

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2619 of 1999 (O&M)
Date of Decision : 03.02.2016

Mewa Devi and others

....Appellants

Versus

Ram Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. Sachin Mittal, Advocate
for respondents no. 1 and 2.

Mr. Mr. Ravinder Arora, Advocate with
Mr. Neeraj Khanna, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

Mewa Devi wife of Mange Ram and her six children (appellants) filed claim petition under Section 166 of the Motor Vehicles Act seeking compensation for the death of Mange Ram in a motor accident while traveling in Maruti Van bearing no. PIL-9875. The Motor Accident Claims Tribunal, Karnal (later referred to as 'the Tribunal') dismissed the petition with observations that the accident had taken place due to sole negligence of driver of Maruti Van, as such, claimants are not entitled to any compensation.

2. Case of claimants, in brief, is that on 28.06.1994, deceased alongwith his brother-in-law Ramesh Kumar, Angrez Singh driver and Satbir Singh started from village Bijna, Tehsil and District Karnal for going to village Kirmach, District Kurukshetra in Maruti Van No. PIL-9875. When the Van reached

near village Padhana and was 1¼ furlong away from village Nilokheri, a tractor-trolley (later referred to as 'the offending vehicle') was standing on the G.T. road without any parking light or indication. The driver of Maruti Van could not see the parked (offending) vehicle and hit the Van into same. The accident was caused due to negligent act on the part of respondent no. 1-Ram Kumar who had parked the offending vehicle on the G.T. road without any indicator. The deceased received multiple grievous injuries on various parts of his body which resulted in his death. The matter was reported to police vide FIR No. 272 dated 28.06.1994, registered at Police Station Butana (P.P. Nilokheri). The deceased was employed as sweeper in Safdarjang Hospital, New Delhi and was getting a salary of ₹2000/- per month. Due to sudden demise of Mange Ram, claimants have lost an earning member and were deprived of his love and affection.

3. In the written statement respondents no. 1 and 2 (driver and owner of the offending vehicle) admitted the accident but took the plea that accident had taken place due to fault, carelessness and rash driving on the part of driver of Maruti Van No. PIL-9875. Respondent no. 1 was not present at the spot at the time of accident nor the tractor was present there. Only trolley of the tractor was standing on left side of the road on *kacha* portion. It was alleged that on 28.06.1994, respondent no. 1-Ram Kumar alongwith one Paras Ram had gone to Karnal for the purchase of marble for construction of their house. While returning, at about 09.00 p.m., right side wheel of the trolley got punctured near village Padhana. Ram Kumar took the trolley on *kacha* portion on

left side of the road and went to Nilokheri to get the tube of trolley repaired. He had put stones around the trolley so that vehicles could pass easily on the highway. Had driver of Maruti Van been little bit careful in driving the vehicle the accident could be avoided.

4. Respondent no. 3-Insurance Company also contested the claim petition with similar averments and also denied that the offending vehicle was insured with respondent no. 3 at the time alleged accident.

5. Pleadings of parties led to framing of the issues as follows:-

- (i) Whether the accident took place due to rash and negligent act of respondent no. 1 in parking trolley in the middle of the road and in the accident Angrez Singh, Satbir Singh, Ramesh received injuries and Mange Ram died? OPP
- (ii) Whether the accident took place due to fault and negligent and rash driving of Maruti Van by its driver Angrez Singh? OPR 1&2
- (iii) Whether tractor had been got insured with respondent no. 2 (sic no. 3) New India Assurance Company? OPR 1&2
- (iv) Whether respondent no. 1 was not holding a valid driving licence at the time of accident, if so to what effect? OPR-3
- (v) How much compensation the claimants of the various cases are entitled and from whom? OPP
- (vi) Relief.

6. In order to prove that the accident had taken place due to negligent act of driver of the offending vehicle, claimants examined Ramesh Kumar as PW-6, who was traveling in the same

Maruti Van with the deceased, Angrez Singh PW-7, another passenger in that Maruti Van and Satbir Singh PW-8, who was sitting in Maruti Van with the deceased. All the three witnesses have stated in unison that at the time of accident, the tractor-trolley was standing on the road. Driver of the offending vehicle had not taken due precautions while parking the same on the road. PW-7 Angrez Singh stated that driver of Maruti Van could not see the tractor-trolley due to light of the vehicles coming from opposite side. All these three witnesses have also sustained injuries in the accident.

7. Learned counsel for the appellants has argued that it is proved from statements of the aforesaid three witnesses that the tractor-trolley was parked on the road at the time of accident. The respondents could not shatter the statements of aforesaid three witnesses in cross-examination. Maruti Van was going at a normal speed of around 70 kmph., which is not a very high speed while travelling on the national highway. Admittedly, there was no parking light or indicator on the road while parking the tractor-trolley there. It was around 09.30 p.m. Driver of Maruti Van could not notice the trolley because of glowing lights of the vehicles coming from opposite side. The Tribunal has committed grave error while concluding that the accident was caused due to negligence of driver of Maruti Van. Driver of the offending vehicle while appearing as RW-2 had tried to set up a case that he had put stones and bushes around the parked vehicle and had also left a burning tyre near the trolley for creating light to mark its presence at the spot for the vehicles going on the road but no such

suggestion was given to eye-witnesses.

7. Learned counsel for respondents no. 1 and 2 has argued that at the spot only the trolley had been parked and not the tractor. Though, it was a national highway still the fault was of driver of Maruti Van who dashed from behind against the parked vehicle. Driver of the offending vehicle while appearing as RW-2 had categorically stated that he parked the vehicle on *kacha* portion by the side of road and had taken required precautions by keeping a burning tyre near the trolley and by putting stones and bushes around it. The Tribunal has rightly appreciated the evidence produced on record while reaching the conclusion that it was driver of Maruti Van who was negligent.

8. The first question which arises for consideration is as to whether tractor was parked on the road or only the trolley was there when the accident took place?

9. Plea in the reply by respondents no. 1 and 2 is that tractor was not at the spot. Only the trolley was parked on left side of the road on *kacha* portion. However, PW-6 Ramesh Kumar had stated that tractor-trolley was standing on the road and its driver had not taken precautions while parking the same on road. In cross-examination, he was given suggestion that there was no trolley on the spot and the tractor was stationed on due left side of the road. Similar suggestion was given to PW-7 Angrez Singh. Statement of PW-8 Satbir Singh that trolley was parked on left side of the road is un-rebutted. In view of the above, testimony of Ram Kumar driver of the offending vehicle, who appeared as RW-2, that he had left the trolley with punctured tyre after putting

it one side on jack, carries no weight. No suggestion was given to witnesses examined by claimants that any precaution was taken by putting stones, bushes or burning tyre by the side of trolley. Testimonies of PW-6 Ramesh Kumar, PW-7 Angrez Singh and PW-8 Satbir Singh answer the query that it was tractor and trolley which were parked on the road.

10. Next question which requires answer in this appeal is that as to whether accident had taken place due to negligence on the part of driver of the offending vehicle or because of rash and negligent driving of Maruti Van by its driver or due to composite negligence of both. PW-8 Satbir Singh was also one of the passengers in Maruti Van at the time of accident. He had described the accident in following words:-

“On 28.06.1994, I was sitting in a van which was being driven by Shri Angrej Singh and was going from Bijana to Kirmach alongwith Mange Ram and Suresh Pal. When the van reached near village Padhana on G.T. road, a tractor-trolley was standing ahead of our van and the same was standing on the left side of the road. There was no indication of its being standing on the road. It was about 09.30 p.m. and our van struck against the said tractor-trolley as a result of which I sustained injuries on my left leg.....”

11. Statement of PW-8 Satbir Singh is un-rebutted as in the cross-examination no suggestion was given to him that the tractor-trolley had not been parked on left side of the road without any indication. A mere suggestion was given to this witness that the accident took place due to rash and negligent driving of the driver of Maruti Van without elaborating the same. Testimonies of PW-6 Ramesh Kumar and PW-7 Angrez Singh driver of Maruti Van

prove that tractor and trolley had been parked on the road without any indication, which was a sheer negligence on the part of driver of the tractor-trolley. Even if this plea of driver of the offending vehicle that tyre of the trolley got punctured be believed, it was incumbent upon him to make attempt to take the tractor-trolley on *kutchra* portion of road and leave the road clear for the traffic and in case he was not in a position to move the tractor-trolley as it was loaded with marble which they had purchased from Karnal, he was required to fix sufficient indicators including reflector on the road and some lights to enable the traffic moving at a speed on the national highway to notice the parked vehicle from a considerable distance so as to take necessary precautions by slowing down the speed while passing from the spot. No reflector, no lights, flag etc. were fixed at the spot to indicate parking of the tractor-trolley on the road. The plea by driver of the offending vehicle while appearing as RW-2 that he had put some marble stones and bushes around the tractor-trolley, was not put to eye-witnesses in their cross-examination. His statement that he had also left a burning tyre near the trolley for creating light appears to be an afterthought as this fact was not confronted to eye-witnesses and was also not pleaded in the written statement. Maruti Van was going on a normal speed of 70 to 80 kilometer per hour on national highway, which cannot be termed as rash speed. The traffic usually moves at this speed on the national highway. It is for the person/authority which create any obstacle in the smooth running of traffic to take all types of precautions and give indications at a sufficient distance so as to make alert drivers of

vehicles coming on the national highway to take necessary precautions to avoid such obstruction, blockade etc. Facts and circumstances of the case and the testimonies of eye-witnesses prove that the accident had taken place due to negligence on the part of driver of the offending vehicle and not the driver of Maruti Van. The Tribunal has committed grave error while concluding that “the trolley was not a small thing which was not visible from a quite sufficient distance”, as such, negligence was of the driver of Maruti Van who hit stationary trolley. It was night hours and for want of indicator, driver of the vehicle coming on road could not notice the trolley which had no light fixed on its either side, resulting into accident. The finding of Tribunal to this effect is perverse and is set aside. The accident was caused due to negligent act of driver of the offending vehicle.

12. The next question which requires answer in this appeal is regarding quantum of compensation.

13. The Tribunal has assessed amount of the compensation as ₹2,98,000/- by taking monthly income of the deceased as ₹1872/-. The deceased left behind his wife and six children. As per observations in case of **Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, 1/5th of income of the deceased is to be deducted towards his personal expenses. The Tribunal has assessed age of the deceased as 38 years, as such, multiplier applicable in this case as per observations in **Sarla Verma’s case (supra)** is 15. In view of observations in the cases of **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54** and **Munna Lal Jain and others**

vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447,

claimants are also entitled to addition of 50% in income of the deceased towards future prospects. Wife of the deceased is allowed compensation of ₹1lac towards loss of consortium, while children of the deceased are allowed compensation of ₹1 lac towards loss of love and affection, care and guidance. Claimants are also allowed compensation of ₹25,000/- towards funeral expenses.

14. In view of my discussion above, the compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased Mange Ram	₹1872 per month (as assessed by Tribunal)
(ii)	50% of (i) above to be added as future prospects	₹1872 + ₹936 = ₹2808 per month
(iii)	1 / 5 th of (ii) deducted as personal expenses of the deceased	₹2808 - ₹561 = ₹2247 per month
(iv)	Compensation after multiplier of 15 is applied	(₹2247X12X15) = ₹404460
(iv)	Loss of consortium	₹100000
(v)	Loss of love and affection care and guidance	₹100000
(vi)	Funeral expenses	₹25000
<i>Total</i>		₹629460

15. In view of my above discussion, the instant appeal has merits and the same is accepted. Award of the Tribunal is set aside and the claimants are allowed ₹6,29,460/- as compensation for death of Mange Ram in motor vehicle accident with offending vehicle. The amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. The amount of compensation shall be shared equally

by the claimants. Respondent No. 3 being insurer of the offending vehicle will deposit the share of claimants in their bank accounts or pay the same through demand drafts. The share of appellants No. 2 to 7, who, as per their age given at the time of filing of the petition, are still minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding the age of the minor as required at the time of deposit of the amount and the minor shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their name after the date of their attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually gives to bring the order of the Tribunal to get the payment even after attaining the age of majority. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed @ ₹20,000/-.

February 03, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No