

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.1624 of 2007 (O&M)
Date of decision: 29.07.2015

Smt.Chander Pati

..... Appellant

versus

Rajbir and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Ms.Anita Balyan, Advocate for the appellant
Mr.Suveer Dewan, Advocate for respondent No.3

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

Kuldip Singh, J. (Oral)

Appellant has filed this appeal against the award dated 5.10.2006, passed by the Motor Accident Claims Tribunal, Jhajjar (for short, 'the Tribunal), vide which, the claim petition of the appellant was dismissed.

Brief facts of the case are that Pawan son of Raj Kumar, was working as a technician in Maruti Udhog Limited, Gurgaon and was a daily commuter from his village to Gurgaon on a scooter. On 12.5.2000 while returning from job, at about 5.30 p.m., he met his father Raj Kumar (since deceased) at Palika Bazar, Railway Road,

Bahadurgarh, where the deceased has come to purchase some domestic goods. Then both of them started their journey back. Raj Kumar was riding the pillion of the scooter. When they reached near Malik Medical Store, Bamnoli road, after crossing the railway crossing, a tempo Tata 407 bearing registration No.HR-46A-6741 being driven by respondent No.1 at a high speed came from the side of village Bamnoli in rash and negligent manner and while turning on right side, hit rear portion of the scooter of Pawan. The scooter became imbalanced and both the riders fell down on the road. Offending vehicle Tata 407 sped away from the spot. In the accident, Raj Kumar received serious injuries. He was taken to Century Hospital, Bahadurgarh. However, keeping in view his serious condition, he was referred to Jaipur Golden Hospital, Delhi, where he remained admitted from 12.5.2000 to 20.5.2000. Thereafter, he was referred to Vimhans Hospital, Delhi where he remained admitted upto 25.5.2000. Ultimately, Raj Kumar succumbed to injuries on 31.5.2000. An FIR under Section 304A IPC was registered on 28.5.2000.

It is claimed that the deceased was self employed and earning Rs.10,000/- per month.

In the reply, owner and the driver i.e. respondent Nos.1 and 2 in the joint written statement, took the plea that the offending vehicle was being driven at a moderate speed on the correct side, whereas the scooterist was under the influence of liquor. He could not control the scooter and struck against the Tata 407. It was further claimed that the driver took the injured to the hospital. He had

sustained only minor injuries. Therefore, his death is not outcome of the accident.

The insurance company took the usual plea. From the pleadings, the following issues were framed:-

- 1. Whether deceased Raj Kumar expired after sustaining injuries in a motor vehicular accident on 12.5.2000 within the area of P.S. City Bahadurgarh due to rash and negligent driving of vehicle bearing No.HR-46A/6741 by respondent No.1? OPP*
- 2. If issue No.01 is proved then to what amount of compensation, the claimant is entitled and from whom? OPP*
- 3. Whether respondent No.1 had a legal and valid driving licence on the date of accident? OPR*
- 4. Relief.*

The Tribunal dismissed the claim petition primarily on the ground that the FIR was lodged after a delay of 17 days and that there is no post-mortem report on file to show that the death was due to injuries received in the accident.

I have heard learned counsel for the parties and have also carefully gone through the file.

In order to prove the accident, Pawan eye witness himself appeared as PW1 and proved the accident. He gave the manner of accident as stated above and stated that he had fell down along with his father. His father had received multiple injuries. He also proved about admission of his father in various hospitals and stated that he

had lodged the FIR (Ex.P1).

It is not denying fact that the respondent driver was challaned by the police under Section 304A IPC and was facing trial during the pendency of the claim petition. Keeping in view of the fact that Raj Kumar was serious and he was being shifted from one or the other hospital, the priority of the claimant and his family was to save the life of Raj Kumar. Therefore, the late registration of the FIR is no ground to disbelieve the story of accident, particularly when in the written statement the driver does not deny the accident. He had pleaded that Pawan was under the influence of the liquor and he is to be blamed for the accident. Rather he had claimed that he took the injured to the hospital. He further narrated in the written statement that the deceased had received only minor injuries. Therefore, death is not the outcome of the accident. However, the driver did not appear in the witness box and offer himself for cross-examination to tell his side of story and further give opportunity to the opposite party to extract the truth by his cross examination. Therefore, the statement of Pawan regarding the accident has to be believed. Since, immediately after the accident, the deceased was removed to the hospital and he remained admitted in the hospital till his death and driver claimed that he himself had removed the injured to the hospital, therefore, death is certainly connected with the accident. There are no allegations that after the accident and before the death, the deceased had met with some other accident or was suffering from some kind of disease. In fact, the insurance company produced only the copy of the insurance policy and none of the respondents

led any other evidence. It being so, even if the post mortem report is not there, it is proved from the record that the deceased Raj Kumar died due to the injuries received by him in a motor vehicular accident on 12.5.2000. Therefore, findings of the Tribunal on issue No.1 are reversed.

Now coming to the quantum of compensation, it comes out that as per evidence recorded by the Tribunal, the deceased has incurred medical expenses of Rs.1,82,570/- during the period of admission. The claimant had produced medical bills and also examined Parmod Kumar, bill clerk of the hospital. It being so, the entire medical bills of Rs.1,82,570/- are to be allowed. For the admission of 20 days, compensation @ Rs.2000/- per day for pain and suffering, attendant and special diet are also allowed, which comes to Rs.40,000/-. A sum of Rs.25,000/- for funeral and last rites is allowed. Another sum of Rs.one lac for loss of consortium to the claimant is also allowed.

Now coming to the compensation on account of loss of dependency. It comes out that there is no evidence on the file about the income of the deceased. Therefore, his income is taken to be that of an ordinary labourer as in the year 2000. By way of guess work, Rs.3000/- are taken to be the minimum wages existing in Haryana in the year 2000. Since the deceased was about 55 years, therefore, 15% income is added on account of future prospects which comes to Rs.450/-. 1/3rd is deducted on account of personal expenses i.e. Rs.1150/- and dependency comes to Rs.2300/- pm.

Keeping in view the age of the deceased, multiplier of 11 is to be

applied which comes to be Rs.3,03,600/-. Therefore, the total amount of compensation comes to Rs.6,51,170/-. Since the vehicle was insured with the respondent insurance company, therefore, the respondent-insurance company shall be liable to pay the compensation along with interest @ 7.5% per annum from the date of filing of claim petition i.e. 6.1.2003 till realization.

Appeal is accordingly allowed.

29.07.2015

gk

**(Kuldip Singh)
Judge**