

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

**FAO No.3413 of 2013 (O&M)
Date of Decision: September 21, 2016.**

Karamjit Kaur and others

.....APPELLANT(s).

VERSUS

Bhuri Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Sunil Garg, Advocate
for the appellant (s).

Mr. G.D. Gupta, Advocate
for respondent No.3.

SURINDER GUPTA, J.

This is appeal by claimants Karamjit Kaur and others against the award dated 09.11.2012 passed by Motor Accident Claims Tribunal, Patiala (later referred to as 'the Tribunal'), dismissing the petition claiming compensation for the death of Gurmeet Singh (later referred to as 'the deceased') in a motor accident which took place on 12.05.2009 with TATA-1109 vehicle bearing registration No.PB-11V/6889 (later referred to as 'the offending vehicle').

2. The claimants have given the details of the accident in para 24 of the claim petition, which reads as follows:-

“That on 12.5.2009 the deceased Gurmeet Singh was coming to his village on his Bajaj Chetak Scooter No.PB-

10-AB-9475 from Samana. Lakhwinder Singh s/o Faqir Singh resident of village Bamna Basti, Tehsil Samana, District Patiala was also following the deceased on his motorcycle. The deceased Gurmeet Singh was driving his scooter on his correct left hand side at a normal speed. At about 7.15 PM, when the deceased reached in the revenue limits of Village Bamna Basti (T-point village Kularan Samana and Bhawanigarh), in the meantime a Tata Canter bearing No.PB-11-B-6889 came from Bhawanigarh side driven by respondent No.1 in a rash and negligent manner with very high speed, without observing the traffic rules, came from the front side of the scooter (i.e. the offending vehicle is plying on its right hand side) and hit against the scooter of the deceased. As a result of which deceased Gurmeet Singh fell down and received multiple injuries on his person, which proved fatal and caused his death. The occurrence was witnessed by Lakhwinder Singh and Ram Pal son of Ralla Singh R/o New Grain Market, Samana, District Patiala who were present at the spot. The matter was reported to the police and an FIR against unknown person was lodged by P.S. Samana, District Patiala in order to escape the main accused. However, a criminal complaint against respondent No.1 i.e. driver of the offending vehicle, is also pending in the court of Sh. Kuldeep Singh, Sub Divisional Judicial Magistrate, Samana. The post mortem examination on the dead body of deceased was conducted at Civil Hospital, Samana. The driver of the Tata Canter No.PB-11-B-6889 is the sole author of the accident. As the accident took place due to rash and negligent driving of the driver of Tata Canter as such all the respondents are jointly and severally liable to pay compensation to the claimants.”

3. The claimants alleged that the deceased, aged 37 years, was

doing private job and his own business, thereby earning ₹12,000/- per month. The claimants were dependent on the deceased and claimed compensation of ₹30 lacs.

4. Respondent No.1 did not appear despite service and was proceeded against ex parte, while respondent No.2 in its written statement, denied the accident and that respondent No.1 was ever employed as driver. It pleaded in para 14 of the reply as follows:-

“The present petition is false, frivolous and vexatious to the knowledge of the claimants and has been filed just to cause harassment to the replying respondent. The replying respondent has nothing to do with the alleged accident. The detailed reply has already been given above. The claim petition has been filed to extract easy money. In fact, as per the version of the FIR, it was registered against unknown person and no number of offending vehicle was mentioned which clearly shows that accident took place but the offending vehicle ran away from the spot and the particulars of the real offender were not known and as such the claimants only to get easy claim, filed this petition after mentioning wrong facts. In fact, there is no firm with the name of Johri Medda Mill, Patiala Road, Samana and the replying respondent is running his business under the name and style of M/s Samana Roller Flour Mills, Patiala Road, Samana and is having one Truck No.PB-11-V-6889, which is owned by Avinash Jain but no accident as alleged took (sic place) with the said vehicle nor Bhuri Singh ever remained the driver of the said vehicle. It is also mentioned in the FIR that offending vehicle was TATA Canter 407 but the vehicle of the replying respondent is TATA 1109 Model.”

The offending vehicle was insured with National Insurance

Company Limited-respondent No.3. In its separate written statement, the insurer took the objection that the driver of the offending vehicle was not having a valid and effective driving licence and this vehicle was being plied without valid route permit. It also denied the accident. However, admitted the insurance of the offending vehicle for the period from 10.04.2009 to 09.04.2010.

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

- (1) Whether deceased Gurmit Singh died in a motor accident, caused due to the rash and negligent driving of offending vehicle by respondent no.1? OPP
- (2) Whether the claimants are entitled to compensation and from whom? OPP
- (3) Whether the petition is not maintainable? OPR
- (4) Whether the respondent no.1 never worked as driver on the truck of respondent no.2 nor does the respondent no.2 knows him? OPR
- (5) Relief.

7. The Tribunal declined the claim petition mainly on following grounds:-

- (i) In the FIR, the vehicle involved in the accident is mentioned as TATA-407 and no vehicle number was mentioned.
- (ii) Bant Singh, father of the deceased, had got recorded the FIR but he never made reference of Lakhwinder Singh as eyewitness of the accident.

- (iii) Lakhwinder Singh never got recorded his statement with the

police under Section 161 Cr.P.C. or ever visited police station to make statement.

(iv) Lakhwinder Singh has stated that at the time of accident, he was present at '*kainchian*'(crossing) and place of accident was 5-6 kilometres away from that site.

(v) Lakhwinder Singh stated that he has apprised Bant Singh father of the deceased about number of the offending vehicle.

(vi) Avinash Jain, partner of respondent No.2, who appeared as RW4 has stated that on the day of accident, the vehicle in question had gone to Ludhiana.

8. Learned counsel for the appellants-claimants has argued that the Tribunal instead of probing the way accident took place, gave reasons to discard the version of the claimants which are not based on proper appraisal of evidence on record and are also not legally sustainable. It is quite unfortunate that Gurmeet Singh had died in the accident. Identity of the vehicle is mentioned as a TATA vehicle. It is immaterial for a layman that it was a TATA-407, 907, 1100 or 1109. The matter was reported to the police without any delay. The misfortune of the claimants continued when Bant Singh, author of the FIR also died and they had to rely on the statement of Lakhwinder Singh, an eyewitness of the incident. Lakhwinder while appearing as PW3 stated that he had gone with Bant Singh to the police station. If police had not recorded his statement, no fault can be found with the version of the claimants regarding the accident. The police submitted an untrace report in this case in casual manner without assigning any reason, particularly when, the offending vehicle was taken into

possession. The mechanical examination of the offending vehicle would have disclosed that it had met with an accident. Respondent No.2 has come up with a manipulated version that offending vehicle had gone to Ludhiana on the day of accident. This plea was never taken in the written reply and the name of the driver of the offending vehicle, who had taken it to Ludhiana, has not been disclosed nor he has been examined. Respondent No.2 has taken the plea that Bhuri Singh was not driver of the offending vehicle, if so it was for the owner to disclose as to who was driver of the vehicle on the day of accident but very cleverly it has chosen to keep it a concealed fact in the reply and also in the statement by way of affidavit of Avinash Jain, who appeared as RW4 for respondent No.2. The evidence produced by the claimants regarding the accident was not to be securitised on the same parameters as is done in criminal cases. The claimants have to make out that the accident took place as alleged by them which they have been able to prove by leading cogent and convincing evidence. The claimants belong to poor strata of society and could not fight against respondent No.2, who is a big businessman of the area. The police did not present the challan despite repeated applications moved to it. It merely harped on the fact that the vehicle mentioned in the FIR is TATA-407 which could not be traced. It is for the investigating agency to trace the truth but in this case, despite taking the offending vehicle into possession, the police without ascertaining the name of its driver on the relevant day, presented an untrace report before the court with submission that if the culprit comes to notice at any later point of time, required action will be taken. The claimants have proved the accident and that the deceased was

employed with Shiv Motor Bus Service and was getting ₹6,500/- per month, as salary. He was 37 years of age. Karamjit Kaur, his wife has stated that he was also doing side business of sale of milk and earning ₹5,500/- per month, in addition to his salary. The claimants are also entitled to compensation for loss of consortium, for loss of love and affection, care and guidance for the minor children of the deceased and also for loss of estate to the parents.

9. Learned counsel for the respondent No.3 has argued that the reasons advanced by the Tribunal are based on appraisal of evidence on the record. Bant Singh, father of the deceased had got the FIR registered as eyewitness of the occurrence while Lakhwinder Singh stated that he (Bant Singh) reached the spot on receiving intimation about the accident. Bant Singh has nowhere referred to Lakhwinder Singh as eyewitness. It is improbable that Lakhwinder Singh had gone to police station or even to the hospital. He got his statement regarding the accident recorded in the court for the first time. This all shows that it is a manipulated version. If Lakhwinder Singh had noted the number of the vehicle and also disclosed the same to Bant Singh, the same would have been mentioned in the FIR. The police could not trace the vehicle involved in the accident and filed untrace report. Even criminal complaint filed by the claimants was also dismissed. The onus was heavily on the claimants to prove that the offending vehicle was involved in the accident and the accident took place due to rash and negligent driving of the offending vehicle by respondent No.1, which they have utterly failed to prove.

10. On giving a careful thought to the submissions of learned counsel for the parties, I find that the entire evidence led in the claim

petition call for re-appraisal to reach the conclusion as to whether the claimants have been able to prove that the accident took place with the offending vehicle and it was caused due to rash and negligent driving of the offending vehicle by its driver.

11. Before proceeding further, it will be relevant to take a note of the fact that the claimants do not belong to highly educated segment of the society. Father of the deceased Bant Singh was a bus driver with PEPSU Roadways. The deceased was a conductor with Shiv Bus Service. There remained confusion even while preparing the claim petition about number of the offending vehicle which was mentioned as PB-11-B-6889 instead of PB-11-V-6889. Even while dictating statement of witness examined by the Tribunal, number of the vehicle was dictated as PB-11-B-6889. However, at some places, it was mentioned as PB-11-V-6889. The reason for this mistake is obvious because of the fact that while pronouncing the word 'B' in Gurmukhi, which is a language of the region to which the claimants belong, not much difference is found in pronouncing 'B' or 'V' for a semi-literate person. This explains the reason for mistake about number of the vehicle mentioned in claim petition as PB-11-B-6889, which was, however, later on rectified by way of amendment as PB-11-V-6889.

12. The second question which arise in this appeal is about the identity of the vehicle involved in the accident. In the FIR, the vehicle is mentioned as Canter TATA-407. While in fact the vehicle in question is TATA-1109. It is only the difference of size of TATA-407 and 1109 and when a vehicle hit a person and the driver succeeded in speeding away with the vehicle, it may not be possible for a person to take exact note that

whether it was a TATA-407 or 1109. However, the vehicle was a TATA Canter vehicle and this identifies the vehicle involved in the accident.

13. The matter was reported to the police within few hours of the accident. The offending vehicle was also taken into possession by the police vide memo Ex.R8. This shows that the police had reached the vehicle. Memo Ex.R8 reads as follows:-

“Certificate

It is certified that Canter bearing No.PB-11V-6889 was taken into possession due to accident in case bearing FIR No.131 dated 26.03.2007 for offences punishable under Sections 279, 304-A IPC registered at Police Station Sadar Patiala and original registration certificate of the vehicle was taken in police custody, which has been attached with the file.

Sign/-
HC Hansraj/1359
P.P. Dhakala,
P.S. Sadar Patiala.”

14. This shows that the offending vehicle was taken into possession by the police as it was involved in the case pertaining to FIR (Ex.P1). It is quite strange, rather ridiculous to read the untrace report (Ex.R2) prepared by the police, wherein it averred that preliminary investigation was conducted and the attempt was made to trace tempo TATA-407 which did not succeed, as such, it was not deemed appropriate to keep the investigation pending. Consequently, untrace report was submitted keeping the option open to track the case as and when the opportunity so arise. No reference was made in this report Ex.R2 about taking of offending vehicle into possession; as to whether it was got mechanically examined; whether

the police inquired about the driver of the offending vehicle. All this reflect

that police, which besides being an investigating agency is also responsible force, has not only acted in a casual manner but has given untrace report to favour the culprit in this case. It is nowhere mentioned in the report or anything has come on record that on investigation the offending vehicle, which was taken in possession by police was not found involved in the accident.

15. In view of these facts, I find no reason to read this report against the claimants who have been moving applications i.e. Ex.R4, Ex.R5, Ex.R6 and mark-A to the police authorities to investigate the case and the present the challan. They ultimately filed a criminal complaint but could not pursue the same and unfortunately, it was dismissed due to non-appearance of claimant/complainant.

16. The next question which arise in this case is as to whether the testimony of Lakhwinder Singh is credible or not. The Tribunal has discarded his statement because of the reason that Bant Singh has not mentioned him as an eyewitness in the FIR. It is a settled proposition of law that FIR is not an encyclopaedia giving all details of an event/occurrence. It is only an information to the police about an incident. There is no legal requirement to mention the name of all the eyewitnesses in the FIR. While appearing as PW3, Lakhwinder Singh has stated that on the fateful day, he was going from Samana to his village Bamna Basti, Tehsil Samana District Patiala on motorcycle. The deceased was going ahead of him on his scooter when near T-point of village Kularan Samana and Bhawanigarh, the offending vehicle came from the side of Bhawanigarh in a very rash and high speed and hit the scooter of the deceased, who suffered multiple

grievous injuries and died at the spot. He has stated that the accident took place due to rash and negligent driving of the offending vehicle by its driver. He was cross-examined at length and in his cross-examination, he has stated that at the time of accident, he was standing at *Saidpura Kainchian*. It was never got clarified from him as to whether the place of accident is 5/6 kilometres from *Saidpur Kainchian* or from some other crossing. In the area, where the accident took place, the crossings are usually referred as '*Kainchian*'. Without there being specific clarification, the Tribunal has committed error while observing that this witness was 5/6 kilometres away from the place of occurrence. Moreover, statement of this witness is to be read as a whole and one line in his statement can not be referred to reach some conclusion. In his affidavit Ex.PC, he has categorically stated that when he reached near T-point of village Kularan Samana and Bhawanigarh, accident took place. Keeping in view his entire statement, one line in his cross-examination that accident took place 5/6 kilometres from *Kainchian* (crossing), cannot be interpreted to conclude that he was 5/6 kilometres away from the place of accident, when it took place. He has stated that the number of the offending vehicle was disclosed to Bant Singh, author of the FIR but the same is not mentioned in FIR. Bant Singh is not alive to disclose as to under what circumstances, police did not record the vehicle number in his statement. So far as the driver of the offending vehicle is concerned, he stated that his name later on was disclosed to him as Bhuri Singh. He further stated that he had gone to police station with Bant Singh. This observation of the Tribunal that he had come to court to depose for the first time is without any basis. When a

person goes to the police, it is for the investigating officer to inquire about the accident from him and to record his statement.

17. As already discussed, the police had conducted the investigation in this case in a very slip shod manner, apparently for obvious reasons to avoid tracing the real culprit. Lakhwinder Singh has not appeared as a tutored witness. He has stated the truth which has also resulted in certain discrepancies but the same have not rendered his statement unworthy of reliance.

18. The Tribunal very easily believed the version of Avinash Jain, partner of respondent No.2, who stated that their vehicle on the fateful day had gone to Ludhiana. This fact was beyond pleading and is not supported by any evidence. Strangely enough, respondent No.2 has cleverly avoided to disclose the name of driver of their vehicle on the fateful day. The onus was on the owner to disclose as to who was driving his vehicle on the date of accident, if Bhuri Singh was not driver of the offending vehicle on the date of accident.

19. I agree with the submission of learned counsel for the appellants-claimants that the evidence produced by the claimants is not to be put to that strict scrutiny as in a criminal case. Reference in this regard can be made to the observations made in case of ***Bimla Devi V. Himachal Road Transport Corporation, 2009 (13) SCC 530.***

20. As a sequel of my above discussion, I am of considered opinion that the findings recorded by the Tribunal that the claimants have not been able to prove that the accident was caused by the offending vehicle or due to rash and negligent driving of offending vehicle by its driver, is not based on

proper appreciation of evidence and are set aside. It is held that Gurmeet Singh deceased died due to rash and negligent driving of the offending vehicle. Consequently the finding of Tribunal on issue No.3 are also reversed and the claim petition is held as maintainable.

21. The next question which arise for consideration is quantum of compensation. The Tribunal has not recorded any finding in this regard despite there being an issue. However, keeping in view that the evidence has been produced by the parties and the quantum of compensation can be assessed in this appeal on appraisal of evidence, I proceed to look into the evidence produced by the claimants in this regard.

22. PW2 Darshan Singh has stated that he is Inspector-cum-Manager of Shiv Motors Bus Service, Samana with whom the deceased was employed and getting ₹6,500/- per month as salary. Though he has not produced any documentary evidence regarding salary of the deceased but it is proved from the version incorporated in the FIR, which was recorded on the statement of Bant Singh, who is since dead and the statement of Karamjit Kaur, his wife that deceased was employed as conductor with Shiv Motor Bus Service and was getting ₹6,500/- per month as salary. However, this plea of claimants that deceased was also earning ₹5,500/- from dairy business, cannot be accepted for want of any documentary or corroborating evidence in this regard.

23. As per the observations in case of *Rajesh and others Vs. Rajbir and others (2013)9 SCC 54, Munna Lal Jain and others Vs. Vipin Kumar Sharma and others 2015(3)RCR (Civil) 447*, claimants are entitled to addition of 50% in the income of the deceased towards future prospects.

In view of observations in case of *Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121*, 1/4th of income of the deceased is to be deducted towards his personal expenses and the multiplier to be applied in this case, in view of the age of the deceased as 37 years, is 15. The claimants are also entitled to compensation of ₹1 lac towards loss of consortium for the wife; ₹1 lac towards loss of love and affection, care and guidance for minor children of the deceased and ₹1 lac towards loss of estate for the parents of the deceased. Claimants are also entitled to compensation of ₹25,000/- towards funeral expenses.

24. Taking above factors into account, the amount of compensation to which the claimants are entitled to is tabulated as follows:-

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Income of the deceased	₹6500 per month
(ii)	50% of (i) above to be added as future prospects	(₹6500+ ₹3250)= (₹9750 per month)
(iii)	1/4 th of (ii) deducted as personal expenses of the deceased	(₹9750-₹2438)= ₹7312 per month
(iv)	Compensation after multiplier of 15 is applied	(₹7312X12X15)= ₹1316160
(v)	Loss of consortium	₹100000
(vi)	Loss of care and guidance for minor children	₹100000
(vii)	Loss of estate	₹100000
(viii)	Funeral expenses	₹25000
<i>Total</i>		₹1641160

25. Consequently, the appeal has merits and is accepted. The award passed by the Tribunal is set aside and the claim petition is accepted. The appellants-claimants are held entitled to compensation of ₹16,41,160/- for the death of Gurmeet Singh. The amount of compensation will carry interest 7.5% per annum from the date of filing of the petition till actual

realization. The vehicle was insured with respondent No.3, as such, it will

pay the entire amount of compensation to the claimants. However, keeping in view the fact that respondent No.2-owner of the offending vehicle have not come up with any specific plea regarding driver of the offending vehicle, a right is afforded to the insurance company to proceed against respondent No.2 through civil remedy to recover the amount of compensation, if there is breach of terms and conditions of the insurance policy.

26. Since, it has come on record that claimant No.6 Bant Singh has expired, the amount of compensation shall be apportioned between the claimants as follows:-

- (i) Claimant No.1 : 40%
- (ii) Claimants No.2 to 5 : 15% each.

27. Respondent No.3-insurance company will deposit the share of appellants-claimants No.1 and 5 in their bank accounts or pay the same through demand drafts. The share of minor appellants No.2 to 4, who are mentioned as minors at the time of filing of the appeal, will be deposited in some nationalised 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 minors as required at the time of deposit of the amount and the minors shall not be asked to bring the fresh order from the Tribunal to get the payment of the amount deposited in their names after the date of attaining majority. The above direction has been issued to save the claimants from unnecessary harassment caused due to directions the bank usually give to bring the order of the Tribunal to get the payment even after

attaining the age of majority. In case of demise of any of above claimant(s),

his/her share of compensation shall be apportioned equally amongst other surviving claimants. The claimants shall also be entitled to costs of this appeal. The counsel fee is assessed ₹20,000/-.

September 21, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

√
Yes/No

Whether Reportable:

√
Yes/No