants against the award dated 29.11.2003, passed by Motor Accident Claims Tribunal, Fatehabad (hereinafter referred to as 'the Tribunal').

Brief facts of the case are that on 26.01.2001, Rai Sahab and Wazir Singh (deceased) were waiting for a conveyance at the Mill Gate, Sugar Mill, Bhuna. In the meanwhile, Rajender

son of Surja Ram and Krishan Kumar son of Atam Parkash, who were also working in the Sugal Mill reached at the gate for going to Bhuna. In the meantime, a tractor make Swaraj 735 which was being driven by Kuldeep Singh son of Balbir Singh along with a trolley came there and was going to Bhuna after unloading the sugarcane in the mill. They stopped the tractor-trolley and they all four boarded the trolley. Wazir Singh was sitting towards the right side of trolley. When the tractor-trolley reached near Ratia Kanshi at about 07:00 p.m., then from the side of Bhuna, a tractor along with trolley which was loaded with sugarcane came which being driven by its driver at a very high speed, rashly and negligently, without blowing any horn, without observing the mandatory traffic rules. On seeing, the tractor-trolley in such a negligent manner, Kuldeep Singh took his tractor-trolley on katcha portion of the road, but even then the trolley loaded with sugarcane struck into the trolley of their tractor. Due to this impact, the bid (external portion fitted on a trolley for loading extra quantity) of the trolley struck Wazir Singh. Wazir Singh fell down on the road and sustained serious and grievous injuries including injury on waist. Krishan Kumar also sustained injuries on the fingers of left hand. The driver of the tractor loaded with sugarcane fled away from the spot along with his tractor-trolley. Rai Sahab brought Wazir Singh to C.H.C. Bhuna, for treatment, but after some time Wazir Singh succumbed to his injuries.

Consequently, the claimants-appellants filed a claim petition before the Tribunal.

On notice, respondents No.1, 4 (I), 4 (ii), 2 (ii), 2 (iv), 3 and 5, have filed their written statement and pleaded that the FIR has falsely been registered against respondent No.1-Dunger Lal. The number of the tractor has not been mentioned in the FIR and the name of respondent No.1, has been introduced later. No accident has taken place with tractor bearing registration No.HR-20-D-6128. It was denied that the alleged accident has taken place due to rash and negligent driving of tractor bearing registration No.HR-20-D-6128, which was being driven by Dunger Lal.

From the pleadings of the parties, following issues were framed on 20.01.2003, by the Tribunal:-

- 1. Whether the present accident has taken place due to rash and negligent driving of tractor-trolley bearing registration No.HR-20-D-6128, by respondent No.1-Dunger Lal? OPP.*
- 2. Whether Wazir Singh died as a result of injuries received in this accident, if so, to what amount of compensation the claimants are entitled to received? OPP.*
- 3. Who is liable for payment of amount of compensation? OPP.*
- 4. Whether respondent No.1 was not having a valid and effective driving licence at the time of accident, if so, to what effect? OPR-5.*
- 5. Relief.*

The Tribunal after going through the statements made by the parties, came to the conclusion that in the FIR, name of the driver of the tractor-trolley has not been mentioned. The accident took place on 26.01.2001 at 07:00 p.m., and the FIR was registered on the very next day i.e. 27.01.2001. The testimony of PW-2, Krishan Kumar and PW-5, Rajinder Singh, was not sufficient to hold that Dunder Lal-respondent No.1, was responsible for rash and negligent driving of tractor-trolley. Rai Sahab who reported the matter to the police had not been produced as a witness by the claimants. The Tribunal by making reference to the judgments, "***Smt. Sarli Devi vs Mool Chand and others***", 2004 (1) R.C.R. (Civil) 403, and "***Ram Karan and others vs Zile Singh and others***", 2001 (3) R.C.R. (Civil) 582, hold that the claim petition should be dismissed in case, the name of the driver and number of the vehicle had not been disclosed and the introduction of the name of driver by the witnesses was sufficient to discard the version of the claimants. Hence, the claim petition filed by the claimants-appellant before the Tribunal was dismissed.

PW-2, namely, Krishan Kumar and PW-5, namely, Rajinder Singh, were the eye-witness of the accident, in question.

As per the deposition of PW-2, when he along with Wazir Singh and Rajinder Singh was standing at Mill gate, a tractor bearing registration No.PB-03-F-2872, which was driven

by Kuldeep Singh came from Mill side and they all boarded the tractor and sit in the trolley for going towards Bhuna. When they reached Ratia Kanchi, a tractor of green colour bearing registration No.HR-20-D-6128, came from Bhuna side which was loaded with sugarcane. The said tractor was being driven by its driver, namely, Dunger Lal, in a rash and negligent manner. Dunger Lal struck his tractor-trolley with the tractor bearing registration No.PB-03-F-2872, in which Wazir Singh and Krishan Kumar received injuries. Dunger Lal driver of the tractor-trolley, fled away with his tractor towards Bhuna Mill and Rajinder Singh followed the tractor. PW-2, took Wazir Singh to the Civil Hospital, Bhuna in the trolley of Kuldeep Singh and after one hour Wazir Singh was declared dead.

In cross-examination, PW-2 has stated that his statement was recorded by the police on the next day i.e. on 27.01.2001 and he disclosed the number of both the tractors to the police. Rajinder Singh came from the sugar-mill at 01:30 a.m. and he told him the name of the driver and number of the tractor driven by Dunger Lal.

In examination-in-chief, Krishan Kumar has stated that he has taken Wazir Singh to Civil Hospital, Bhuna in the trolley of Kuldeep Singh, but this witness was not asked anything with regard to this fact in cross-examination.

Further, PW-5- Rajinder Singh, has stated in his examination-in-chief that he along with Wazir Singh, Krishan

Kumar and Rai Singh was standing at the mill gate, Bhuna for coming to Bhuna. In the meantime, a tractor bearing registration No.PB-03-F-2872, which was being driven by Kuldeep Singh son of Balbir Singh came from the mill side and they all boarded the tractor and sit in the trolley for going to Bhuna. When they reached near Ratia Kanchi, a tractor bearing registration No.HR-20-D-6128 which was loaded with sugarcane came from Bhuna side and struck his trolley into the trolley of Kuldeep Singh and fled away from the spot along with his trolley towards Bhuna mill. Wazir Singh and Krishan Kumar received injuries. They were shifted to Civil Hospital, Bhuna in the tractor-trolley of Kuldeep Singh. Rajinder Singh followed the tractor towards Bhuna Mill and Dunger Lal fled away after leaving the tractor in Bhuna Mill. Wazir Singh died in this accident after reaching the hospital.

In cross-examination, he has stated that he recorded the number of both the tractors at the time of accident. Police recorded his statement at about 01:00 a.m., on the same night. He has also stated that he know Dunger Lal prior to the accident. He has admitted that FIR was lodged by Rai Singh who was relative of Wazir Singh and further admitted that he had not gone to hospital, to get the injured admitted. He had gone to Bhuna Mill to enquire about the name of the driver. He enquired from Rule Ram who was employee of Sugarmill. Dunger Lal was not present at that time. He came back at 01:30 a.m., and went to his house, then

he went to the hospital and after that Rai Singh went to his home.

A perusal of these entire deposition of eye-witnesses i.e. PW-2 and PW-5, shows that Rajinder Singh knew Dunder Lal prior to the accident and at the time of recording his statement, police has taken the number of both the tractors from him.

Since, the FIR was got registered by Rai Singh who was relative of Wazir Singh, the number and name of the driver could not be mentioned. Further as per deposition of Devi Lal, Criminal Ahlmad to the Court of Sh. Ishwar Dutt, learned J.M.I.C., has stated that Dunder Lal son of Sujan Singh has been facing trial for the offence under Sections 279, 337 and 304-A IPC and the charge was framed on 05.08.2003.

The mere fact that Rai Singh who was relative of Wazir Singh, was not sufficient to discard the version of eye-witnesses i.e. PW-2 and PW-5. It is not a case, where respondent No.1 has falsely been involved in the accident by the claimants. He has merely denied the accident. Once, the FIR was registered, challan was presented and after presentation of challan, charges were framed as is evident from the deposition of PW-3-Devi Lal, the finding on Issue No.1 merely on account of non-mentioning of the name of the driver and number of the tractor in the FIR requires to be reversed. Krishan Kumar was not the complainant in the FIR. Rai Singh who was relative of Wazir Singh was the complainant in the FIR and he was not in a position to give name

of the driver and number of the truck. So, this fact is not sufficient to dismiss the claim petition filed by the claimants.

Hence, in view of the judgment ***“Girdhari Lal vs. Radhey Shyam and others”***, 1993 (2) PLR 109, and after accepting the depositions of PW-2, PW-3 and PW-5, it is held that the accident has taken place due to rash and negligent driving of tractor-trolley bearing registration No.HR-20-D-6128, by Dunger Lal-respondent No.1. The judgments referred by the Tribunal i.e. ***“Smt. Sarli Devi vs Mool Chand and others”***, 2004 (1) R.C.R. (Civil) 403, and ***“Ram Karan and others vs Zile Singh and others”***, 2001 (3) R.C.R. (Civil) 582, are not applicable to the facts of the present case.

In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby re-assessed in view of the judgments of ***New India Assurance Company Ltd. vs Gopali and others***, 2012 (2) SCC 198, ***Asha Verman and others vs. Maharaj Singh and others***, 2015(2) RCR (Civil) 520, ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77, ***Rajesh and others vs. Rajbir Singh and others***, 2013 (9) SCC 54 and ***Munna Lal Jain and another vs. Vipin Kumar Sharma and others***, 2015(3) Recent Apex Judgments 459. As per the deposition of PW-4, Surender Arora, Assistant Accountant, Sugar-mill, Bhuna, Wazir Singh son of Sunder Lal was working as an Electrician in Sugar-mill, Buna

and was earning Rs.5,371/- per month and Rs.500/- per month was also deposited by the employer of Wazir Singh in his Provident Fund Account. So, the income of the deceased is taken as Rs.5,871/- per month (rounded off to Rs.5,800/- per month.) Accordingly, the compensation re-assessed as under:-

SR. NO.	HEADS	CALCULATIONS
(i)	Annual Income (Rs.5,800/- x 12)	Rs.69,600/-
(ii)	50% of (i) above to be added as future prospects (Age 35-40 years)	(Rs.69,600/-) + (Rs.34,800/-) = Rs.1,04,400/-
(iii)	Dependency of the claimant after deducting 1/10 of (ii) towards personal expenses of the deceased	(Rs.1,04,400/-) - (Rs.10,440) = Rs.93,960/-
(iv)	Compensation after multiplier of 15 is applied	(Rs.93,960/- x 15) =Rs.14,09,400/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of estate	Rs.1,00,000/-
(vii)	Loss of love and affection for minor children	Rs.4,00,000/- (Rs.1,00,000/- each)
(viii)	Loss of love and affection to parents	Rs.1,00,000/- (Rs.50,000/- each)
(viii)	Funeral expenses	Rs.25,000/-
(ix)	TOTAL COMPENSATION AWARDED	Rs.21,34,400/-

The enhanced amount of compensation of **Rs.21,34,400/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The enhanced amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of “*Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others*”, 2015(1) SCC 539. Remaining

conditions of disbursal of amount shall remain unaltered.

Accordingly, the award stands modified to the above extent and the present appeal is partly allowed.

03.11.2015

yakub

(RITU BAHRI)
JUDGE