

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 526 of 2001 (O&M)

Date of Decision: 30.08.2017

Smt. Biro Devi and others

.....Appellants

Versus

Mehar Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. C.B. Goel, Advocate
for the appellant.

Mr. G.D. Gupta, Advocate
for respondent No.3-Insurance Company.

AVNEESH JHINGAN, J.

The present appeal is against the award dated 12.2.2000 passed by the Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal').

The claim petition was filed by Biro Devi widow of Balak Ram (deceased) and four sons-Ram Kishan, Om Parkash, Pardeep Kumar, Krishan Kumar and one daughter Shakuntla. The claim petition was filed claiming compensation of ₹10,00,000/- on account of death of Balak Ram.

The facts as stated in the claim petition are that on 14.8.1997 Balak Ram along with his son Ram Kishan went to Khadi Ashram, Pinjore to purchase tri-colour flag. At about 10:15 a.m., when they were going to Bus stand, Pinjore, a Cielo Car having registration No.HP-02-5805, which was being driven by Mehar Lal in a rash and negligent manner, struck Balak Ram from behind. As a result of the accident, Balak Ram suffered multiple injuries including fracture of ribs, back bone etc. Balam Ram was admitted

in PGIMER, Chandigarh, on 14.8.1997 and was discharged on 21.8.1997. His follow up treatment was there in PGI upto 6.10.1997. Unfortunately, Balak Ram expired on 4.1.1998. After his death, the claim petition was filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of ₹10,00,000/- on account of death of Balak Ram.

The Tribunal after considering the evidence and witnesses, came to the conclusion that it was not established that death had occurred as a result of accident and the claim petition was dismissed.

Aggrieved of the said award, the instant appeal has been filed before this Court.

Heard learned counsel for the parties and perused the paper book with their able assistance.

Learned counsel for the appellant has argued that the Tribunal has erred in dismissing the claim petition as the death was due to the accident. Learned counsel contended that gap of 4 ½ months between the accident and the death will not prove that death was not due to the accident. The counsel further pleaded that the issue of accident occurring because of the negligent and rash driving of the Cielo Car is not disputed (it may be mentioned here that the registration number of the Cielo Car at the time of accident was HP-02-5805 which was changed to HP-01-1224 w.e.f. 16.9.1997). It was argued that Balak Ram suffered multiple injuries including fracture of ribs, back bone etc. because of accident, yet no amount of compensation has been awarded by the Tribunal. Learned counsel further argued that while quantifying the compensation the fact that the deceased remained on bed till death should have been considered. Learned counsel contended that the deceased was hospitalised from 14.8.1997 to 21.8.1997

and thereafter also, there was a follow up treatment in PGI upto 6.10.1997. The Tribunal has not even granted medical expenses. No expenses has been awarded under the heads, pain and suffering, rich diet and for the attendant.

Learned counsel for respondent No.3 argued that the claimants had not adduced any income proof of the deceased. All the claimants are major. Learned counsel further argued that there was a time gap of 4 ½ months between the accident and the death, therefore, it cannot be said that death occurred due to accident and death might be for some other reason.

Learned counsel fortified his argument by stating that no Doctor was examined by the claimants to show that the death was due to accident and no postmortem of the deceased was done. Learned counsel further argued as the claim petition was dismissed, the appellants, were not entitled to any compensation under any heads.

The contention that deceased died due to accident, cannot be accepted. The accident occurred on 14.8.1997. Balak Ram was admitted in PGI and was discharged on 21.8.1997. Balak Ram expired on 4.1.1998. Statement of Doctor Ashim Wokhlu, PW3, was recorded stating Balak Ram was discharged from PGI in good condition and at the time of discharge, he only had fracture and except that his over-all condition was good. Doctor further stated that it cannot be said that he died as a result of injuries received in the accident. Doctor did not ruled out the possibility that he might have suffered from other ailment after discharge from PGI. The claimants produced certain prescriptions of private Practitioners of Kalka and Pinjore but no Doctor was examined to establish that death was due to injuries suffered in the accident. Keeping in view the above facts, it would not be possible to hold that death had occurred because of the accident.

Keeping in view the time period-gap of 4 ½ month, the nature of injuries and the statement of PW-3, the plea of the appellants with regard to death occurred due to the accident, is rejected.

Now coming to the issue regarding compensation to be awarded for injuries suffered. The Tribunal has given a categorical finding while deciding issue No.1 that the accident had occurred due to rash and negligent driving of the Cielo Car. This finding has not been disputed.

It is established that there was an accident because of which Balak Ram suffered fractures, as a result of which he remained hospitalised and had to undergo a long treatment. The Tribunal though dismissed the claim petition but while deciding issue of injury, the Tribunal recorded that no medical bills etc were produced yet by applying a guess work it held that ₹40,000/- must have been spent on the treatment.

Hon'ble the Apex Court in ***G. Ravindranath @ R. Chowdary Versus E. Srinivas and another***, 2013(12)SCC 455, held as under:

"It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure.

(ii) Loss of earnings (and other gains), which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

12. In routine personal injury cases, compensation will be awarded only under head (i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evident of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

A perusal of the above decisions shows that in case of personal injury pecuniary damages (special damages) should be given under various heads. It was further held that non-pecuniary damages should also be compensated.

It is not disputed that a 70 years old person suffered grievous injuries, had to be hospitalised and underwent long treatment. The injuries were such that atleast one attendant, if not two, were required. The deceased remained bed ridden, if not till death, then atleast for a long time. In such a case, the medical expenses must have been incurred, pain and suffering was there and rich and special diet was required. It cannot be ruled out that these injuries at the age of 70, might have shortened the life expectation. Keeping in view the totality of the circumstance, the amount of

In order to reach just and equitable compensation, an amount of ₹ 1,75,000/- as lump-sum has been awarded. This amount has been arrived at taking into consideration the age of the deceased, type of injuries and the fact that most of the claimants were major at the time of filing of the claim. Section 171 of the Motor Vehicles Act, regarding awarding of interest has also been kept in mind. It is only thereafter that a lump-sum amount of ₹ 1,75,000/- has been awarded.

The appeal is accordingly partly allowed

30.08.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No