

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Date of Decision: 26.04.2016.

FAO No.2533 of 2012

Baljeet Kaur @ Balbir Kaur and others

....Appellants.

VERSUS

Butta Singh and others

....Respondents.

WITH

FAO No.2803 of 2012 (O&M)

New India Assurance Co. Limited

....Appellant.

VERSUS

Baljeet Kaur @ Balbir Kaur and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. J.S. Cooner, Advocate
for the appellants (in FAO No.2533 of 2012) and
for respondents No.1 to 4 (in FAO No.2803 of 2012).

Mr. Vipul Sharma, Advocate for
Mr. Paul S. Saini, Advocate
for the appellant (in FAO No.2803 of 2012) and
for respondent No.3 (in FAO No.2533 of 2012).

SNEH PRASHAR, J.

The award dated 17.01.2012 passed by learned Motor Accident
Claims Tribunal, SAS Nagar, Mohali (for short, “the Tribunal”), by virtue

of which MACT Case No.78 of 30.03.2009 i.e. the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by Baljeet Kaur @ Balbir Kaur and others (claimants-appellants) was allowed, has given rise to the two appeals captioned above, one filed by the insurance company with whom Canter Swaraj Mazda No.HR-04N-0599 (hereinafter referred to as the “offending Canter”) was insured and the other by Baljeet Kaur @ Balbir Kaur and others, the claimants themselves.

Precisely, the facts are that on 18.12.2008, Pardeep Singh (since deceased) was going from his house in Panchsheel Enclave, Ambala Road, Zirakpur to Chandigarh by means of Aactiva scooter No.PB-65F-4992 (for short, “the Aactiva”) and his brother Kavardeep Singh was travelling with him as a pillion rider. At about 6:15 p.m., when they reached near Popular Property Dealer, Zirakpur on Ambala-Chandigarh road, the offending Canter, being driven rashly, negligently and in a high speed, came from their backside, overtook their Aactiva and coming on extreme left side of the road i.e. in front of the Aactiva suddenly applied brakes without any signal or indication. The front portion of the Aactiva struck into the rear portion of the offending Canter and due to the impact, both of them fell down. While Kavardeep Singh suffered minor injuries, Pardeep Singh suffered multiple grievous and serious injuries and became unconscious. The driver of the offending Canter sped away from the spot towards Chandigarh. Pardeep Singh was taken to G.M.C.H., Sector-32, Chandigarh, but he succumbed to the injuries on the way to the hospital.

A First Information Report No.221 dated 18.12.2008 was

registered under Sections 279, 337 and 304-A of the Indian Penal Code at Police Station Zirakpur against respondent-Butta Singh.

The widow, sons and mother (legal representatives) of deceased Pardeep Singh filed a petition invoking the provisions of Section 166 of the Act of 1988 claiming compensation from the driver, owner and insurer (respondents in the petition) of the offending Canter for his untimely death. The petition was contested by the respondents. Respondents No.1 and 2 denied the occurrence of accident involving the offending Canter. Respondent No.3 besides denying the accident raised all preliminary objections available to the insurer under the Act of 1988.

On the basis of the rival pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal accepted the petition and awarded Rs.6,00,000/- as compensation to the claimants (appellants in FAO No.2533 of 2012) and held the respondents jointly and severally liable for payment of the compensation amount.

Feeling dissatisfied, the appellants-claimants filed the appeal i.e. FAO No.2533 of 2012 seeking enhancement of the compensation amount. The appellant-insurance company also assailed the award by filing appeal i.e. FAO No.2803 of 2012.

The submissions made by learned counsel for the parties have been heard and record perused.

FAO-2803-2012 (O&M)

At the very outset, learned counsel for the appellant-insurance company argued that there was no substantive or reliable evidence to prove involvement of the offending Canter in the accident during which Pardeep Singh died. The First Information Report Ex.P7 was registered on the statement of Kwardeep Singh, brother of the deceased, who stated that he was travelling as a pillion rider on the Axtiva being driven by the deceased when the accident took place. In his report, he simply referred to the vehicle which caused the accident as "heavy vehicle" and categorically stated that he could neither read the number of that vehicle nor could recognize its make or mark due to darkness. On his statement, the First Information Report was registered against an 'unknown vehicle driver'. Subsequently, on the statement of one Suhsil Kumar, the offending Canter was introduced as the offending vehicle.

Elaborating his argument, learned counsel contended that the collusion between the claimants and the driver and owner of the offending Canter is evident from the fact that the driver-owner who were arrayed as respondents No.1 and 2 quietly walked out of the proceedings when the trial before the Tribunal reached the stage when they were called upon to adduce evidence. The appellant-insurer after seeking required permission from the Tribunal summoned the owner and driver for examining them as witness but they did not appear and ultimately the evidence of the appellant was closed by order of the learned Tribunal. The brother of the deceased, who lodged the First Information Report, did not appear in the witness box

though he claimed to be an eyewitness of the accident. His absence also proves that the offending Canter was falsely implicated and he was unable to explain when and how he came to know the particulars necessary for identification of the offending Canter.

Without prejudice to his above argument, learned counsel for the appellant submitted that even if it is assumed for the sake of arguments that the offending Canter was the vehicle involved in the accident yet from the narration of the accident presented by the claimants and PW2 Sushil Kumar, it is apparent that the accident occurred due too rash and negligent driving of the Activa by the deceased himself. The Activa of the deceased hit the offending Canter from the backside. When the offending Canter was ahead of the Activa of the deceased, as per traffic rules, it was necessary for the deceased to maintain proper and safe distance from the offending Canter. In fact, the distance of the Activa from the offending Canter was so less that when the driver of the offending Canter applied brakes, the deceased had no time to apply brake and stop at a considerable distance. Because of his own high speed and rash driving, he went and rammed into the rear portion of the offending Canter. The said facts, at the most, make out a case of contributory negligence on part of the driver of the offending Canter and the deceased who was driving the Activa and learned Tribunal erred in holding the driver of the offending Canter solely responsible for causing the accident in question.

It was also the argument of learned counsel that the income of the deceased had been taken as Rs.4800/- per month whereas as per the

Haryana Government notification, the minimum wage of an unskilled labourer in the year 2008 was Rs.3664.54P per month.

On the other hand, learned counsel for the respondents-claimants argued that in the First Information Report, which was recorded on the statement of Kwarddeep Singh, brother of the deceased on the day of accident i.e. 18.12.2008, the registration number of the vehicle which caused the accident may not have been mentioned but in his statement recorded under Section 161 of the Code of Criminal Procedure (for short, "Cr.P.C.") on just the next day of the accident, PW2 Suhsil Kumar, an eyewitness of the accident, had very clearly mentioned the registration number of the offending Canter being the vehicle involved in the accident and had categorically stated that the accident had taken place due to rash and negligent driving of the offending Canter by its driver (respondent-Butta Singh). The appellant-insurer was given adequate opportunity by learned Tribunal to examine the driver or the owner of the offending Canter but it failed to do so. During cross-examination of PW2 Sushil Kumar, it was suggested by the owner and driver (respondent No.1 and 2 in the petition) that the deceased had struck his Activa into the offending Canter when it was stationary. By their own suggestion, they admitted that the offending Canter was the vehicle involved in the accident.

As regards the alternate argument of learned counsel for the appellant that the deceased was guilty of contributory negligence, learned counsel argued that because the driver of the offending Canter had abruptly applied brakes after coming in front of the Activa of the deceased, the

Activa of the deceased hit into the offending Canter. To support his argument that there was no act or omission on part of the deceased which could be termed as 'contributory negligence' on his part, learned counsel relied upon **Shrimanti and Ors.vs. Krishna Deva Madiwal and Ors., 2005 ACJ 350.**

Indeed, in the First Information Report lodged by brother of the deceased, the registration number of the offending vehicle was not stated. That would not mean that there was no other source that could disclose the identity of the offending vehicle. On registration of First Information Report, the investigation commences during which statements of relevant witnesses are recorded and that is the legal way to know the necessary facts related to the crime in order to detect the identity of the criminal/offender. In the instant case, during investigation, statement of PW2 Sushil Kumar was recorded by the Investigation Officer under Section 161 Cr.P.C., who stated that he was an eyewitness of the accident and in his statement he mentioned the registration number of the offending Canter as the vehicle involved in the accident.

Through in his affidavit Ex.PW2/A, PW2 he stated that on the relevant date and time, he was going on his scooter from his house in village Baltana Nayi Abadi and after he had crosses Zirakpur light chowk from Dera Bassi side and was coming towards Chandigarh, he saw two persons going ahead of him on an Activa. The Activa was being driven by its driver on his left hand side of the road at a moderate speed. In the meantime, the offending Canter, being driven by Butta Singh (respondent

No.1 in the petition) in a rash and negligent manner, came from their backside and after overtaking him and then the Aactiva going ahead of him, the driver brought his offending Canter on the extreme left side of the road i.e. just in front of the Aactiva and abruptly applied brakes without slowing down the speed and without giving any signal or indicator. As a result thereof, the rear portion of the offending Canter struck against the front portion of the Aactiva. Both the occupants of the Aactiva fell on the road. The driver of the Aactiva became unconscious and the pillion rider suffered minor injuries. The driver of the offending Canter stopped at the site of accident for about half a minute and then sped away. On enquiry, the pillion rider of the Aactiva disclosed his name as 'Kawardeep Singh' and also told that the person lying unconscious was hit brother Pardeep Singh. On the next day of the accident, he again stopped there and on enquiry by the police officials he disclosed the particulars of the offending Canter being the vehicle that had caused the accident. It is also in the statement of PW2 that on 28.01.2009 he was called by the police for identification of the driver of the offending Canter and he had identified the driver as he was present among 4 or 5 persons present there. The driver then disclosed his name and address etc. in his presence.

The statement of PW2 Sushil Kumar is crystal clear on every aspect relating to the accident. He even explained when and how he disclosed the identity of the offending Canter to the police. He was cross examined by the driver and owner (respondents No.1 and 2 in the petition) as well as by the appellant-insurer separately. Nothing such could be

derived from him during cross-examination which could favour either of the respondents or could shake his credibility. The appellant-insurer except for putting 2/3 suggestions to the witness, did not cross examine him on any of the relevant facts disclosed by him and therefore, the appellant has nothing on which it can assail the deposition of PW2 Sushil Kumar. It is also important to mention here that no evidence worth in its name could be produced by the appellant to rebut the testimony of PW2 Sushil Kumar. There is nothing on record to prove that he was either related to the deceased or to the claimants or had any reason to be hostile against Butta Singh, driver of the offending Canter to implicate him falsely. From the above discussion, it follows that there appears no doubt that the offending Canter was the 'heavy vehicle' involved in the accident.

Coming to the second argument of learned counsel for the appellant that because the Activa of the deceased had struck into the rear portion of the offending Canter, it was a case of contributory negligence on part of the deceased, the narration of accident by PW2 Sushil Kumar would indicate that there was no negligence on part of the deceased and rash and negligent driving of the offending Canter by respondent-Buta Singh was solely responsible for causing the accident in question. PW2 stated that the Activa being driven by the deceased was going ahead of him. The offending Canter had come from their backside and after overtaking his scooter and then the Activa of the deceased, the driver of the offending Canter had taken his vehicle on the extreme left side of the road in front of the Activa and had abruptly applied brakes without slowing down the speed or without

giving any signal or indicator. Such being the set of facts, the deceased could not be blamed for not keeping appropriate distance from the vehicle going ahead of him. The offending Canter had suddenly come in front of his Aactiva and its driver had applied brakes giving him no chance to stop his Aactiva and avoid the accident. Due to sudden and abrupt halt of the offending Canter, its rear portion hit the front portion of the Aactiva and the impact was so high that the occupants of the Aactiva fell down and its driver suffered serious and fatal injuries which led to his death. Thus, seeing from every angle, it was the rash and negligent driving of the offending Canter on part of respondent No.1 which led to the accident during which Pardeep Singh lost his life.

The finding of learned Tribunal that the Pardeep Singh died in a motor vehicle accident which was caused due to the rash and negligent driving of the offending Canter by respondent-Butta Singh, calls for no intervention.

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Learned counsel for appellants-claimants argued that the deceased was employed as a driver in United Arab Emirates at Dubai and was earning 4000 Dirham per month which is equivalent to Rs.52,000/- per month but learned Tribunal wrongly assessed his income as Rs.4800/- per month only and deducted 1/3rd of the income towards personal and living expenses of the deceased whereas the dependents of the deceased being four in number, the deduction of 1/4th of the income should have been made. Further, considering the age of the deceased the appropriate

multiplier to the amount assessed as loss of dependency of the appellants was '16' whereas learned Tribunal applied the multiplier of '15'. No amount was added by learned Tribunal to the income of the deceased computing future prospects and the amount of Rs.20,000/- awarded towards funeral expenses and loss of estate is also on the lower side. No amount was awarded to the claimants for loss of consortium and loss of love and affection. The interest allowed by learned Tribunal on the amount of compensation is also on the lower side.

To prove the income of the deceased, the claimants had produced on file documents Ex.P1 to Ex.P5. The passport of the deceased was also produced, however, the documents tendered were just photocopies and for the reasons best known to the claimants the original were withheld. The documents not proved in due process of law fail to inspire truth. Ex.P6 is the middle examination certificate of the deceased wherein his date of birth is mentioned as '07.03.1973' which means that at the timer of his death he was 35 years old. The accident had taken place in the year 2008 and the income of the deceased was assesses as Rs.4800/- per month but there being no evidence to support the assessment it appears to be on higher side especially when in the year 2008 the minimum wage of an unskilled worker was Rs.3664.54 per month. There being nothing to indicate occupation of the deceased, he had to be taken as an unskilled labourer. In the year 2008-2009 the minimum wage of an unskilled labourer was Rs.3664.54 per month. The wage rate as per minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation. As

such, considering all factors, the monthly income of the deceased is assessed as Rs.4000/- per month i.e. Rs.48,000/- per annum.

Perusal of the award shows that no amount was added to the income of the deceased computing future prospects. Following the ratio of **Rajesh and others vs. Rajbir Singh and others, 2013(3) R.C.R. (Civil) 170** since the deceased was 35 years aged when he died in the accident, there had to be an addition of 50% to the actual income of the deceased on account of future prospects, which learned Tribunal failed to allow.

The deceased is survived by widow-Baljeet Kaur @ Balbir Kaur, two minor sons-Ramandeep Singh and Jaskaran Singh and mother-Gurmeet Kaur. In view of the law laid down by Hon'ble Apex Court in **Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) R.C.R. (Civil) 77**, there being four dependents of the deceased, deduction of 1/4th is appropriate. Considering the age of the deceased being 35 years, the multiplier of '16' should have been applied by learned Tribunal instead of '15'. Accordingly, the compensation payable to the appellants-claimants is calculated as under:-

1.	Monthly income of the deceased (in Rupees)	Rs.4000/-
2.	Actual age of the deceased	35 years
3.	Increase in future income as per Rajesh and others' case (supra)	Rs.2000/-
4.	Annual dependency	3/4 of Rs.6000 x 12 = Rs.54,000/-
5.	Multiplier	16
6.	Total	Rs.8,64,000/-

In addition to the amount of Rs.8,,64,000/- calculated towards

dependency, the amount of Rs.20,000/- awarded on account of funeral expenses and loss of estate is enhanced to Rs.25,000/- as funeral expenses and Rs.5000/- for loss of estate. A further amount of Rs.1,50,000/- is awarded to the appellants-claimants No.2 to 4 for loss of love and affection and an amount of Rs.1,00,000/- towards loss of consortium is allowed to appellant-claimant No.1. The amount of Rs.4000/- granted on account of transportation charges is just and adequate.

Accordingly, the appeal filed by the appellants-claimants and the appeal of the insurance company are disposed of and the award dated 17.01.2012 passed by learned Tribunal is modified. The enhanced compensation of Rs.5,48,000/- shall be deposited by the respondents within 45 days from the date of receipt of certified copy of this judgment failing which the appellants-claimants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of this order till realization. The amount of compensation will be disbursed to the appellants-claimants in terms of shares/conditions incorporated in the award of the Tribunal.

(SNEH PRASHAR)
JUDGE

26.04.2016.

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