

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

FAO No.880 of 2012.

Date of Reserve: 03.09.2015.

Date of Pronouncement: 9.09.2015.

Pardeep and others

....Appellants.

VERSUS

Anand Singh Kadian and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Argued by: Mr. Surender Gandhi, Advocate for the appellants.

Mr. Parveen Jain, Advocate for respondent No.1.

Mr. R.N. Singal, Advocate for respondent No.2.

Mr. Rajbir Singh, Advocate for respondent No.3.

SNEH PRASHAR, J.

1. This appeal was filed by the appellants assailing the Award dated 07.09.2011 passed by Motor Accident Claims Tribunal, Jhajjar (for short, “the tribunal”) in MACT case No.77 of 2010 titled “Pardeep and others vs. Anand Singh Kadian and others” dismissing the claim petition of the appellants-claimants.

2. Precisely, the facts are that on 22.03.2010, Dinesh Kumar alongwith two other persons was going from Jhajjar to village Chhara by means of motorcycle no.HR-14D-6677 (for short, “motorcycle no.6677”). One Jasbir Singh riding motorcycle no.HR-14D-7939 (for short, “motorcycle no.7939”) was going from village Girawar towards his agricultural fields. His wife Urmila was travelling on his motorcycle as a

pillion rider. Per chance both the said motorcycles collided with each other and the drivers of the motorcycles Dinesh Kumar and Jasbir Singh died on the spot as a result of injuries sustained by them. Urmila, Manjeet and Joni suffered injuries during the accident. Ultimately, Urmila also succumbed to the injuries.

3. A petition claiming compensation to the tune of Rs.7 lacs on account of death of Urmila during the accident, was filed by the three minor children of the deceased invoking the provisions of Section 163-A of the Motor Vehicles Act, 1988 (for short, the Act of 1988"). The motorcycle no.6677 was owned by Anand Singh Kadian (respondent No.1) and was insured with National Insurance Company Limited (respondent No.2). The motorcycle no.7939 was insured with IFFCO Tokio General Insurance Company Limited (respondent No.3). The said respondents contested the petition by filing separate written statements. In his written statement, respondent No.1, owner of motorcycle no.6677, admitted the occurrence of accident but denied that he was liable for payment of any kind of compensation. He submitted that his motorcycle was duly insured with respondent No.2 insurance company. Respondent No.2 beside raising number of other objections alleged that there was clear collusion between the appellants and respondent-owner of motorcycle no.6677 and that the said vehicle had been falsely involved in connivance with the local police to grab compensation. Respondent No.3, insurer of motorcycle no.7939, also raised various legal and factual objections and denied its liability to pay compensation.

4. On the pleadings of the parties, following issues were settled:-

- (1) Whether the accident occurred due to the use of the vehicles No.14C-6677 and HR14D-7939? OPP.
- (2) Whether the petitioners are entitled to recover any compensation from the respondents? If so to what extent? OPP
- (3) Whether the petition of petitioners is not maintainable? OPR.
- (4) Relief.

5. Apart from examining a witness namely, Sanjeet as PW1 the claimants tendered in evidence documents Ex.P2 to Ex.P11.

On the other hand, the respondent only tendered their respective documents.

6. Considering the ocular and documentary evidence available on record and the submissions made on behalf of counsel for the parties, learned tribunal came to the conclusion that the claimants had miserably failed to prove that deceased Urmila died during an accident arising out of use of motorcycle no.6677 and motorcycle no.7939. Accordingly, the petition filed by the claimants-appellants was dismissed.

7. Aggrieved by the Award dated 07.09.2011 passed by the tribunal, the appellants preferred the instant appeal.

8. The submissions made by Mr. Surender Gandhi, learned counsel representing the appellants, Mr. Parveen Jain, learned counsel representing respondent No.1, Mr. R.N. Singal, learned counsel

representing respondent No.2 and Mr. Rajbir Singh, learned counsel representing respondent No.3 have been heard.

9. Indeed, as pointed out by learned counsel for the respondents, the appellants failed to examine any eyewitness of the accident. During his cross-examination, PW1 Sanjeet, the only witness examined by them, admitted that he was not present at the spot when the accident took place. He also admitted that he was told by one Pardeep that two motorcycles in question had collided with each other but he did not lodge report in respect of the accident with the police. However, in his affidavit Ex.PW1/A, he testified that his brother-in-law Jasbir Singh was driving motorcycle no.7939 and his sister Urmila was travelling as pillion rider on the same when per chance their motorcycle collided with motorcycle no.6677. He also mentioned that the drivers of both the motorcycles Jasbir Singh and Dinesh Kumar died at the spot. Urmila, who suffered grievous injuries, was first admitted to General Hospital, Jhajjar vide MLR No.AC/1351/10 dated 22.03.2010, from where she was referred to PGIMS, Rohtak and during treatment she succumbed to the injuries on 26.03.2010. He added that postmortem examination on the dead body of Urmila was conducted vide PMR No.444/10 P.G.I.M.S. Rohtak dated 26.03.2010 and that on the statement of Sunil Kumar son of Rajpal, resident of village Chhara, DDR No.14 dated 22.03.2010 was registered at Police Station Jhajjar in respect of the accident.

10. Perusal of the cross-examination of PW1 shows that the respondents did not cross examine PW1 on any of the aforesaid facts.

Needless to say that non cross-examination of the witness on a particular fact by the opposite party amounts to admission of that fact by the said party.

11. The DDR No.19 dated 22.03.2010 Ex.P2 recorded by ASI Satbir Singh, on his return from the spot of accident in the area of village Girawar, indicates that he had returned after completing proceedings under Section 174 Cr.P.C. in respect of dead bodies of Dinesh son of Rajpal and Jasbir son of Mange Ram and had brought with him statement of Sunil Kumar son of Rajpal, a resident of Chhara, brother of deceased Dinesh Kumar. In his statement, Sunil Kumar had stated that the motorcycle being driven by his brother Dinesh Kumar with whom Manjeet and Joni were also travelling, had per chance struck into the motorcycle of Jasbir Singh who alongwith his wife Urmila was going to the fields for bringing Barseem. Registration number of both the motorcycles involved in the accident were mentioned by him. Stating the proceedings conducted by him, ASI Satbir Singh mentioned in the DDR that on receipt of information about the accident, he alongwith official companions had reached the spot where the dead bodies of Dinesh Kumar and Jasbir Singh were lying and he recorded the statement of Sunil Kumar son of Rajpal who was also present there. He mentioned that from the enquiry at the spot it appeared that the accident had taken place by chance due to collision between both the motorcycles.

12. In addition to the DDR Ex.P2, the medico legal report Ex.P5 of Smt. Urmila proves that on 22.03.2010, the date of accident, she was admitted in the hospital with injuries on her person. Ex.P6 is her

postmortem report according to which she died due to the injuries suffered by her during the accident. According to the insurance policy Ex.P9 and the registration certificate of motorcycle no.7939 which is also exhibited as Ex.P9, Jasbir Singh, father of the appellants-claimants was the registered owner of the said motorcycle.

According to the insurance policy Ex.R1, Anand Singh (respondent No.1) was the owner-insured of motorcycle no.6677. The said motorcycle was being driven by deceased Dinesh Kumar. Importantly, in his written statement, Anand Singh-respondent No.1 not only admitted the occurrence of accident as pleaded by the claimants, but also admitted identity of the motorcycles involved in the accident. Neither respondent No.2-insurer of motorcycle no.6677 nor respondent No.3-insurer of motorcycle no.7939 produced any evidence to controvert/refute admission of factum of accident by the said respondent. No doubt, respondent No.1 did not appear in the witness box, but his admission in the pleadings is good enough to prove the accident as well as involvement of motorcycle no.6677 owned by him and motorcycle no.7939 owned by deceased Jasbir Singh in the accident especially when as observed above, respondents No.2 and 3 produced nothing to rebut the admission of respondent No.1.

13. This petition claiming compensation on account of death of Smt. Urmila during the vehicular accident was filed by the appellants under the provisions of Section 163-A of the Act of 1988. Section 163-A is a special provision for payment of compensation on structured formula basis. It postulates that notwithstanding anything contained in the Act of 1988 or

in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

14. For claiming compensation under the above provision, the requirement of law is to prove occurrence of accident arising out of the use of motor vehicle. Sub section 2 of Section 163-A provides that in any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. Meaning thereby that for claiming compensation under Section 163-A(1) of the Act of 1988, the claimant is not required to prove that the accident was result of any wrongful act or rash and negligent driving on part of driver of the vehicle or due to any default on part of the owner of the vehicle. The only requirement is to prove occurrence of accident arising out of use of the motor vehicle.

15. Reverting to the instant case, it has been observed above that from the deposition of PW1, the admission of accident by respondent No.1, who is none other than owner of one of the motorcycles involved in the accident and the documents i.e. D.D.R. Ex.P2, M.L.R. No.AC/1351/10 dated 22.03.2010 Ex.P4 and P.M.R No.444/10 P.G.I.M.S. Rohtak dated 26.03.2010 Ex.P5, it stands established that the accident during which Smt.

Urmila suffered injuries and lost her life had taken place arising out of use of motorcycle no.6677 and motorcycle no.7939. The DDR may not have been proved in due process of law but there being no evidence of the respondents to controvert the same and the admission of respondent No.1 in his pleadings corroborated the contents of the DDR, there is no reason why the said document should not be accepted in evidence and relied upon. Accordingly, the finding of learned tribunal on issues no.1 to 3 are reversed and it is held that the accident which led to death of Smt. Urmila had taken place arising out of use of motorcycle no.6677 and motorcycle no.7939.

16. Deceased Urmila was a housewife. She had three children. The services rendered by her as housewife were as valuable as any other occupation. The petitioners pleaded her income as Rs.3200/- per month. The accident occurred in 2010. In that year even a daily wager was able to earn Rs.3000/- per month. The value of services of the deceased towards her family cannot be assessed less than that. Accordingly, the income of the deceased is assessed as Rs.3000/- per month i.e. Rs.36,000/- per annum. Since the petition is under Section 163-A of the Act of 1988, the compensation is to be allowed strictly according to the provisions of the Second Schedule of the Act of 1988. The age of the deceased was 42 years as mentioned in the petition. As per the Second Schedule, the compensation using multiplier 15 comes to Rs.5,04,000/-.

There is a note at the bottom of the Second Schedule that the amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim

would have incurred towards maintaining herself had she been alive. As per the said note, deducting 1/3rd in consideration of personal expenses of the deceased the amount comes to Rs.3,36,000/-.

In addition to the above, the appellants-claimants are awarded Rs.2000/- towards funeral expenses, Rs.2500/- on account of loss of estate and accordingly total amount of Rs.3,40,500/- is awarded as compensation to the claimants. The amount of compensation shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition till realization. The share of the minor appellants in the compensation amount will be equal and will be deposited in their names in some beneficial scheme of fixed deposit with a Nationalized bank and will be disbursed to each of them of his/her attaining the age of majority.

17. Coming to the liability of the respondents, respondent No.1 is the owner of motorcycle no.6677, respondent No.2 is the insurer of motorcycle no.6677 and respondent No.3 is the insurer of motorcycle no.7939. The deceased was a pillion rider on motorcycle no.7939 and was third party as far as respondent No.3 is concerned. The accident had arisen out of the use of both the motorcycles. Accordingly, while respondents No.1 and 2 are jointly and severally liable for payment of 50% of compensation amount, the remaining 50% shall be paid by respondent No.3.

The appeal is accordingly allowed.

(SNEH PRASHAR)
JUDGE

9.09.2015.
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