

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

**FAO No.1257 of 2016 (O&M)
Date of Decision: 30.08.2016**

Indo Swiss International Convent School and another

.....Appellants

Vs

Sukhwinder Kaur and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Ashok Giri, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

1. This is an appeal filed by owner of the offending vehicle against the Award dated 22.12.2015 passed by the Motor Accidents Claims Tribunal, Jalandhar (for short 'Tribunal'), whereby the claim petition under Section 166 of Motor Vehicles Act, 1988 (for short the 'Act') filed by the claimants-respondents was allowed.

2. Respondents-claimants filed a petition under Section 166 of the Act for grant of compensation along with interest on account of death of Harwinder Singh in a vehicular accident which took place on 1.9.2014 at 6:45 A.M. Harwinder Singh was driver by profession in Pepsu Road Transport Corporation,

Kapurthala Depot (for short 'PRTC, Kapurthala Depot'). On 1.9.2014, he was going to his duty on Motorcycle in early hours. His brother Rachhpal Singh and cousin Khushbir Singh were also following him on their motorcycle. At about 6:45 A.M, when they reached near railway line approximately 1 km ahead of Muhem, near village Rerwan and village Mahuwal, Tehsil Nakodar, District Jalandhar, the offending bus belonging to the appellant, came from opposite side at a very fast speed in a rash and negligent manner and without giving any signal, hit the motorcycle of Harwinder Singh. On account of impact, the motorcycle was pushed forcibly and Harwinder Singh suffered serious injuries on his head and other parts of the body. Motorcycle was also completely damaged. Rachhpal Singh and Khushbir Singh stopped their vehicle and found Harwinder Singh to be dead on the spot. The driver of the offending vehicle ran away from the spot, whose name later on came to be known as Manjit Singh. FIR No. 377 dated 1.9.2014, under Sections 279, 304-A and 427 IPC, was registered against the driver of the offending vehicle. Deceased was 38 years of age at the time of death and was keeping good health. He was working as a driver in PRTC, Kapurthala Depot for the last 3-4 years on temporary basis. There were chances of his confirmation in the job on permanent basis and in that eventuality he would have earned salary to the tune of ₹ 30,000/- to ₹ 50,000/- per month. The

claimants asserted that the deceased was having 2 kanals of land and was also dealing with sale and purchase of milk, animals and woods during free time. The income of the deceased was claimed to be ₹ 30,000/- to 50,000/- per month from the resources.

3. The claim petition was contested by the appellants-respondents. The Tribunal found that the accident in question was the result of rash and negligent driving of the driver of the offending vehicle.

4. As per Ex.PW-5/A to Ex.PW-5/d, deceased Harwinder Singh was found appointed as driver w.e.f. 14.6.2012 in PRTC, Kapurthala Depot. He received appreciation letter from the General Manager in respect of his work as driver. Sarbjit Singh, Clerk, PRTC, Kapurthala Depot, had proved all these documents in his statement as PW-5. Though Harwinder Singh was not absorbed on regular basis and was appointed by the contractor only, as against salary payable to regular drivers, the Tribunal assessed the salary of deceased Harwinder Singh to be ₹ 10,000/- per month i.e. ₹ 1,20,000/- per annum. In the absence of any evidence of other source of income, the claim of the claimants- respondents was not entertained.

5. The tribunal awarded ₹ 1,00,000/- for the loss of consortium. 30% increase on account of future prospects keeping in view the age of deceased to be 40 years in the light

of observations made in **Rajesh and anothers vs. Rajvir and others 2013 (3) RCR (Civil) 170**. The future prospects has been held applicable even in case of private employment in view of judgment rendered by the Hon'ble Supreme Court in **Smt.Neeta wife of Kallappa Kodolkar and others vs. The Divisional Manager MSRTC, Kolhapur, 2015 (2) Civil Court Cases, 524 (SC)**.

6. Relying upon the aforesaid propositions, the Tribunal came to assess annual income of the deceased to be ₹ 1,20,000 + 30% = ₹ 1,56,000/- per annum. The claimants were four in number, therefore, deduction to the tune of 1/4th towards self expenses of the deceased was applied and the annual dependency was calculated to the tune of ₹ 1,17,000/- per annum. Since the deceased was 40 years of age, a multiplier of 14 was applied and in this way, the amount assessed by the Tribunal was to the tune of ₹ 16,38,000/- . In addition to this, amount under the conventional heads i.e. ₹ 25,000/- towards funeral expenses, ₹ 50,000/- towards loss of estate, ₹ 1,00,000/- towards loss of love and affection and ₹ 1,00,000/- towards loss of consortium was added, thereby making tally of total compensation to be ₹ 19,13,000/-. The amount was ordered to carry interest @ 7.5% per annum from the date of filing of claim petition till final realisation of the amount. The liability of the owner, driver and the society was held to be joint and several to

pay the aforesaid compensation. The amount of compensation was apportioned amongst the claimants in the ratio as depicted in para No.41 of the award.

7. Learned counsel for the appellant has argued that the award is on the higher side and the manner in which the accident had taken place was on doubtful note.

8. I have considered the arguments raised by learned counsel for the appellant.

9. The claim cases are to be decided on the concept of welfare legislation where no strict proof of evidence is required to be appreciated. The cases are to be decided on the basis of preponderance of probability. Registration of criminal case against driver of the offending vehicle in itself is sufficient to infer that the driver of the offending vehicle was at fault. FIR No. 377 dated 1.9.2014 was registered against respondent No.1.

10. In view of ratio laid down in **Girdhari Lal Vs. Radhey Shyam and others, (1993) 2 PLR 109**, the lodging of FIR was considered to be sufficient to presume that the accident was the result of rash and negligent driving of driver of the offending vehicle. The strict proof regarding evidence is not required in a road accident nor the requirement is analogous to a criminal trial. The claimants are only required to establish the case on the touchstone of preponderance of probability as held by the Hon'ble Supreme Court in **Parmeshwari vs Amir Chand & Ors**

2011 (2) RCR (Civil), 153 (SC) and in **Kusum Lata and others vs. Satbir Singh and others** **2011 (2) RCR (Civil) 379.** No doubt can be entertained and culpability of the driver has to be inferred from the circumstances. The court cannot succumb to niceties and technicalities. The proof of accident is not supposed to be proved beyond shadow of any reasonable doubt. The inquiries before the Tribunals are in the nature of summary inquiries where strict rules of evidence are not applicable. Tribunal is to ascertain as to whether the accident has taken place by the use of motor vehicle or not. The involvement of driver in a FIR is the sufficient proof to establish that the driver of the offending vehicle was rash and negligent in terms of his driving and the accident took place on account of such driving.

11. Deceased Harwinder Singh was found to be 40 years of age. He was a driver in PRTC, Kapurthala Depot, which has been established by documentary evidence produced by PW-5 Sarabjit Singh, Clerk, PRTC, Kapurthala Depot. It has also come on record that regular drivers in the Corporation are drawing salary to the tune ₹ 30,000/- per month. The income of the deceased, who was employed as driver by the contractor, was correctly assessed to be ₹ 10,000/- per month. The dependency was rightly calculated after adding future prospects to the tune of ₹ 1,56,000/- per annum and after deducting the

1/4th income of the deceased the dependency comes to ₹ 1,17,000/- per annum.

12. Keeping in view the age of the deceased, the Tribunal has rightly assessed total amount of compensation as ₹ 19,13,000/- after adding conventional heads of compensation towards loss of love and affection, loss of consortium, loss of estate and funeral charges.

13. In considered opinion of this Court, the amount awarded by the Tribunal does not call for any interference at the hands of this Court. The appeal is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

August 30, 2016
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Whether Reasoned/Speaking Yes/No
Whether Reportable Yes/No