

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O. No. 805 of 2012

Date of decision : February 06, 2015

Ram Kishan and others

....Appellants

versus

Himachal Road Transport Corporation, Shimla and another

....Respondents

F.A.O. No. 5216 of 2012

Himachal Road Transport Corporation, Shimla

....Appellant

versus

Ram Kishan and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Ashwani Arora, Advocate for appellants in
FAO No. 805 of 2012 and for respondents 1 to 4 in
FAO No. 5216 of 2012

Mr. Neeraj Khanna, Advocate for respondent no. 1 in
FAO No. 805 of 2012 and for appellant in
FAO No. 5216 of 2012

None for respondent Ram Sarup-driver.

Fateh Deep Singh, J.

Since both these appeals are directed against a common award
of learned Motor Accident Claims Tribunal, Mohali dated 4.11.2011

pertaining to the same very accident are thus being disposed of together.

In FAO No. 805 of 2012, the claimants have preferred appeal against this award whereby a sum of Rs 3,67,500/- was ordered as compensation impugning the same on the grounds of insufficiency and sought enhancement of the same whereas in the other appeal, the appellant-owner has sought to challenge these findings of liability.

Heard Mr. Ashwani Arora, Advocate for the claimants and Mr. Neeraj Khanna, for HRTC-owner.

It is in no manner challenged as to the death of Malhi Devi aged around 52 years in a motor vehicular accident that took place on 28.10.2007 around 1.10 PM in the area of Chandigarh-Zirakpur barrier. Even it is not challenged as so the inter-se relationship between the deceased and claimants. The lone contention that has come to be agitated between the contesting parties is over the identity of the vehicle and thus the liability to pay compensation. Mr. Khanna on behalf of the owner has emphatically stressed that neither the name of driver nor the registration of the vehicle was mentioned in the First Information Report and statement of the eye witness and it is a subsequent event that vehicle in question has been involved and placed reliance on **Dabwali Fire Tragedy Victims Association vs. Union of India & Ors., 2009(4) Law Herald (Pb. & Hr.) 3220.**

Counsel for the claimants has sought to project that at the happening of such a sudden accident it cannot be expected of scooterist husband to have detailed and picturised the events with mathematical precision. It is subsequent thereto as the facts have been unravelled and placed reliance on **Gian Devi vs. General Manager, Haryana Roadways, Chandigarh, 2004(3) RCR (Civil) 199; Union of India and another vs. Ghulam Nabi Dar, 1010 ACJ 23 and Sushila Devi & Ors. vs. State of Uttar Pradesh, II(2008) ACC 231.**

Appreciating these arguments, it is well entrenched law reference of which can be taken note of the ratios laid down in **R.P. Gautam vs. R.N.M. Singh, AIR 2008 MP 68 and Virat Sama vs. Mohan Lal and others, 1994 (1) PLR 82** that FIR is not a pre-requisite for seeking compensation and is no substitute for evidence in compensation cases and the Tribunal ought to see the evidence led before it. Ram Kishan PW1 husband of the deceased in his examination in chief has given the bus to be that of Himachal Road Transport Corporation (HRTC) bearing registration No. HP-68-1804 and has attributed acts of rash and negligent driving and has placed reliance on FIR Ex. P1 and has given the name of the driver to be respondent no. 2-Ram Sarup. In his cross-examination as has been assailed he states that in the FIR he failed to give the bus number. A suggestion has been put to him that it was subsequent to the accident that

the bus in question had arrived and that is how the bus has been falsely implicated. A close look at the FIR though not a substantive piece of evidence only mention of Himachal Roadways has been detailed. Thus statement of RW1 Jodh Singh Rana, Conductor of the bus becomes very essential who admits the route of the bus and that when their bus reached the accident site people had gathered and dead body was lying nearby along with a scooter and also admits a valuable fact that when he questioned people after peeping from the window, he was told that HRTC bus had caused the accident and claims that the people did not disclose the number of the bus as they could not read it and claims that subsequent thereto around 2.00 PM, their bus was stopped at Police Naka at Zirakpur and was involved in a false case. To a specific query of the Court that what representation regarding allegation of false implication has been made, the counsel was at loss of words and similar is the deposition of RW2 a passenger Raj Rani who claims to be going as passenger in the bus in question and in her cross-examination she admits that at the time of accident she came to know of the name of bus driver are matters which have bearing on the outcome of this case. The bus driver Ram Sarup RW5 in his cross-examination admits that the site where he has claimed that he has seen the accident is around 15 Kms from Chandigarh and that his bus was stopped at Zirakpur and passengers were made to alight from the bus and proceeded on with their journey in another vehicle. Though even Subhash

Kumar RW3 who has relied on the way-bill admits the route of the bus, similar to the place where the accident has taken place.

Thus from it all it stands adequately reflected that it was none but the bus in question that was involved in the accident and the failure of the driver of the bus and the respondents to establish that the bus has been falsely implicated certain goes to their detriment. This Court in **Gian Devi's** case (supra) and another view of Hon'ble High Court of Jammu and Kashmir in **Ghulam Nabi Dar's** case (supra) and view of Hon'ble Allahabad High Court in **Sushila Devi & Ors.'s** case (supra) have clearly held and laid down that omission to mention registration number of the offending vehicle in such a situation and the manner in which the accident has occurred rather depicts the involvement to be very natural and not a cooked up story. Since it is the case of the claimant-husband that he was driving scooter in which the deceased was riding on the pillion certainly is the most natural and probable witness to this occurrence and his evidence in identifying the bus as well as its driver having remained un rebutted certainly needs to be accepted. Since it is well elicited from the evidence that it was a Himachal Roadways bus and the failure of the respondents to prove their defence in terms of section 101 of Evidence Act and which other bus as claimed was involved and failure to do so certainly impels this Court to hold that the bus in question was at fault and therefore, responsible

in causing accidental death of the deceased. These observations pertaining to the manner of the accident and findings on issue no. 1 by the Tribunal are correct and needs to be upheld.

The claim of the claimants that the deceased was running Grocery Shop/Confectionary Shop earning Rs 10,000/- per month and having placed on record income tax returns for the years 2005-06 Ex. P3 and 2003-04 Ex. P7 does not augur well for the claimants in the light of the fact that even prior thereto no quantum of earning have been proved and it is around the period of the accident which took place in the year 2007. They have come up to show that it is a subsequent event and cannot be a good and reliable indicator to show the income of the deceased. Neither any proof by way of account books as has been argued by the counsel for the owner has been brought about nor any profit loss account is established to adjudge this fact. More-so, the learned Tribunal has taken note of the fact that the husband himself is employed and claimants Naresh Kumar is 28 years of age, Nanak Chand is aged 36 years and Ramesh Kumar is aged 32 years and thus, married and therefore, cannot be considered to be dependents and taking the age of the deceased into consideration has taken the annual dependency of the claimants to be Rs 37,500/-, out of total earnings of Rs 75,000/- , has held that the claimants are entitled to dependency compensation of Rs 3,37,500/-. Though in the light of the

submissions of the claimants' counsel the Tribunal has awarded Rs 10,000/- towards loss of consortium, Rs 5000/- towards loss of love and affection which is on the lower side could not be controverted by the other side. Having regard to the fact that the husband has lost his wife at this crucial juncture in life and sons their mother ought to be adequately compensated for the loss of love and affection, loss of consortium besides they must have spent money on the last rites and ceremonies and under all these conventional heads, the claimants certainly are entitled to enhanced compensation of Rs 1,50,000/-. Therefore, total compensation comes to Rs 5,17,500/-. (Rs Five lacs, seventeen thousand and five hundred only).

Thus in the light of these observations, the appeal filed by Himachal Road Transport Corporation bearing FAO No. 5216 of 2012 is dismissed whereas appeal filed by claimants bearing FAO No. 805 of 2012 is allowed and the impugned award is accordingly modified in the aforesaid terms. Rest of the stipulations laid down by the Tribunal need not be disturbed. Interim compensation paid, if any, shall be adjusted. The claimants shall be entitled to interest @ 7.5% per annum on the enhanced amount from the date of filing of the appeal till realization.

February 06, 2015
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(Fateh Deep Singh)
Judge