

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

Date of Decision: 21.03.2016

1) FAO No.53 of 2000 (O&M)

Bharatjit Chibbar and another Appellants

versus

Dinesh Kumar & Others Respondents

2) FAO No.54 of 2000 (O&M)

Smt. Vijay Chibber Appellant

versus

Dinesh Kumar & Others Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. R.P.S. Ahluwalia, Advocate
for the appellants.

Mr. Pardeep Goyal, Advocate
for respondent No.3-Insurance Company.

1. Whether Reporters of local papers 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?

Ajay Tewari, J.(Oral)

This order will decide two appeals bearing FAO Nos.53 and 54 of 2000 as same have arisen out of common judgment dated 22.07.1995 passed by Motor Accident Claims Tribunal, Kurukshetra. For the sake of convenience, the facts of the case are being taken from FAO No.53 of 2000.

Brief facts as given in the claim petition are; that on 01.02.1993 at about 8.00 pm the injured and the deceased were

travelling in Maruti Van bearing registration No.DL 3C/8779 driven by respondent No.1 – Dinesh Kumar. The driver of the van was driving it in rash and negligent manner despite repeated request of the injured/deceased and other persons sitting in the van. While trying to overtake the tractor trolley respondent No.1 could not control the van and hit against the same. In this accident, Ajay Kumar @ Monu, son of the appellant No.1 and one Chander Parkash Bakshi died while Smt. Vijay Chibber and other persons received injuries. The claimants filed separate claims petitions for grant of enhancement of compensation on account of death and injuries sustained by them.

The Tribunal held that the appellants/claimants had not been able to prove that van was driven in rash and negligent manner by respondent No.1 and consequently, while dismissing the claim petition under Section 166 of the Motor Vehicle Act awarded Rs.25,000/- to the injured – Vijay Chibber and Rs.50,000/- in a death case under Section 140 of the Motor Vehicle Act.

Learned counsel for the appellants has argued that the basis on which the negligence was held to be not proved is vitiated. As per him, there were two injured eye-witnesses. One had stated that respondent No.1 was driving rashly and negligently and was trying to overtake the tractor trolley and struck the van against the tractor trolley. The other witness also stated the same thing and added that the trolley was standing on the side of the road. As per him there is no contradiction in the statements when one witness stated that the trolley was standing on the other side of the road while the other witness stated that respondent No.1 tried to overtake the trolley which was going ahead because both the witnesses had unanimously stated

that the van was overtaking the trolley.

Learned counsel for the respondent No.3-Insurance Company has argued that a completely different version was given in the FIR. Learned counsel for the appellants has contended that the FIR was got recorded by the guilty driver who would naturally mention everything to exculpate himself. Moreover, he did not appear in the witness box. Learned counsel for the respondent No.3-Insurance Company has then argued that no criminal case was lodged against the driver. Learned counsel for the appellants has stated that the mere fact that criminal case was not lodged can never go to show that accident did not take place as alleged. As per him, there are so many examples where criminal case ended in acquittal but compensation was still granted. In my opinion, the argument of learned counsel for the appellants carry more weight and consequently I hold that the accident took place due to the rash and negligent driving of the respondent No.1.

Coming to the case for enhancement of compensation on account of injuries suffered in the accident, learned counsel for the appellants has argued that there were three fractures, of left hand, left leg and hip joint. As per him, there was hospitalization of 41 days and she received multiple fracture of the left thigh bone and as per the disability certificate, she received 25% disability of whole body. Learned counsel for the appellants has further argued that for the 25% disability of the whole body, the claimant was entitled to Rs.50,000/-. He has further submitted that medical expenses were of Rs.75,000/- i.e. expenses incurred for medical treatment, special diet and attendant. He has further argued that on account of pain and suffering

the claimant is entitled to Rs.50,000/-. Since the claimant has been handicapped from her household duties till today, in my view, Rs.50,000/- would be sufficient for pain and suffering and also an amount of Rs.50,000/- for disability. Ordered accordingly.

As regards medical expenses, no bill has been placed on record. Yet considering the fact that she has got 25% disability to the whole body, it cannot be said no expense on medical bills, transportation and special diet would have been incurred. Learned counsel for the respondent No.3-Insurance Company is not in a position to deny this but states that in the absence of any evidence it would not be appropriate for the Court to award any amount. In my opinion, this argument is too extreme. No doubt there is no actual evidence of the expenses incurred but keeping in view the nature of injuries, I deem it appropriate to grant Rs.30,000/- for medical expenses, for transportation and for special diet.

Coming to the case for enhancement of compensation on account of deceased in the accident, the deceased was young child of 11 years and the Hon'ble Supreme Court in ***Kishan Gopal & anr. vs. Lala and ors., reported as (2014) 1 SCC 244***, awarded a sum of Rs.5 lacs for the death of a non-earning child.

Learned counsel for the respondent No.3-Insurance Company has argued that in the present case, the accident is of the year 1993 and the compensation awarded by the Hon'ble Supreme Court in the present case cannot be the same.

Learned counsel for the appellants submits that in the judgment rendered by Hon'ble Supreme Court in ***Kishan Gopal's case (supra)*** where the amount of Rs.5 lacs was awarded, the

accident had taken place on 19.07.1992 and their Lordships awarded Rs.5 lacs with interest @ 9% per annum from the date of filing of application till the date of payment.

Learned counsel for the respondent No.3-Insurance Company is not in a position to cite any judgment in contradiction.

In such circumstances, for the death of Ajay Kumar @ Monu the compensation of Rs.5 lacs is awarded. In both the cases, the enhanced amount should be paid along with interest @ 8% per annum from the date of application till the date of payment. The amount already paid is set off.

Accordingly, both the appeals stand disposed of.

Since the main cases have been decided the pending civil miscellaneous application, if any, also stands disposed of.

March 21, 2016

ashish/sonia

(AJAY TEWARI)
JUDGE