

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2656-2005 (O&M)

Date of Decision: 28.07.2017

Nachhatar Singh and another

...Appellants

V/s.

M/s. Gobindgarh Motor Roadways and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. HPS Ghuman, Advocate for the appellants.

Mr. Paul S. Saini, Advocate for respondent No. 3.

AMIT RAWAL, J. (Oral).

The appellants-claimants are the father and the mother of the deceased Sukhwinder Singh who was young in age had died in road accident on 08.10.2003 at about 05:00 p.m. but the claim petition has been denied on two counts:-

(1) The appellant-claimants have not been able to identify the deceased person.

(2) Have not been able to prove the rash and negligent driving of the offending vehicle.

Mr. Ghuman, learned counsel appearing on behalf of the appellants submits that the entire thrust of the MACT had been that Harinderpreet Singh PW-4 had not come into the witness box and was only

examined in the cross-examination. Such a finding is not only erroneous, perverse but off the record as he has drawn the attention of this Court to the certified copy of examination-in-chief submitted in shape of evidence wherein he was candid enough to state that Sukhwinder Singh died in front of his shop in an accident met with the bus bearing No. PB-11-A-1631 which was driven very rash and in negligent manner. A specific suggestion had been also put in cross-examination but he stood by his examination-in-chief. Had the aforementioned examination-in-chief coupled with registration of FIR been seen, the findings would have been otherwise. Thus, award is liable to be set aside.

Per contra Mr. Paul S. Saini, learned counsel appearing on behalf of the United India Insurance Company-respondent No. 3 submits that it is a case of death of un-known person as the identification of Sukhwinder Singh has not been established. During the course of arguments, he has referred to post mortem report to submit that neither the name of the deceased nor the legal representatives of the deceased came forward to claim the dead body as per the perusal of cross-examination of witness Dr. Anand Ghai PW-1, though he identified the photograph of the deceased, would irresistibly lead to conclusion, that the deceased who had died and the person whose post mortem was examined; was actually not the son of the appellants but someone else. In other words, he submitted that the appellants failed to establish the fact that Sukhwinder Singh had died in road accident as the FIR, in the afore-mentioned matter, was lodged on 25.11.2003 whereas the accident had taken place on 08.10.2003 but the post mortem was conducted on 09.10.2003 at 04.20 p.m.. The death certificate

has also not seen the light of the day much less the rash and negligent and rightly so the MACT by fastening the liability under Section 140 of the Motor Vehicles Act awarded the compensation of Rs.50,000/- urging this Court for upholding the order.

On rebuttal, Mr. Ghuman submits that the Doctor had identified the photographs of the deceased produced by the appellants and the photographs were of none else but that of their son Sukhwinder Singh and no other person had come forward to claim compensation on account of the unknown person. This issue goes against insurance company.

I have heard learned counsel for the parties and appraised the paper book and am of the view that findings of the MACT is wholly erroneous and perverse as PW-4 in affidavit submitted in examination-in-chief states as under: -

“That on 8-10-2003 at about 7.-7.30 PM I am present at my shop. Sukhwinder Singh son of Nachhatar Singh of village Jassran was standing on the road in front of my shop. From Gobindgarh side Bus No. PB-11-A-1631 came with very high speed and by rash and negligent driving by the driver of the same, crushed said Sukhwinder Singh who died on the spot. The said accident was occurred due to the rash and negligent driving of the driver of said Bus namely Ajaib Singh son of Mohinder Singh r/o Ward No. 4 Amloh Tehsil Amloh Distt. Fatehgarh Sahib while driving the said Bus No. PB-11-A-1631. I personally known to said Sukhwinder Singh as he was of my village. The Sukhwinder Singh was crushed by the said Bus in my presence and I seen the whole occurrence with my eyes at the time of accident. Photo of said Sukhwinder Singh has been taken on the spot which is Ex.P-2 attached already with the claim petition. I identified the said photo which is of

Sukhwinder Singh who was crushed by the said Bus in the accident. Sukhwinder Singh was crushed by the negligence driving of the driver of said Bus without blowing any horn, with very high speed and without caring the traffic rules and regulations. So many persons were gathered on the spot. After some time from the accident, the police came there and the police took away the death body of said Sukhwinder Singh. Sukhwinder Singh was the only son of his father.”

He had been cross-examined extensively but he stuck to the stand taken in the examination-in-chief i.e. vehicle was driven rashly and negligently. As regards statement of Dr. Anand Ghai is concerned, there is specific question in cross-examination. He identified the deceased with photograph exhibited as Ex.P2 which in my view has been produced by none else but the relatives of the deceased. Therefore, the identify of Sukhwinder Singh has been established. Had it been so, some other person would have come forward to claim the dead body. As per record it is uncontroverted that Sukhwinder Singh was missing from the date of accident since the head was crushed and it was very difficult to identify him by his clothes. The rustic villagers do not know the intricacies of law and, therefore, did not lodge the FIR or claimed the dead body in time.

As regards the rash and negligent driving, though the Court had formed an opinion with regard to assessment of compensation under the head of liability, but the fact remains as per the statement of PW-4, the bus was found to be driven rashly and negligently and there is no cross-examination to that fact much less to the contrary, of not involved in the accident and therefore I set aside the findings of MACT.

The formula prescribed in the ratio decidendi culled out by

Hon'ble Supreme Court in **Sarla Verma's case** (supra) is required to be applied while assessing the compensation, according to which, I will take the income of the deceased as Rs. 2,000/- per month, apply a deduction of 1/2nd for personal expenses and adopt a multiplier of 17 suitable to the age of the deceased, who was 27 years old at the time of accident. I will further add a sum of ₹50,000/- towards loss of love and affection.

However, as regards the increase in income as future prospects, the Hon'ble Supreme Court in the ratio decidendi culled out in the judgment rendered in **Chikkamma and another Vs. Parvathama and another** passed in Civil Appeal No.3409 of 2017 decided on 28.02.2017 has refused to grant claim for future prospects with regard to self employed person, owing to the fact that the issue with regard to award of future prospects of a self employed person is pending before a larger Bench of Hon'ble Supreme Court. The relevant paragraph 9 of the same reads as under:-

“9. Taking into account the fact that the deceased was a self employed person and also as the question with regard to award of future prospects of a self employed person is presently pending before a larger Bench of this Court and as some enhancement of compensation has already been made by us, we are of the view that in the facts of the present case, the claim for future prospects ought not to be gone into by us. The said claim, therefore, is refused.

In view of the ratio decidendi culled out by Hon'ble Supreme Court in **Chikkama's case** (supra), I will constrain myself to award any amount for future prospects at this stage, for, the aforementioned issue is pending adjudication before the larger Bench of Hon'ble Supreme Court.

The other heads of claim are tabulated as under:-

FATAL ACCIDENT			
Age	27 years		
Occupation	Gas Cutter		
Claimants	Parents		
	Heads of claim	Tribunal	High Court
Sl. No.		Amount (Rs.)	Amount(Rs.)
1	Income		2000
2	Add, % of increase		
3	Less, Deduction		1000 (½)
4	Multiplicand (annualized by multiplying 12)		12000
5	Multiplier		17
6	Loss of dependence		204000
7	Medical Expenses & Transportation		
8	Loss of Consortium		
9	Loss of love and affection		50000
10	Love to estate		
11	Funeral expenses		
	Total	50000	254000

The amount of compensation payable shall be ₹2,54,000/-. The amount in excess over what has already been provided by the Tribunal shall attract interest @6% from the date of filing of the appeal till realization. The liability shall remain same as fixed by the Tribunal.

The award is modified and the appeal is allowed to the above extent.

July 28, 2017
Divyanshi

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No