

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1029 of 2007
Date of Decision : 28.01.2016

Sulekh Chand and anotherAppellants

Versus

Ram Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sagar Aggarwal, Advocate
for the appellants.

Mr. Inderjeet Singh, Advocate
for respondent no. 1.

Mr. G.D. Gupta, Advocate
for respondent no. 3-Insurance Company

Surinder Gupta, J.

Sulekh Chand and Santosh claimants-appellants filed petition under Section 166 of the Motor Vehicles Act claiming compensation for the death of Reena Devi in a motor vehicle accident with truck bearing registration No. HP-17-9364 (later referred to as 'the offending vehicle'), which was dismissed by Motor Accident Claims Tribunal, Yamuna Nagar (later referred to as 'the Tribunal') with the observation that death of Reena Devi as a result of accident with the offending vehicle is not established. Being not satisfied, claimants have filed this appeal against the award passed by the Tribunal.

BRIEF FACTS:-

2. Two claim petitions bearing MACT Nos. 46 and 47 of 2005 were filed, claiming compensation for the death of Shiv Kumar and Reena Devi in a motor accident. Facts relating to the accident as incorporated in para 24 of the claim petition in MACT

No. 47 of 2005 relating to death of Reena Devi in the accident reads as follows:-

“That on the fateful day of 22nd January, 2005, the deceased alongwith her maternal uncle was going on the motorcycle bearing registration no. HR-05P-1205, for going to Yamuna Nagar, to purchase the articles for the marriage of the deceased. The motorcycle No. HR-05P-1205, was being driven by Shiv Kumar. (sic) After crossing the Railway over bridge, when they reached near Kamani chowk, in the meanwhile, the offending truck No. HP-17-9364, being driven by the respondent no. 1 at a very fast speed in a rash and negligent manner, came from back side, and hit against the motorcycle of the deceased and due to the impact of the same, the deceased and her maternal uncle fell down on the road and were (being) crushed by the offending truck and both of them died on the spot. The present accident has occurred because of the sole, rash and negligent driving of the truck by the respondent no. 1. Had the respondent no. 1 observed caution and the rules of the road, the present accident would not have occurred and the precious life of the deceased would have been saved.”

3. Case of claimants, in brief, is that the deceased was 21 years of age. She was self-employed and running a coaching/tuition centre, thereby earning ₹8000/- per month. Claimants are parents of the deceased and her death has caused great mental pain and agony to claimants. They claimed compensation of ₹10 lacs for the death of their daughter.

4. In the written statement filed by respondents no. 1 and 2 i.e. driver and owner of the offending vehicle, it was denied that the accident was caused due to rash and negligent driving of the offending vehicle by respondent no. 1-Ram Kumar.

5. Respondent no. 3-Insurance Company in its separate written statement also denied the accident and took an alternate plea that the accident, if any, was caused, it was due to sole negligence of driver of the motorcycle, which was being driven by Shiv Kumar in a rash and negligent manner without complying with the traffic rules. It was further alleged that deceased-Reena Devi was not an earning hand. She was a student having no income.

6. Claim petitions bearing MACT No. 46 and 47 of 2005 were taken up together by the Tribunal for the purpose of recording evidence and findings. Following consolidated issues were framed in both the cases:-

- (i) Whether the accident was caused due to rash and negligent driving of truck No. HR-17-9364 by Ram Singh-respondent no. 1, as alleged? OPP
- (ii) Whether claimants-Rena Rani etc. are entitled to recover any amount of compensation on account of death of Shiv Kumar in the accident, if so, to what amount and from whom? OPP
- (iii) Whether claimants-Sulekh Chand etc. are entitled to recover any amount of compensation on account of Reena Devi in the accident, if so, to what amount and from whom? OPP
- (iv) Whether the insured violated any terms and conditions of insurance policy, as alleged? OPR
- (v) Relief.

7. On appraisal of evidence, the Tribunal recorded finding on issue no. 1 that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1,

resulting in death of Shiv Kumar driver of the motorcycle. It was, however, observed that death of Reena Devi as a result of accident is not established. The Tribunal, however, assessed compensation amount for the death of Reena Devi as ₹2 lacs. However, in view of finding on issue no. 1, claimants were held not entitled to recover any compensation for the death of Reena Devi.

8. Learned counsel for the appellants has argued that the Tribunal has ignored the material documentary evidence on file while recording finding that the death of Reena Devi daughter of claimants-appellants in the accident is not proved. It ignored version in the FIR which was recorded immediately after the accident on the statement of Suresh Pal son of Balak Ram. Copy of the FIR was on record before the Tribunal. Police had presented the challan against Ram Kumar-driver of the offending vehicle wherein a specific charge was framed that in the accident dated 22.01.2005, respondent no. 1-Ram Kumar had caused death of Shiv Kumar as well as Reena Devi in the accident. The copy of charge-sheet was produced on record as Ex. P-4. This allegation was also in the final report submitted by police under Section 173 Cr.P.C., copy of which was placed on record as Ex. P-5. The accident had taken place on 22.01.2005 near *Kamani Chowk*, Yamuna Nagar. Dead body of Reena Devi was brought to Civil Hospital, Yamuna Nagar (Jagadhri) on 22.01.2005 and it was mentioned in the postmortem report (Ex. P-6) that dead body was brought from *Kamani chowk*, Yamuna Nagar (Jagadhri). It was also opined by the doctor that injuries on the person of deceased (Reena Devi) could be because of roadside accident. Dead body of Shiv Kumar was also brought to

the hospital for postmortem examination from *Kamani Chowk*. Both the dead bodies were brought by HC Rishpal Singh No. 493. Both the dead bodies were identified by Karamveer and Raghubir Singh witnesses. All this shows that Reena Devi was with deceased Shiv Kumar on his motorcycle at the time of accident. The Tribunal ignored this evidence and got swayed by the statement of PW-1 Reena Rani wife of deceased-Shiv Kumar who had stated that she was on motorcycle of her husband at the time of accident. It is nowhere the case of respondents that death of Reena Devi had not taken place in the accident. The Tribunal has also failed to assess monthly income of deceased-Reena Devi who was a post-graduate and was doing tuition work. The lump sum compensation of ₹2 lacs assessed by the Tribunal is on lower side.

9. Learned counsel for the respondents have argued that the Tribunal on the basis of evidence has rightly observed that death of Reena Devi in motor accident with the offending vehicle is not proved. No evidence was produced by the claimants to prove their case giving any reason for interference with findings of the Tribunal.

10. On giving careful thought to the submissions of learned counsel for the parties and on perusal of record of claim petitions, I find that the Tribunal has committed error while recording the finding that death of Reena Devi in a motor accident with the offending vehicle on 22.01.2005 is not established. The Tribunal ignored the vital evidence on record and appears to have been got swayed by the statement of PW-1 Reena Rani wife of deceased-Shiv Kumar who had set up altogether a new case beyond pleadings that

she was on the motorcycle with her husband at the time of accident and received injuries but did not state that Reena Devi (deceased) was also on motorcycle of deceased.

11. In order to appreciate the testimony of PW-1 Reena Rani in a proper perspective, it would be relevant to first have a look on the pleadings relating to accident as contained in para 24 of claim petition bearing MACT No. 46 of 2005 filed by Reena Rani and others claiming compensation for the death of Shiv Kumar which took place on 22.01.2005 with the offending vehicle. Para 24 of the petition describe the accident in the following manner:-

*“That on the fateful day of 22nd January, 2005 the deceased **alongwith his sister’s daughter** was going on his motorcycle bearing registration No. HR-05P-1205 for going to Yamuna Nagar, to purchase the articles for the marriage of daughter of his sister. The deceased was driving the motorcycle No. HR05P-1205, at a very normal speed, observing the rules of the road. After crossing the Railway over bridge, when they reached near Kamani Chowk, in the meanwhile, the offending truck bearing registration No. HP-17-9364, being driven by the respondent no. 1 at a very fast speed in a rash and negligent manner, came from back side, and hit against the motorcycle of the deceased and due to the impact of the same, **the deceased Shiv Kumar and the pillion rider i.e. daughter of the sister of the deceased**, fell down on the road and being crushed by the offending truck and both of them died on the spot. The present accident has occurred because of the sole rash and negligent driving of the truck by the respondent no. 1. Had the respondent no. 1 observed caution and the rules of the road, the present accident would not have occurred and the life of the deceased would have been saved.”*

12. Perusal of the above pleadings show that claimants, including PW-1 Reena Rani, have pleaded that the deceased alongwith his sister's daughter was going on the motorcycle and both died in the accident after being crushed by the offending vehicle. The accident had taken place near *Kamani Chowk*, Yamuna Nagar. In the postmortem report (Ex. P-9) of Shiv Kumar it was mentioned in the relevant column that dead body had been brought from *Kamani Chowk*, Yamuna Nagar. Dead body of Shiv Kumar was identified by Karamveer son of Sadhu Ram and Raghubir Singh son of Balak Ram. Perusal of postmortem report (Ex. P-6) of Reena Devi also shows that her dead body was brought from *Kamani Chowk* and was identified by same Karamveer and Raghubir Singh. FIR regarding the accident was got recorded by one Suresh Pal who also stated that Reena Devi d/o Sulekh Chand was pillion rider on the motorcycle of Shiv Kumar at the time of accident and the offending vehicle crushed Shiv Kumar and Reena Devi resulting in their death at the spot. The police on investigation presented the final report (Ex. P-5) wherein it describes the accident and death of Reena Devi alongwith Shiv Kumar in the accident. Copy of charge-sheet (Ex. P-4) shows that Ram Kumar driver of the offending vehicle was charge-sheeted by the Court of Chief Judicial Magistrate, Jagadhri, for offence under Section 304-A of the Indian Penal Code (IPC) for causing death of Shiv Kumar and Reena Devi due to rash and negligent driving of the offending vehicle. The above documentary evidence do not leave any iota of doubt that it was Reena Devi who was pillion rider on the motorcycle of Shiv Kumar. Even the respondents have not

denied this fact in the reply to claim petition. In the reply filed in case MACT No. 47 of 05.04.2005 filed by parents of Reena Devi, respondents have nowhere taken the plea that death of Reena Devi was not caused in the accident. The only plea taken by respondents no. 1 and 2 was that the accident had not taken place due to rash and negligent driving of the offending vehicle by respondent no. 1. Respondent no. 3-Insurance Company in its reply had taken the plea that “the alleged deceased was not an earning hand. She was a student and her income was nil.”

13. In the circumstances discussed above, it is quite strange that Reena Rani wife of deceased-Shiv Kumar while appearing as PW-1 has stated that she was with her husband as a pillion rider on his motorcycle and has also sustained injuries but did not name Reena Devi daughter of Sulekh Chand, who died at the spot in the accident and as per version of accident given in petition filed by Reena Rani, she (Reena Devi) was pillion rider on motorcycle with Shiv Kumar.

14. Learned counsel for respondents has argued that Sulekh Chand father of Reena Devi when appeared as PW-4 did not state anything about the manner in which his daughter died in the accident and there is no other eye-witness account of the occurrence to support the claim of parents of Reena Devi that she got killed in the accident with the offending vehicle.

15. Sulekh Chand father of Reena Devi had appeared as PW-4 and stated that his daughter has died in a roadside accident on 22.01.2005. He was not an eye-witness to the occurrence, as such, could not be expected to give details or to describe the

manner of accident. He was not even suggested that his daughter had not died in the accident with the offending vehicle or her death had not taken place in the accident.

16. The un-rebutted documentary evidence on record as discussed above is sufficient to reach the conclusion that Reena Devi had died in the accident. The Tribunal has committed grave error while ignoring the documentary evidence on record in this regard and on the basis of testimony of PW-1 Reena Rani has recorded the finding that death of Reena Devi as a result of accident in question is not established. The finding of the Tribunal on issue no. 1 to this effect is reversed. It is proved on record that Reena Devi alongwith Shiv Kumar died in accident with offending vehicle, which at the time of accident was being driven in a rash and negligent manner by respondent no. 1.

17. The Tribunal assessed compensation payable to claimants due to death of Reena Devi as ₹2 lacs. This was calculated by taking the dependency of claimants on her income to the tune of ₹1000/- per month. Admittedly, the deceased was post-graduate. PW-4 Sulekh Chand has stated that she was doing tuition work thereby earning ₹8000/- per month. In the absence of any documentary evidence, even if, this plea of claimants is not accepted, still being an educated person, her income can be taken as that of a skilled labourer which in the year 2005 was around ₹5000/- per month. In the case of **Minu Rout and another vs. Satya Pradyumna Mohapatra and others**, 2013 (10) SCC 695 the accident had taken place on 08.11.2004 and the Apex Court held income of the deceased as ₹6000/- per month considering the

job of a driver as skilled job. In a similar case before Delhi High Court in case of **Mahrunisha and others vs. Mohd. Naseem Haider and others, 2013 (2) AICJ 626**, the accident had taken place on 24.09.2009 and the Delhi High Court assessed income of the deceased as ₹7500/- per month. Keeping in view the observations in above cited cases, monthly income of the deceased in this case is taken as ₹5000/- per month. Claimants are also entitled to compensation of ₹1 lac for the loss of love and affection and ₹25000/- for funeral expenses. The deceased was 21 years of age, as such, in view of norms fixed in the case of **Sarla Verma and ors. vs. Delhi Transport Corporation and another, (2009) 6 SCC 121**, multiplier of 18 is applied in this case to assess the amount of dependency.

18. Taking the above factor into account, compensation to which claimants are entitled is tabulated as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased Reena Devi	₹5000 per month
(ii)	1 / 2 nd of (i) deducted as personal expenses of the deceased	₹5000 - ₹2500 = ₹2500 per month
(iii)	Compensation after multiplier of 18 is applied	(₹2500X12X18) = ₹540000
(iv)	Loss of estate, love and affection	₹100000
(v)	Funeral expenses	₹25000
Total		₹665000

19. In view of my above discussion, the instant appeal has merit and the same is accepted. Award passed by the Tribunal is set aside and the claimants are allowed compensation of ₹6,65,000/- for the death of Reena Devi. The amount of compensation will carry interest @ 7.5% per annum from the date

of filing of the claim petition till actual realization. Being insurer of the offending vehicle, amount of compensation shall be paid by respondent no. 3-Insurance Company within six weeks.

January 28, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? *Yes/No*