

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 4297 of 2005

Date of decision : 22-09-2015

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Lalit Kumar (Minor)

.....Appellant

Versus

Pardeep Kumar and another

.....Respondents

\* \* \* \* \*

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

\* \* \* \* \*

Present: Mr. Yogesh Saini, Advocate for  
Mr. Pritam Saini, Advocate for the appellant.

Mr. M.B Jain, Advocate for respondent no.2.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

**RITU BAHRI, J**

The claimant-appellant, Lalit Kumar (minor) has come up in this appeal against the award dated 2.6.2005 passed by the Motor Accidents Claims Tribunal, Kurukshetra, whereby on account of injuries received in the alleged accident, he has been awarded a sum of Rs.30,000 as the lump sum compensation.

Brief facts as stated in the claim petition are that on 14.2.2004, the claimant-appellant, Lalit Kumar aged 3½ years was playing near his house. At about 2:30 p.m, respondent no.1-Pardeep Kumar came driving motor cycle No. HR-07-F-1947 on Ambala-

Hissar road from the side of Ismailabad. The house of the claimant-appellant abuts on this road. Pardeep Kumar was driving the motor cycle in a rash and negligent manner. He had hit Lalit Kumar and run over him on his legs on account of which, his both legs were fractured. He had been taken to the hospital of Dr. Soni at Kurukshetra, where he remained admitted w.e.f 14.2.2004 to 28.2.2004. He kept visiting the hospital of Dr. Soni thereafter as OPD patient and a sum of Rs.50,000/- was spent in his treatment.

Lalit Kumar, the injured filed claim petition bearing MACT Case No. 59 of 2004 through his father Ramesh Kumar claiming that he had become permanently disabled and he remained bed ridden for long and suffered physically as well as mentally. A sum of Rs.4 Lakhs was claimed as compensation.

On notice of the claim petition, respondent no.1-Pardeep Kumar, the driver and owner of the motorcycle and New India Assurance Company Limited, Shahabad with which the motor cycle was insured filed their respective written statements. In the written statements preliminary objections were taken with regard to the maintainability of the claim petition. It was denied that the accident had taken place on account of rash or negligent driving of the motorcycle by respondent no.1

The following issues were framed by the Tribunal:

- 1. Whether the accident in question was caused due to rash and negligent driving of motor cycle No. HR-07F-1947? OPP.*

2. *Whether the petitioner is entitled to compensation? If so, how much and from whom?OPP.*
3. *Whether the claim petition is not maintainable in the present form?OPP.*
4. *Whether the claimant has no locus standi or cause of action to file the claim petition?OPR.*
5. *Whether the claimant is estopped from filing the claim petition?OPR.*
6. *Whether the claim petition is bad for mis-joinder of parties and causes of action?OPR.*
7. *Whether the claim petition has been filed in collusion with respondent No.1 ? If so to what effect?OPR.*
8. *Whether the motor cycle driver was not holding valid driving licence? OF so, to what effect ?OPR2.*

Ramesh Kumar appeared as PW-1 and stated that on 14.2.2004, he was standing near his house. His house abuts on Hissar-Ambala road and his son Lalit Kumar aged 3 ½ years was playing near the house at kutchra berm of the road. Ramesh Kumar was eye witness to the accident and according to him, the motorcycle bearing registration No. HR-07F-1947 came from the side of

Ismailabad at a very high speed. The motorcycle was brought to the kutchra berm of the road and Lalit Kumar was hit by the motor cycle on account of which he suffered injuries on both legs. Motor cycle is said to have crossed over Lalit Kumar about his legs. Ramesh Kumar father of Lalit Kumar is a handicapped person. His relative Chuhar Singh went to the police station to lodge a complaint. The DDR No.3 a copy of which is Ex. P-3, a copy of which is on the record is dated 18.2.2004 while the accident took place on 14.2.2004.

The Tribunal has taken this fact into consideration that there was a gap of four days in getting the DDR registered. It observed that even if Ramesh Kumar was handicapped, he came to the Court to appear as a witness and hence he could have gone to the police station to lodge a report in time. Moreover as per the statement of Chuhar Singh he had given a clean chit to the motorcycle driver. No criminal complaint was filed by Ramesh Kumar in the Court on the version of the accident he had given in the Court as PW-1. The Tribunal doubted the presence of Ramesh Kumar at the spot and returned a finding that the accident was not a result of the rash and negligent driving of the motorcycle. The tribunal took into consideration the statement made by Pardeep Kumar, who had appeared as RW-1 and stated that on 14.2.2004, he was going from Ismailabad to Thol and when he was near Village Ajrawar, one of the children playing by the side of the road suddenly got up and ran to the road and came in front of his motorcycle and was hit.

The Tribunal had come to a conclusion that the accident had not occurred on account of rash and negligent driving of the motorcyclist Pardeep Kumar and as such issues no. 1 & 2 were decided against the claimant. It was held by the Tribunal that the claimant has failed to prove that the accident in question was caused due to rash and negligent driving of motor cycle No. HR-07-F-1947 by Pardeep Kumar-respondent no.1 and hence the claimant was not entitled to any compensation. However, keeping in view that the claimant had suffered bilateral fracture of shaft femur and both bones of left leg and remained hospitalized for 14 days as pr Dr. P.K Soni, PW-2, he was awarded a lumpsum compensation of Rs.30,000/- by the Tribunal under **Order 14 Rule 2 CPC**. Rest of the issues were not pressed.

Counsel for the appellant has argued that the finding returned by the Tribunal that the presence of Ramesh Kumar at the spot is doubtful as he did not make any effort to lodge a report against Pardeep Kumar for causing the accident by his rash and negligent driving of the motorcycle is liable to be set aside. He has referred to a judgment in the case of ***Usha Rani and others vs. Barejesh Kumar and others, 2012(5) RCR (Civil) 687*** on a proposition that in a situation of motor accident where a pedestrian gets killed by a motor vehicle, it could not be inferred that there was an element of negligence on the part of the pedestrian. It has to be invariably a greater care for a driver of motor vehicle to mind the safety of any pedestrian, even in a situation, where a pedestrian is

prone to be careless. Reference was made to a judgment in the case of **Mohindro Devi vs. Sukh Ram in FAO No. 48 of 1991 decided on 6.12.2010**, wherein it has been observed as under:

*“3. I am of the view that the approach of the Tribunal was wholly faulty. Learned counsel for the insurance company would argue that there was no negligence at all of the truck and the accident had taken place only by the negligence of the cyclist. Any driver of a motor cycle ought to know that a cyclist or a pedestrian has just as much use for the road as they have. There shall be a greater degree of circumspection for a driver on a motor vehicle, than a pedestrian or a cyclist. The reasons are obvious. A pedestrian dashing against another pedestrian does not cause death nor a cyclist could cause death to a pedestrian. It is only a faster moving vehicle with heavier mass can cause death by its impact. A person that drives a truck ought to be prepared at any time for even a careless use of the road by a pedestrian or a cyclist. I will be loath to infer an element of negligence for a cyclist or a pedestrian ever. I would, on the other hand, hold a driver of the motor cycle to be always responsible if there results an impact with the cyclist and he comes to harm and in this case, a person was crushed to*

*death. It will be wrong to assume that a driver, who could drive the vehicle carefully, would cause death by the negligence of another. Even an issue of contributory negligence in such situations ought not to be easily inferred. I would, therefore, reverse the finding that the accident took place only by the negligence of the cyclist and that the driver of the truck was careful in his driving.”*

Counsel for the respondent no.2-Insurance Company on the other hand has argued that the statement made by Chuhar Singh at the time of recording of DDR was that Pardeep Kuar was not driving in a rash and negligent manner and hence this finding recorded by the trial Court on issue no.1 should not be interfered with.

I have heard counsel for the parties. As per the facts stated above, the claimant Lalit Kumar remained admitted in hospital w.e.f 14.2.2004 to 28.2.2004 as deposed by Dr. P.K Soni, PW-2. Father of the claimant Ramesh Kumar, who was a handicapped person was taking care of his child who was only 3 ½ years old at the time of accident and had suffered fracture on both the legs. Hence the very fact that he did not go to get the DDR registered should not go against him. His relative Chuhar Singh went to the the Police Station to report about the accident. In the judgment in ***Usha Rani's case (supra)***, the deceased was a pedestrian waiting for a bus when the offending vehicle came. The deceased got crushed

*under the rear tyre of the bus.* In a situation of motor accident where a pedestrian gets killed by a motor vehicle the court should not infer any negligence on the part of the pedestrian. In ***Usha Rani's case (supra)***, the pedestrian was a Chartered Accountant and the appeal against the dismissal of the petition for compensation was allowed. The compensation was assessed after taking into account the income tax returns of the deceased.

In view of the observations in the above stated case, the claim petition could not be dismissed by the Tribunal. In view of all that has been discussed above, present appeal is allowed and the order of Tribunal dated 2.6.2005 is hereby set aside.

Keeping in view the age of the injured as 3 ½ years and the fact that he remained hospitalized for 14 days, the compensation is reassessed as under:

| HEAD                                                                                                        | COMPENSATION AMOUNT       |
|-------------------------------------------------------------------------------------------------------------|---------------------------|
| <i>Pain and suffering</i>                                                                                   | <i>Rs.30,000/-</i>        |
| <i>Medical and incidental expenses during the period of hospitalization i.e from 14.2.2004 to 28.2.2004</i> | <i>Rs.30,000/-</i>        |
| <i>Special Diet and Transportation Charges</i>                                                              | <i>Rs.10,000/-</i>        |
| <b>TOTAL COMPENSATION AWARDED:-</b>                                                                         | <b><i>Rs.70,000/-</i></b> |

The amount of compensation of Rs.70,000/- 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 a 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.

22-09-2015

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( RITU BAHRI )  
JUDGE