

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

**FAO No.3196 of 2016 (O&M)
Date of Decision: 11.07.2016**

Oriental Insurance Company Limited ...Appellant

Vs

Shashi Bala and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Satpal Dhamija, Advocate
for the appellant.

1. *Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J.

[1]. Appellant-Insurance Company has filed this appeal against the award dated 21.01.2016 passed by Motor Accident Claims Tribunal, Patiala (hereinafter to be referred as 'the Tribunal') whereby the claim petition filed by the claimants was accepted and an amount of Rs.13,59,000/- was passed in favour of the claimants along with interest @ 9% per annum from the date of filing of the claim petition till final realisation of the amount.

[2]. Claimants-Shashi Bala (widow), Aarti and Kiran (minor daughters), Lachhmi Devi (mother) and Nanak Chand (father) of

the deceased ventured to file the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter to be referred as 'the Act') for grant of compensation to the tune of Rs.20 lacs on account of death of Roshan Lal in a vehicular accident.

[3]. Brief facts as gathered from the record are that Roshan Lal was going on his motorcycle on 30.10.2012 from Patiala to Devigarh for some private work. He was followed by Babla @ Suresh Kumar and Vinod Kumar on separate motorcycle. When the motorcycle of Roshan Lal reached near bus stand of village Khasiya on Devigarh road at about 6.15 p.m. and it was going ahead of Babla @ Suresh Kumar and Vinod Kumar, the offending truck was standing in a stationary mode in the middle of the road in front of a wine shop without following the rules as no parking lights and indicators of the truck were in operation. The motorcycle hit the stationed truck from backside. Due to that impact Roshan Lal received head and bodily injuries and expired after reaching Rajindra Hospital, Patiala. The deceased was 42 years of age and was mason by profession. He was earning Rs.15,000/- per month from his masonry work. The claimants spent Rs.50,000/- on transportation of the body and for last rites of the deceased.

[4]. The Tribunal concluded under issue No.1 that the accident was the result of negligent act of respondent No.1.

[5]. I have heard learned counsel for the appellant.

[6]. It is a settled principle of law that the claim petition arising out of vehicular accident is to be decided by conducting summary inquiry. The standard of proof is not required beyond all reasonable doubts like in a criminal case, nor the same is based on preponderance of evidence like in a civil case. The requirement is much below than the two standards of proof required for criminal trial as well as in civil litigation. It is the duty of the Court to award just compensation to the claimants, even if the same is not claimed in the claim petition. The Court is not required to be weighed with the technicalities and should equate the miseries of the victim with adequate compensation so as to prevent vagaries of life on account of discontinuation of income earned by the victim. The Court should award equitable, fair and reasonable compensation which should be in consonance with the gravity of the injuries received by the injured and loss suffered by the claimants in death cases under all the heads.

[7]. In **Rajesh and others vs. Rajbir Singh and others, 2013 ACT 1403** and in **MACT No.238/13** decided on 21.05.2014 titled as **Reliance General Insurance Co. Ltd. vs. Gurpreet Kaur and others**, the aforesaid proposition was highlighted and it was held that it is the duty of the Court to grant just and equitable compensation for the injuries of loss

suffered by the victim. Consortium to the tune of Rs.1,00,000/- was considered just and appropriate. For loss of love and affection an amount of Rs.1,00,000/- was considered appropriate and for funeral expenses amount of Rs.25,000/- was considered appropriate besides grant of compensation and interest @ 9% per annum from the date of filing of claim petition till realisation of the amount.

[8]. In the instant case the driver of the offending vehicle was booked in a criminal case and that itself was a *prima facie* evidence to presume that the driver of the offending vehicle was responsible for the accident in question. On the aforesaid proposition, reference can be made to **National Insurance Co. Ltd. vs. Sanjay Kumar and others II (2011) ACC 756** and **Girdhari Lal vs. Radhey Sham and others, 1993(2) PLR 109.**

[9]. Dependency of the claimants, income of the deceased, deductions made on account of composition of family and multiplier to the dependency have to be granted in terms of dictum laid down by the Hon'ble Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and Another, 2009 (3) RCR (Civil) 77.** As per the table approved in the aforesaid case the claimants existing more than three would entail in deduction of 1/4th in respect of personal expenses of deceased and a suitable multiplier has to be applied on the

dependency so calculated.

[10]. In view of dictum laid down in **Rajesh and others** and **Sarla Verma and others'** cases (supra) the Tribunal has awarded loss of consortium to the tune of Rs.1,00,000/- besides awarding an amount of Rs.1,00,000/- towards loss of love and affection. Minors Aarti and Kiran were also held entitled for this amount. An amount of Rs.25,000/- was awarded towards funeral expenses which was in consonance with the judgment rendered in **Rajesh and others's** case (supra). The deceased was a mason. The Tribunal equated the status of the deceased with that of casual labourer and on the basis of daily wage, the earning capacity of the deceased was assessed to the tune of Rs.9,000/- per month. Seeing the composition of family, the deduction to the tune of 1/4th was considered appropriate by applying the ratio of **Sarla Verma and others'** case (supra). The dependency of the family was multiplied as per the age of the deceased and a multiplier of 14 was applied as per table approved in the **Sarla Verma and others'** case (supra). In this way the total compensation to the tune of Rs.13,59,000/- was awarded in favour of the claimants.

[11]. Learned counsel for the appellant vehemently argued with reference to the timing of accident and the nature of injury received by the deceased that it was a case of contributory

negligence and the award could not have been passed in the manner as done by the Tribunal.

[12]. I have considered the submissions in the light of dictum laid down in the aforesaid precedents.

[13]. This Court is not in agreement with the submissions made by learned counsel for the appellant. Admittedly, the driver of the offending vehicle was facing prosecution in FIR (Ex.P-8) and chargesheet (Ex.P-9) and, therefore, in view of law laid down in **National Insurance Co. Ltd.** and **Girdhari Lal's** cases (supra) that fact itself was sufficient to presume that the driver of the offending vehicle was responsible for the accident in question and deceased was not negligent. The accident took place after 6.00 p.m. on the last day of month of October . No inference can be drawn that at the time of accident there was much visibility and, therefore, the deceased could have taken due care and caution while driving the motorcycle, even if the offending vehicle was parked in a stationary condition in the middle of the road. No evidence was led to corroborate the aforesaid fact.

[14]. In view of material available on record, the Tribunal was also right in apportioning the total amount of compensation in favour of the claimants thereby entitling Shashi Bala (widow) to

be entitled for 40% of the total compensation. Aarti and Kiran (minor daughters) to be entitled for 20% each and Lachhmi Devi and Nanak Chand parents of deceased to be entitled for 10% each of the calculated amount.

[15]. In view of aforesaid, this Court is unable to subscribe the intended effort sought to be projected by learned counsel for the appellant for taking different view than the one taken by the Tribunal. Consequently, this appeal is found to be totally bereft of merit and the same is accordingly dismissed.

July 11, 2016

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(RAJ MOHAN SINGH)
JUDGE