

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

FAO No.2107 of 2016(O&M)
Date of Decision: May 16, 2016

Cholamandlam MS General Insurance Company Ltd. ...Appellant

Versus

Kiran and others ...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Ms. Vandana Malhotra, Advocate for
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

For the reasons mentioned in the application, delay of 58 days
in filing the appeal is condoned.

This is an appeal by the Insurance Company (Cholamandlam
MS General Insurance Company Limited) against the Award 08.10.2015
passed in MACP No.206 of 5.10.2013 by the Motor Accident Claims
Tribunal, Fazilka (for short 'the Tribunal') awarding compensation of
Rs.29,25,000/- along with interest for the death of Kavinder Gupta @
Kuvinder Gupta in a motor vehicular accident.

Brief facts of the case are that on 24.12.2012, at about 4.00
p.m., Kavinder Gupta @ Kuvinder Gupta-deceased resident of Dashmesh
Nagar, Jalalabad was going on foot towards K.G.Industries, Jalalabad.
Ashwani Kumar- brother of deceased was also going for his domestic work
at that time. A truck bearing No.HR-69-A-7037 being driven rashly and
negligently, crossed Ashwani Kumar and then hit his brother who fell down

and sustained injuries. Ashwani Kumar after stopping his motorcycle, picked his brother. Labourers also gathered at the spot. Ashwani Kumar shifted injured Kavinder Gupta to Ludhiana, but he died on the way to hospital. FIR No.187 dated 24.12.2012, under Sections 279/304-A IPC was registered on the statement of Ashwani Kumar at P.S.Sadar Jalalabad regarding this accident.

The legal heirs of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 40 years and was working as Accountant in M/S K.G Industries, Jalalabad, earning Rs.20,000/- per month.

Upon notice, respondent -Ashok Kumar (driver of the offending truck) was proceeded against ex parte. Respondents - Gulab Singh and Rakesh Kumar (owners of the truck) had been given up by the claimants, so they were ordered to be deleted from the array of parties. Respondent - Gurmail Singh (another owner of truck, who took the vehicle on Superdari after the accident) had appeared and contested the claim petition. Appellant – insurer pleaded that driver of the truck in question was not having valid and effective driving licence and truck in question was not holding a valid registration certificate at the time of accident.

On the pleadings of the parties, the Tribunal framed the following issues:-

- “1. Whether the death of Kavinder Gupta @ Kuvinder Gupta son of Babu Ram caused by respondent no.1(driver) while driving truck bearing No. HR-69A-7037 owned by respondent No. 2, in rash and negligent driving on 24.12.2012 at about 4 PM in the area of Ariana Wala Road, Jalalabad? OPC*
- 2. Whether claimants are legal representatives of deceased*

Kavinder Gupta@ Kuvinder Gupta son of Babu Ram? Dr. Gopal Arora, Motor Accident Claim Tribunal, Fazilka, 8.10.2015 4 Kiran v.Ashok Kumar etc. OPC

- 3. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPC*
- 4. Whether the claim petition is not maintainable?OPR*
- 5. Whether the claimants have no come with clean hands and have suppressed the material facts from this court?OPR*
- 6. Whether the claimants are estopped by his own act, conduct?OPR*
- 7. Whether the claim petition is false, frivolous and vexatious to the knowledge of claimants?OPR*
- 8. Whether the claimants have no right, locus standi or cause of action to file the present claim petition?OPR*
- 9. Relief.*

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of truck No.HR-69A-7037 by respondent Ashok Kumar. As per the document Ex.C13 (salary certificate) supported by ledger (Ex.C12), the income was assessed by the Tribunal at Rs.1,80,000/- per annum. The deceased was aged about 40 years at the time of his death, therefore, addition of 50% in the income towards future prospects was granted. Multiplier of 15 was applied and 1/3rd was deducted as personal and living expenses and total loss of dependency was assessed at Rs.27,00,000/-(1,80,000+90,000 = 2,70,000-90,000 = 1,80,000x15 = 27,00,000). Besides, the Tribunal also awarded amounts for loss of consortium at Rs. 1,00,000, loss of care and guidance for children at Rs.1,00,000/- and funeral expenses at Rs. 25,000/-.

Learned counsel for the appellant- Insurance Company has challenged the award contending that merely by registration of an FIR, it

cannot be taken to have been proved that the accident was caused due to rash and negligent driving of the offending truck. He has further contended that as per the certificate (Annexure A-3, produced today in court) issued by M/s K.G.Industries, employer of the deceased, he was earning Rs.1,66,700/- per annum. He has next contended that as per the Aadhar Card (Annexure A-1), the year of birth of the deceased was 1969 and thus he was aged about 43 years at the time of the accident which took place on 24.12.2012. Accordingly, he has argued that increase of 50% in the income of the deceased towards future prospectus was unjustified. Relying on the Aadhar Card, he has also contended that considering the age of the deceased as 43 years, multiplier of 14 was to be applied, whereas, the Tribunal fell into error by applying the multiplier of 15.

I have heard learned counsel for the appellant and perused the paper book with her assistance.

It has been noted by the Ld. Tribunal that CW-3 Ashwani Kumar has categorically deposed about the rash and negligent driving of the truck by respondent No. 4. His statement was further supported by Kiran wife of the deceased. The accident had occurred on 24.12.2012 and the FIR regarding the accident was registered with the police station on the same day. Ashok Kumar-the driver of the offending vehicle did not come forward to rebut the allegations.

This Court in Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109, observed about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, as under:-

“xxx xxx xxx There is no denial that Radhey Shyam

respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries.xxx xxx xxx”

The requirement of proof in a MACT case is not so stringent as in criminal case. The Hon'ble Supreme Court in **Kusum Lata and others vs. Satbir and others, 2011(2) RCR(Civil) 379 (SC)**, while distinguishing the criminal trial and motor accident has observed that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. It has been stressed that the Court must keep this distinction in mind. Strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. Accordingly, the finding of the Tribunal on the issue of rash and negligent driving of the offending truck by respondent No.4 Ashok Kumar is affirmed.

To assess the income of the deceased, the Tribunal has relied upon balance sheet of the Company (Exhibit C-10), where the deceased had been working. It is a list of employees sent to the Income Tax Department clearly depicting that the deceased Kavinder Gupta had earned Rs.1,80,000/- during the financial year 1.4.2011 to 31.3.2012. So far as the contention of the learned counsel relying upon a certificate Annexure A-3 produced on record today in court that the deceased was earning Rs.1,66,700/- per annum

is concerned, the same is nothing else, but misreading of the said document. A perusal of the Certificate (Annexure A-3) itself clearly shows that a sum of Rs.1,66,700/- was paid as salary to the deceased for a period of about nine months i.e. from 1.4.2012 to 24.12.2012, on which date, he had met with the accident and expired. In view of this, the findings of the Tribunal that the deceased was earning Rs.1,80,000/- per annum cannot be interfered with.

So far as the contention of the learned counsel regarding the age of the deceased is concerned, the age of the deceased on the Postmortem Report was mentioned as 40 years at the time of his death. Further, the Ration Card produced on record also depicted the date of the deceased as 38 years as on 19.10.2011. These documents clearly establish that the deceased was less than 40 years at the time of his death in December 2012. In the face of this the argument of the Ld. Counsel that based on the Adhar Card where the year of birth of the deceased has been mentioned as 1969 and hence his age at the time of death was 43 cannot be accepted. Moreover this document was never produced before the Tribunal. As the two documents i.e. Postmortem Report as also the Ration Card available on the record revealed the age of the deceased below 40 years, there is no ground to interfere with the finding of the Tribunal assessing the age of the deceased as 40 years. Thus, as per the age of the deceased, the Tribunal was justified in granting 50% increase towards future prospects.

No other point was raised.

Appeal dismissed.

May 16, 2016

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(HARINDER SINGH SIDHU)
JUDGE