

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

**FAO No.1247 of 2009 (O&M)
Date of Decision: May 17, 2017**

Jarnail Kaur and others

..Appellant(s)

Versus

Gagandeep Singh and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.K. Shukla, Advocate
for the appellant.

None for respondents no.1 & 2.

Mr. Shubham Jain, Advocate for
Mr. Suman Jain, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

The claimant is aggrieved by the dismissal of his petition by the Motor Accident Claims Tribunal, Patiala on 18.10.2008.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. The claimants had placed photocopy of the record available with them. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

The submission on behalf of the appellants is that they had filed a petition under Section 163-A of the Motor Vehicle Act and the

manner of accident was narrated in para no.24 and the Tribunal wrongly framed the issues as if the claim petition had been filed under Section 166 of the Motor Vehicle Act and gave a finding that the claimants had failed to prove negligence and the issue was wrongly framed. It was urged that when the claim petition had been filed under Section 163-A of the Motor Vehicle Act, the Tribunal was not required to give any finding and the issue of negligence was insignificant. It was urged that legislature never wanted the claimant to plead or establish negligence. Reliance was placed upon *National Insurance Co. Ltd. Vs. Tula Ram and others 2004 ACJ 741*, *Oriental Insurance Co. Ltd. Vs. Salma and others 2008 ACJ 1197*, *Mohit Garg and another vs. Afrojan and others 2015 ACJ 2009*, *United India Insurance Co. Ltd. Vs. Sunil Kumar and another 2013 ACJ 2856* and *National Insurance Co. Ltd. Vs. Sinitha and others 2012 ACJ 1*. It was urged that the claimants had pleaded that deceased was getting pension of Rs.3,221/- per month and the compensation could have been calculated and award should have been passed.

The submission on the other hand was that the claimants had raised no objection when issues were framed nor the order was challenged and after the dismissal of the appeal they have raised this plea for the first time. It was urged that except for a son, all the sons and daughters of the deceased were major and were not dependent and the number of claimants have been increased to get higher compensation.

The accident had been described in para no.24 of the written statement filed by respondent no.3, wherein it was mentioned that the

deceased Lal Singh along with his son Harjit Singh were going on a motorcycle to the shop. From there Lal Singh left for Devigarh on a motorcycle and his son Harjit and one Daya Lal were following him on another motorcycle. Lal Singh reached near Dhanju's house when a truck came out from the house of respondent no.1 without blowing any horn and Lal Singh suddenly applied brakes but his motorcycle slipped and hit the truck. He fell down and sustained injuries. The above narration would show that the claimants had not pleaded that the accident had occurred on account of negligence of the driver. They had only disclosed the manner in which the accident had occurred while the vehicle was in use. The petition had been filed under Section 163-A of the Motor Vehicle Act, therefore the issue was wrongly framed. The claimants were not required to prove negligence. No doubt an objection should have been raised or they could have filed an application but the compensation cannot be denied because the counsel for the claimant did not take any remedial steps. The claimants cannot be made to suffer for the act of their lawyer.

Since the matter is very old, I am not inclined to remand the case and calculations can be made here. The deceased was stated to be 45 years old. He was getting a pension of Rs.3,221/- per month. The widow no doubt is getting a pension of Rs.2,850/- per month but that would not call for any deduction, therefore, taking the income to be Rs.3,221/- per month the calculations can be made.

The deceased had left behind five sons. The widow Jarnail Kaur had admitted that her three sons Harvinder Singh, Harjit and

Surinder Pal were married and had their own business and were independent. Only two sons namely Kulwant and Ranjit were unmarried who were aged 17 and 19 years. No FIR in this case was lodged. A DDR was registered.

The deceased was admitted in the Amar Hospital on 27.07.2007 and he died three days later on 30.07.2007. Some bills Ex.P12 to P47 were produced. The total of those comes to Rs.26,789.47/- and is rounded off to Rs.26790/-. Taking the income to be Rs.3,221/- per month and making a deduction of 1/3rd, the amount available for the family would be Rs.2,148/-. The compensation would thus be Rs.2,148/- x 12 x 14 = Rs.3,60,864/-. Since the claim petition had been filed under Section 163-A of the Motor Vehicle Act, the amount on the miscellaneous heads would be as per the IIInd Schedule to the Motor Vehicle Act. Therefore, an addition of Rs.5,000/- would be made for loss of consortium, Rs.2,000/- for funeral expenses and Rs.2,500/- for loss of estate, thereby raising the total to Rs.26790 + Rs.3,60,864 + Rs.9500 = Rs.3,97,154/-.

The appeal is allowed. The appellants would be entitled to Rs.3,97,154/-, which would be payable with interest @ 6% from the date of filing of the claim petition till realization.

(ANITA CHAUDHRY)
JUDGE

May 17, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No