

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.929 of 2001

Date of Decision: 4.10.2016

Mela Ram and others

... Appellants

Vs.

Satpal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?
3. Whether the order is speaking/reasoned?

Present:- Mr. R.S.Mamli, Advocate,
for the appellants.

Mr. Rahul Mohan, DAG, Haryana.

Amol Rattan Singh, J.

This is an appeal by the claimants, seeking enhancement of the compensation awarded to them by the learned Motor Accident Claims Tribunal, Yamuna Nagar, vide the impugned Award dated 06.10.2000.

The claim petition before the Tribunal had initially been filed under Section 166 of the Motor Vehicle Act, 1988, but subsequently it was allowed to be amended to be instituted as one under Section 163-A of that Act.

2. The facts of the case, as set up by the claimants before the

Tribunal, are that appellant-claimant No.1, alongwith his wife Banto Devi and one more lady, boarded Haryana Roadways bus bearing registration No.HR-20A-3801 on 11.07.1997 from the bus stand at Shahbad, at about 3:30 pm, to go to their village Mehmoodpur. They are stated to have occupied seats no.36 and 37 of the bus.

When the bus reached near Prem Nagar, Ugala, at about 4:20 pm, a tyre of the bus is stated to have burst and the driver, i.e. respondent No.1 herein, suddenly applied the brakes, in a negligent manner, resulting in a heavy jerk, due to which Banto Devi fell out of the window of the bus and sustained a head injury and became unconscious.

Allegedly, the driver and conductor of the bus (respondents No.1 and 2), did not bother to arrange for taking the injured to hospital and therefore she was taken in a passing jeep owned by one Gurdev Singh of village Dinapur, to Gupta Hospital, at Shahbad.

She was admitted there but her condition continued to deteriorate and therefore, she was referred to the PGI, Chandigarh, on 13.07.1997 but died on the way to that hospital.

Consequently, her body was brought back to the village for the last rites.

3. It was further contended that the doctor at Shahbad not having sent any information to the police, no FIR was registered. Appellant no.1 herein, therefore, moved applications to the S.P.Ambala, the SHO, Police Station Mulana and the General Manager, Haryana Roadways, Yamuna Nagar, but even so, no FIR was registered.

The claim petition was thereafter filed.

4. In response to the notice issued, respondents No.1 and 2 appeared and filed a joint written statement in reply to the original claim petition but chose not to file any to the amended petition and as such, the original petition continued to stand for them.

Respondents No.3 and 4 also only filed a joint written statement to the original claim petition.

5. In the reply of the first two respondents, it was stated that the deceased herself jumped out of the bus and sustained injuries and as such, neither of the two respondents, i.e. the bus driver and conductor, were at fault and actually no accident had ever taken place with the bus, which was evident from the fact that no FIR was lodged. The 3rd and 4th respondent, i.e. the General Manager, Haryana Roadways, Yamuna Nagar, and the State of Haryana, through its Secretary, Transport Department, also stated that as per the records maintained in the office of the General Manager, bus bearing registration No.HR-20A-3801 never met with an accident on 11.07.1997 and no case was ever registered against the driver of the said bus.

Hence, it was stated that the bus driver not being at fault in any manner, no compensation was payable by them.

6. A replication having been filed by the claimants, reiterating the stand in the claim petition and denying the written statements, the following issues were framed by the Tribunal:-

- “1. Whether the death of Banto Devi took place due to rash and negligent driving of bus no.HR-02A-3801 by respondent no.1? OPP

2. Whether the claimants are the only legal heirs of the deceased and entitled to compensation. If so to what amount and from whom? OPP
3. Relief.”

7. The Tribunal, after citing from a judgment of this Court, in **National Insurance Company Limited v. Smt. Indu Sharma and others** (2000 (1) PLR 417 and of the Gujarat High Court in **Ramdevsing V. Chudasma and others versus Hansrajhai V.Kodala and another** 1999 ACJ 1129, held that the following four 'things' are to be determined in a petition filed under Section 163-A of the Act of 1988:-

- i) Involvement of motor vehicle in the taking place of accident;
- ii) The taking place of death or injury in such a motor vehicle accident;
- iii) The age of the deceased, and
- iv) The income of the deceased.

8. Thereafter, finding that as the respondents had admitted that the deceased had herself jumped out of the bus and sustained injuries and further finding that the factum of the tyre burst had also been admitted, it was held that the incident had taken place and that Banto Devi had actually jumped out of the window (probably out of fear) leading to her injuries, and that it was not a case of suicide.

It is to be noticed here that this was obviously only in the context of the observations of the Tribunal itself, to rule out any question of suicide, because the written statements of the respondents do not reveal any

allegations of that nature, except to the extent that Banto Devi had jumped out of the bus.

9. To arrive at the above conclusion, the Tribunal also referred to the testimony of the first claimant as PW1, wherein he stated that upon a tyre bursting, the driver had suddenly applied the brakes, due to which his wife fell down from the bus as there was no glass pane in the window next to which she was sitting.

That part having been disbelieved, it was held by reference also to the testimonies of the bus driver and conductor (RWs1 and 2 respectively), that due to a ply of the tyre having peeled off, the bus starting making a noise, due to which the driver stopped the bus and the lady jumped out of it due to fear.

In any case, holding that negligence need not be proved by the claimants in a petition filed under Section 163-A, and the fact that the deceased had fallen/jumped out of the bus and died having been established, the appellants-claimants were to entitled to compensation.

10. For working out the compensation, the learned Tribunal relied wholly upon the 2nd Schedule to the Act of 1988 and finding that the deceased was a house-wife, 1/3rd of the income of the 1st appellant, i.e. her husband, was taken to be her income, (in terms of clause 6 of the said Schedule).

The contention of the appellants-claimants that Banto Devi was maintaining two buffaloes and selling milk, earning Rs.1600/- - Rs.1700/- per month, was not accepted, in the absence of any evidence led to prove that

and consequently, the income of the 1st appellant having been found to be Rs.3200/- - Rs.3300/- per month, as an employee in the office of the Child Development and Project Officer, the income of the deceased was assessed to be Rs.1050/- per month.

Though her age was stated to be 36-37 years in the testimony of the 1st appellant, however, he having stated that he was 44 years of age, her age was taken to be about 43-44 years.

Accordingly, a multiplier of 15 was applied and after deducting 1/3rd of her notional income towards her personal living expenses, the loss of monthly income to the appellants-claimants was taken to be Rs.700/-, or Rs.8400/- annually. Upon application of the aforesaid multiplier of 15, the total loss of compensation was worked out to be Rs.1,26,000/-.

Rs.3500/- was assessed to be the expenditure incurred by them on her medical expenses, and Rs.9500/- was awarded towards funeral expenses, loss of consortium and loss of estate (in terms of clause 3 of the 2nd Schedule).

Thus, a total compensation of Rs.1,39,000/- was awarded by the Tribunal, to the appellants-claimants.

11. Mr. Mamli, learned counsel for the appellants, contended before this Court that though the claim petition was filed only under Section 163-A of the Motor Vehicle Act, 1988, however, in the judgment of the Supreme Court in Master Mallikarjun v. Division Manager, the National Insurance Company Limited and another 2013 ACJ 2445, it has been held that the 2nd Schedule to the Motor Vehicles Act, 1988 has become

redundant and as such, he further submitted, that the income of a housewife has also to be appropriately adduced in terms of Lata Wadhwa v. State of Bihar (2001) 8 SCC 197.

Learned counsel for the respondent-State, on the other hand, submitted that the learned Tribunal having come to its conclusion after appraising the entire evidence, no interference therewith is called for.

12. Having considered the aforesaid arguments, as also the impugned Award of the learned Tribunal, the first thing which is to be noticed in relation to Mr. Mamlis' arguments, is that in the case of *Master Mallikarjuns'* case (supra) that accident, in which a child was unfortunately involved, took place on 05.06.2006, i.e. about 11½ years after the introduction of the 2nd Schedule to the Motor Vehicles Act, w.e.f. 14.11.1994.

That having been said, it has been reiterated time and again that the schedule is inherently defective, inasmuch as, even the calculations given against the multipliers, in the first part of the Schedule, are not entirely arithmetically correct.

However, the rationale of Mr. Mamlis' argument, to the effect that the amounts of compensation stipulated in the other clauses of the Act, i.e. clauses 3 to 6, are not commensurate with current inflationary prices, is an argument that does not apply to the present case, in which the accident took place in 1997. Undoubtedly, the Award itself was pronounced on 06.10.2000, based on the figures given in the said Schedule which came into effect on 14.11.1994. However, the position is to be seen as on the date of

the accident and in the opinion of this Court, since the accident took place within two years and eight months from the date that the 2nd Schedule came into effect, the observations made by their Lordships in *Mallikarjuns'* case (supra), in which case the accident was of the year 2006, would not be entirely applicable.

13. As regards calculation of quantum, it is seen that the multiplier applied in the present case was 15, the deceased having been taken to be 43 to 44 years old, by the Tribunal. Though the appellants had contended that she was about 35 to 37 years of age, no evidence in that regard was led before the Tribunal, even in the form of a post mortem report. Thus, taking the age of the deceased to be 43 to 44 years old, i.e. about the same age as the 1st appellant (her husband), the Tribunal applied a multiplier of 15, as per the 2nd Schedule to the Motor Vehicles Act.

Yet, that multiplier has been disapproved by the Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another** (2009) 6 SCC 121, wherein for the age group of 41 to 45 years, a multiplier of 14 has been stipulated and for the age group of 36 to 40 years, a multiplier of 15 is stipulated.

Hence, on that score, even if the deceased is presumed to have been 4 to 5 years younger than her husband, i.e. the 1st appellant, she would be just below 40 years of age and therefore, the multiplier applied was correct in terms of the ratio of *Sarla Verma's* judgment.

14. Coming then to the income of the deceased as assessed by the Tribunal, i.e. 1/3rd of her husbands' income. Without a doubt, in *Lata*

Wadhwas' case (supra), the income of a housewife in the age group of 34 to 59 years was assessed by their Lordships to be Rs.3000/- per month.

In that case, the tragedy arose not because of a motor accident but because of a fire accident that took place in 1989. However, the basic principles of granting compensation were applied by their Lordships on the basis of the parameters of claims settled under the Motor Vehicles Act.

However, in the present case, it cannot be lost sight of, that the difference between a petition filed under Section 166 of the Motor Vehicles Act and one under Section 163-A of that Act, primarily lies in the fact that in the latter case, the negligence of the driver of the vehicle which was involved in the accident, does not have to be proved. Thus, whereas upon establishment of negligence, in a petition filed under Section 166, the liability of the driver and owner of the vehicle cannot be limited except on parameters settled in that regard in respect of claim petitions filed under Section 166, the liability of the driver and owner involved in an accident in which no negligence of the driver is established at all, is naturally limited.

It is with that objective, that the 2nd Schedule to the Act of 1988 was inserted, with defined parameters of compensation given therein.

Of course, if the Schedule were to be enforced as it stands, in cases where accidents took place 10 to 15 years (or more) after 14.11.1994, it may be actually amount to a miscarriage of justice. However, this appeal being one that has arisen from an accident that took place on 11.07.1997, about two years and eight months after the 2nd Schedule came into effect, the interest to be paid by the respondents, on the compensation amount to be

awarded, would, to some extent at least, offset the inflation in the cost of living that would have taken place during the period between the date of accident and the realisation of the compensation awarded.

15. Thus, if the ratio of *Lata Wadhwas'* case (supra) is not to be applied in a claim petition filed under Section 163-A, where the negligence of the driver is not established, it would still need to be seen as to whether the contribution of a housewife is adequately factored in, to calculate the compensation to be paid in her case.

Though this Court itself has in a judgment, in *Ram Partap and others v. Chandigarh Transport Undertaking and others* (FAO No.4387 of 2007, decided on July 5, 2016), held that in the case of a non-earning deceased housewife, even in a petition filed under Section 163-A, at least the minimum wages notified by the Government should be taken to be her income, considering her contribution to the home from morn till night, however, in that case the accident had taken place on 27.08.2004, i.e. 9 years and 9 months after the introduction of the 2nd Schedule in the Act of 1988.

In the present case, the Tribunal however has followed clause 6 (b) of the 2nd Schedule to assess the income of the deceased wife of the 1st appellant herein, at 1/3rd of his own income of Rs.3200/- per month.

As already said, as the 2nd Schedule is specific to cases where the negligence of the driver of the vehicle involved in the accident is not proved; hence, despite what this Court (this Bench) itself has held in *Ram Partaps'* case (supra), in the present case arising from an accident which took place in the year 1997, I find it difficult to depart from the parameters laid

down of the 2nd Schedule.

Consequently, the amount awarded by the Tribunal towards loss of income is upheld.

16. Coming to the other heads under which compensation was awarded, that too is difficult to interfere with, in view of the fact that for loss of consortium to appellant No.1, for funeral expenses and loss of estate, the amounts stipulated in clause 3 of the Schedule have been followed by the Tribunal.

Coming to the medical expenses of Rs.3500/-, assessed by the Tribunal to have been spent by the appellants on the deceased, between the time of the accident and between and her unfortunate death. In that regard, though no medical bills were produced before the Tribunal by the police, however, the fact that she was first shifted to the hospital at Shahbad, though in a passing jeep whose driver possibly did not charge any money on account of the fact that he was taking an injured lady, however, thereafter, the deceased was being taken to the PGI Chandigarh on 13.07.1997 but died before reaching there and consequently her body was brought back to her village. However, expenditure would have been incurred by the appellants on her treatment at Shahbad, including on medicines and hospital expenses, it being a private hospital, and thereafter, expenditure would have also been incurred on attempting to take her to the PGI, Chandigarh, and in bringing her body back from somewhere between Shahbad and Chandigarh.

In the opinion of this Court, even in the year 1997, Rs.5000/- to Rs.10,000/- at least would have been incurred on such medical and

transportation expenditure by the appellants, and as such, a sum of Rs.8000/- is awarded towards the medical and transportation expenses.

17. Thus, other than the above small amount of Rs.4500/- added by this judgment, to the compensation of Rs.1,39,000/- already awarded by the Tribunal, I find no ground to interfere with that judgment.

On that small enhanced amount, interest @ 9% is awarded to the appellants, from the date of the filing of the claim petition to the date of the Award of the learned Tribunal, i.e. from 07.08.1998 to 06.10.2000, after which interest @ 6% per annum would accrue on the enhanced amount, till the date of realization of the amount.

The appeal is accordingly disposed of, as above, with no order as to costs.

October 4, 2016
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(AMOL RATTAN SINGH)
JUDGE