

In the High Court of Punjab and Haryana at Chandigarh

FAO No.4981 of 2011 (O&M)

Date of decision: February 23, 2016

Ashok Kumar

..... Appellant

Versus

Sheela and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Rajeev Sharma, Advocate for the appellant.

Mr. Sukhdeep Parmar, Advocate for respondents No.1 to 4.

Respondent No.5 proceeded ex-parte.

Mr. Sanjiv Goyal, Advocate for respondent No.6.

1. *Whether Reporters of Local Newspapers 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)

CM No.823-CII of 2016

This is an application for grant of stay regarding recovery from the appellant, however, learned counsel for the parties unanimously prays that the main case be decided.

Prayer allowed and the main case is taken up for motion hearing today itself.

CM stands disposed of.

Main appeal

This appeal has been filed by the owner of the offending truck against the award dated 17.03.2011 passed by Motor Accident Claims Tribunal, Panipat.

Brief facts as given in the claim petition are; in the midnight of 01.09.2008, Balbir Singh driver and Nishan Dev, cleaner were coming from Khizarabad after loading sand in truck bearing registration No.HR-67-3434. At around 4/5.00 am they reached three kilometers ahead of Ladwa. When they were checking the tyres of the truck, from the back side a loaded truck bearing No.HR-69-6537 SRL Company driven by Jagbir – respondent No.1 came at very high speed and in rash and negligent manner and hit the truck, which was parked on the left side. As a result, front tyre of driver side had crushed Nishan Dev, cleaner and he succumbed to injuries. After causing the accident, the driver of the offending vehicle ran away from the spot. FIR was registered at the statement of Balbir Singh, driver of truck No.HR-67-3434.

The Tribunal held that the driver – respondent No.5 was not competent to drive on account of disability and this was a violation of terms and conditions of the insurance policy and consequently absolved the insurance company – respondent No.6 from the liability to pay the compensation and held the appellant liable to pay the same.

Learned counsel for the appellant has argued that the finding of the Tribunal is vitiated in so much as there is no admissible/credible evidence regarding the disability of respondent No.5. He has further

pointed out that mother of respondent No.5 had placed on record a photocopy of some disability certificate alleged to have been issued by Civil Surgeon, Panipat. As per that certificate, respondent No.5 was suffering from 40% to 70% moderate disability as reported by the head of Psychiatric Department, PGIMS, Rohtak. Apart from that, she had given testimony that her son was handicapped since long. He has argued that the document being a photocopy was inadmissible in evidence without application for leading secondary evidence and as far as testimony of mother is concerned, this was exculpatory evidence to save her son from prosecution under the law and, in the absence of any other evidence, the tribunal could not come to this conclusion that respondent No.5 was physically or mentally disabled.

Learned counsel for respondent No.6 has argued that cases under the Motor Vehicles Act, 1988 (for short 'the Act') have been tried as summary cases and, therefore, this evidence is admissible. In my opinion, even if the cases under the Act have been tried as summary cases yet the essential principle of the law of evidence cannot be given a go-bye. To hold that a driver was disabled, the original Medical Certificate had to be produced by the person who had issued it so that he could have been cross-examined. In the circumstances, it has to be held that the photocopy of disability certificate produced by the mother could not have been taken to be evidence of disability.

Learned counsel for the insurance company-respondent No.6 has further argued that owner of the offending vehicle did not come forward to depose that he had reason to believe that the driver

was mentally or physically fit to drive. Learned counsel for the appellant has argued that the owner of the offending vehicle would have been required to come and give evidence only if admissible/credible evidence had been led about the physical or mental disability of respondent No.5 but since evidence of physical or mental disability was inadmissible/incredible, the fact that the owner did not appear, could not be held against him. In my opinion, this argument is correct.

As regards the claim for enhancement, it may be mentioned that even though no appeal has been filed by the claimants for enhancement, there is no impediment in enhancing the compensation in view of the judgment of Delhi High Court passed in MAC. APP.587 of 2011, decided on 22.01.2015 titled as **United India Insurance Co. Ltd. Vs. Ashok Kumar and others** where it has been held as follows:

“18. It is averred by the learned counsel for the appellant that there is no cross- appeal or cross-objections by Respondent no.1. However, the question whether enhancement of the amount without filing cross-appeal or cross-objections has been dealt with by this Court in MAC APP. 629/2010 titled Oriental Insurance Company Limited versus Mamta Kumari & Ors., decided on 06.09.2012 wherein this MAC APP 587/2011 Page 6 of 11 Court in paras 13 to 19 has held as under:-

"13. The theory of not awarding compensation more than the amount claimed got a sea change with the judgment of the Supreme Court in [Nagappa v. Gurudayal Singh & Ors.](#), (2003) 2 SCC 274, wherein the Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the Claimant. In an appropriate case where from the evidence brought on record if the Tribunal/Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such an award. The Supreme Court said that the only embargo was; that it should be „just“

compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable. Para 21 of the report is extracted hereunder:

"21. In our view, under the [M.V. Act](#), there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award „just“ compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section(4) to [Section 166](#), even report submitted to the Claims Tribunal under Sub-section (6) of [Section 158](#) can be treated as an application for compensation under the [M.V. Act](#), If required, in appropriate cases, Court may permit amendment to the claim Petition."

14. [In National Insurance Company Ltd. v. Rani](#), 2006 ACJ 1224, a Division Bench of Madras High Court held that without filing any Appeal or Cross-Objections, High Court is competent to enhance the compensation in MAC APP 587/2011 Page 7 of 11 favour of a victim of a motor vehicle accident by invoking provisions of Order XLI Rule 33 Code of Civil Procedure(Code). Para 16 of the report is extracted hereunder:

"16. At the risk of repetition it may be stated that the contention put forward is that the Court is duty bound to fix the just compensation. The fact that the Claimants have not filed any cross objection would not stand in the way and further the Court can by invoking the powers conferred under Order XLI Rule 33 of CPC, is satisfied, can enhance the compensation and call upon the Claimants to pay necessary court fee. In that context, the learned counsel also submitted, when the Supreme Court has ruled that even at the appellate stage original petition can be amended claiming enhanced compensation, the Court enhancing compensation in the instant case, if satisfied, invoking powers under Order XLI, Rule 33 will certainly be in order."

15. [In Oriental Fire and General Insurance Co. Ltd. v. Amarsingh Pratapsingh Sikliker](#), 1(1993) ACC 627, a Division Bench of Gujarat High Court held that the Appellate Court was empowered to grant adequate compensation so as to do substantial justice between the parties even in absence of Cross-Objections or Appeal.

Para 17 of the report is extracted hereunder:

"17. It becomes very clear from the aforesaid provisions that the appellate Court is empowered to grant adequate relief so as to do substantial justice between the parties even in absence of cross- objections or appeal...."

16. In *Sone Ram v. Jayaprakash*, AIR 1986 MP 21, the High Court of Madhya Pradesh exercising power under Order XLI Rule 33 of the Code enhanced the compensation granted by the Claims Tribunal even MAC APP 587/2011 Page 8 of 11 though no Appeal was preferred by the Claimant. In the case of *Sewaram alias Sewan v. Nanhe Khan alias Asgar Beg*, 1987 ACJ 354(MP), the High Court of Madhya Pradesh awarded 10% interest on the compensation amount in the absence of any Appeal or Cross-Objections by the Claimants.

17. A learned Single Judge of this Court in [National Insurance Co. Ltd. v. Komal & Ors.](#), MANU/DE/2870/2012, (MAC. APP. No.595/2007 decided on: 27.04.2012) referred to the judgments of the Supreme Court in [Pannalal v. State of Bombay](#), AIR 1963 SC 1516; [Rameshwar Prasad v. M/s Shyam Beharilal Jagannath](#), (1964) 3 SCR 549; [Nirmal Bala Ghose v. Balai Chand Ghose](#), AIR 1965 SC 1874; [Giasi Ram v. Ramjilal](#), AIR 1969 SC 1144; [Harihar Prasad Singh v. Balmiki Prasad Singh](#), (1975) 2 SCR 932; [Mahant Dhangir v. Madan Mohan](#), (1988) 1 SCR 679; [State of Punjab v. Bakshish Singh](#), (1999) 8 SCC 222 and judgments of various High Courts to opine that the High Court is empowered to enhance the compensation without filing any Appeal or Cross-Objections by a Claimant.

18. In [Ibrahim v. Raju](#), AIR 2012 SC 534, a compensation of ₹3,00,000/- was claimed by the Appellant which resulted in an award of ₹60,000/- by the Claims Tribunal. The compensation was enhanced to ₹1,89,440/- by the High Court, which was enhanced to ₹6,00,000/- by the Supreme Court. Para 21 of the report is extracted hereunder:

"21. We are conscious of the fact that in the petition filed by him, the Appellant had claimed compensation of Rs. 3 lacs only with interest and cost. It will be reasonable to presume that due to financial incapacity the Appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the MAC APP 587/2011 Page 9 of 11 Tribunal and the High Court and for that reason this

Court are duty bound to award just compensation, (emphasis supplied) we deem it proper to enhance the compensation from Rs. 1,89,440/- to Rs. 6 lacs. This approach is in tune with the judgment in [Nagappa v. Gurudayal Singh](#), (2003) 2 SCC 274. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in *Municipal Corporation of Greater Bombay v. Kisan Gangaram Hire*, 1987 ACJ 311(Bombay), Orissa High Court in *Mulla Mod. Abdul Wahid v. Abdul Rahim*, 1994 ACJ 348 (Orissa) and Punjab and Haryana High Court in [Devki Nandan Bangur v. State of Haryana](#), 1995 ACJ 1288 (P & H)."

19. In *New India Assurance Co. Ltd. v. Gopali & Ors.*, Civil Appeal No.5179 of 2012 (arising out of SLP (C) No.11345 of 2007) decided by the Supreme Court on 05.07.2012, the New India Assurance Co. Ltd. challenged an award of compensation of ₹6,45,300/-. The compensation was, however, enhanced to ₹10,63,040/- by the Supreme Court."

Learned counsel for the claimants-respondents No.1 to 4 has argued that the salary of ₹3,000/- per month of the deceased, which has been taken by the Tribunal is highly inadequate. According to him, the deceased was working as a cleaner in the truck, his income should have been taken to be that of semi-skilled person, which according to the relevant notification of the State of Haryana, Labour Department, was ₹ 3,770/- per month w.e.f. June, 2007.

I find favour with this argument and take his salary as ₹ 3,770/- per month. He further submits that the multiplier of 17 should be applied in place of 16 as the age of the mother was 35 years and the deceased was 18.

In view of the observations made by this Court in FAO No.5181 of 2010, titled as **Nanak Singh and another Vs. State of Punjab**

and another decided on 17.01.2014 whereby ".....keeping in view the

conflicting decisions of the Hon'ble Supreme Court and taking support from the decision of Division Bench of our High Court in United India Insurance Company Limited v Raj Rani 1998 (1) ACJ 175, in my considered view, the age of the deceased as well as the age group of the claimants is required to be taken into consideration while adopting a multiplier for determining the dependency to award compensation to the claimant." I find this argument to be valid. Therefore, I hold the multiplier of 17 should be applied.

He further argues that funeral expenses of ₹10,000/- are highly inadequate. I award ₹15,000/- more for funeral expenses.

He further argues that nothing has been awarded on account of loss of love and affection to the mother and unmarried sister. Learned counsel for the insurance company submits that unmarried sister cannot be taken to have been dependent on the deceased. Even though technically this argument is correct, this court cannot lose sight of the social responsibility of an elder brother in Indian society, who is bound to contribute something for the marriage of his younger sister.

In these circumstances, ₹ 01 lac is awarded to respondent No.1 (mother) and ₹50,000/- to respondent No.3 (sister) towards loss of love and affection. However, the claim of appellant No.4 i.e. younger brother of deceased on account of loss of love and affection is declined.

With these modifications, the appeal is disposed of. As regards the interest, it is stipulated that interest @ 8% should be paid on the enhanced amount from the date of application till the date of payment. Apart from the individual amounts awarded, the compensation

be handed over to respondent No.1.

Since the main case has been decided, the pending Civil miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

February 23, 2016
sonia/jt