

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

FAO No.2125 of 2011(O&M)

Amit Sharma and another ...Appellants

Versus

Ruldu Singh and others ...Respondents

2. FAO No.2781 of 2011 (O&M)

Anil Kumar through his LRs ...Appellant

Versus

Ruldu Singh and others ...Respondents

Date of Decision: December 15, 2017

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

Present: Mr. Ashit Malik, Advocate for
the claimants - appellants.

Mr. J.J.S. Uppal, Advocate
for respondent No.1 – driver of offending vehicle.

Mr. Subhash Goyal, Advocate
for the insurer – Bajaj Allianz General Insurance Company.

HARINDER SINGH SIDHU, J.

This order shall dispose of the above mentioned two appeals as they arise out of the same award.

Briefly, the facts of the case, as alleged by the appellants, are that on 24.04.2008 Anil Kumar and his wife Parmod Kumari were coming back on LML Vespa Scooter No.HR-07C/8591 after attending a marriage. The scooter was being driven by Anil Kumar and his wife Parmod Kumari was

on the pillion seat. When they reached at ITI Chowk crossing, Karnal, a truck bearing registration No.PB-13M/4671 being driven by Ruldu Singh came at a very fast speed in a rash and negligent manner and hit the scooter, due to which Parmod Kumari fell down, sustained multiple injuries and died at the spot. Anil Kumar also sustained injuries. A case bearing FIR No.183 dated 25.4.2008 under Sections 279/337/304-A IPC was lodged at Police Station Civil Lines Karnal against the driver of the truck, Ruldu Singh.

Two claim petitions were filed. The first claim petition titled 'Amit Sharma and others vs. Ruldu Singh and others' was filed by Anil Kumar, (husband) and Amit Sharma and Ms. Neha Sharma minor son and daughter respectively of deceased, Parmod Kumari, claiming compensation on account of her death. The second claim petition titled 'Anil Kumar vs. Ruldu Singh' was filed by Anil Kumar claiming compensation on account of injuries sustained by him in the accident.

It was the case of the claimants/appellants that Parmod Kumari was aged about 35 years at the time of her death. She was employed with Inder Trading Company, Nehru Palace, Karnal and was getting a package of Rs.1,08,000/- for the year 2007-2008. From 01.04.2008 her salary was to increase to Rs.9500/- per month. It was also pleaded that the deceased was looking after her family and after her death, they had to employ a maid-servant for the said purpose.

Claimant-injured Anil Kumar was 40 years of age and was working with Mahesh Trading Company, Nehru Palace Karnal and getting salary of Rs.10,000/- plus Rs.5000/- as over time. He received multiple

serious injuries in the accident. A sum of Rs.1,00,000/- was spent on his treatment which was still continuing. A sum of Rs.20,00,000/- was claimed as compensation.

Respondents No.1 and 2, the driver and owner of the truck pleaded that the accident had taken place due to rash and negligent driving of scooter driver- Anil Kumar, who was under the influence of liquor. Anil Kumar while driving his scooter came from the side of Kunjpura road in a drunken condition and while trying to cross the GT road, he struck with the culvert due to which he lost balance and the pillion rider fell on the road and died due to the injuries sustained thereby. There was no impact of the scooter with the truck and the respondents are not at fault.

The Ld. Tribunal framed the following issues in the case :-

- “1. Whether the motor vehicular accident which took place on 24.04.2008 was caused on account of rash and negligent driving of vehicle No.PB13M-4671 by Ruldu Singh, respondent No.1 resulting into death of Smt. Parmod Kumari and injuries to claimant Anil Kumar. If so, its effect?OPP*
- 2. If issue no.1 is proved, whether the claimants are entitled to receive any amount of compensation. How much and from whom? OPP*
- 3. Whether the respondent No.1 was driving the offending vehicle in violation of terms and conditions of policy of insurance ?OPR*
- 4. Whether the claim petitions are not maintainable ?OPR*
- 5. Whether the present claim petition has been filed by the claimant in collusion with drivers and owners i.e. Respondent No.1 and 2. If so its effect ?OPR*
- 6. Relief.”*

To prove its case regarding negligence, the claimant Anil Kumar Sharma appeared as PW1. Rajiv Gupta PW2, Partner of Inder Trading Company produced the salary certificate Ex.P3 of the deceased. PW3 Jaswant Rai, Ahlmad of the Court of CJM, Karnal produced the case file of FIR 183 dated 25.4.2008 u/s 279/337/338 and 304-A IPC and 207 M.V. Act 'State Vs. Ruldu Singh'. He deposed that charge in the case had been framed and the case was fixed for prosecution evidence for 26.11.2009. He also produced the R.C. of the vehicle No.PB-13M-4671 (offending truck) which was in the name of Surinder son of Kuldeep C/o Robind Roadways, Stadium Road, Malerkotla, Distt. Sangrur. The Insurance policy in respect thereof was also produced which was valid from 28.01.2008 to 27.01.2009.

On the other hand, Ruldu Singh, the driver of the truck, was examined as RW1 who deposed as per the stand in the written statement. He stated that Anil Kumar was under the influence of liquor. When trying to cross the GT Road he struck with the culvert as a result of which the pillion rider fell on the road and sustained injuries on her head leading to her death. He stated that there was no impact of the truck with the scooter.

The Learned Tribunal held that as per the evidence on record, the accident was more or less admitted. It was only the manner thereof that had been disputed. The Tribunal concluded that as per the evidence brought on the record, the claimant Anil Kumar was coming on scooter from the side road i.e. the Kunjpura Road and was to cross the main GT road. The truck was coming on the main GT road and was on the right of the scooter when it hit the scooter. The Tribunal held that whenever a person from the side road approaches the main road, it was his duty to slow down, wait and not

enter the intersection until he became aware that he may do so without endangering others on the main road. Reliance was placed on Regulations 6 and 7 of the Traffic Regulations contained in 10th schedule of the Motor Vehicles Act, as framed under Sections 77 and 78 of the Motor Vehicles Act 1939. The relevant Regulations are reproduced as under:-

“6. The driver of a motor vehicle shall slow down when approaching a road intersection, a road junction or a road corner and shall not enter any such intersection or junction until he has become aware that he may do so without endangering the safety of persons thereon.

7. The driver of a motor vehicle shall on entering a road intersection, if the road entered is a main road designated as such, give way to the vehicles proceeding along that road, and in any other case give way to all traffic approaching the intersection on his right hand.”

It was noted that these Regulations imposed a duty on the driver of a motor vehicle entering a road intersection to give way to the vehicles proceeding on the main road and to give way to all traffic approaching the intersection from the right side.

In the present case as the truck was coming from the right side whereas the scooterist was approaching the road from the side road, no fault could be attributed to the truck driver. The Tribunal further noticed that PW-1 Anil Sharma had himself admitted that he had seen the truck and stopped in the middle of GT road on the intersection when the accident took place. It was held that this would not absolve him of responsibility for the accident as he ought not to have stopped in the middle of the GT road and it was his duty to stop at a safe distance to allow the truck on the main road to pass without obstruction. The truck driver was, thereby, totally absolved of all liability and the accident was held to be caused as a result of the

negligence of the appellant-claimant. The reliance by the claimants on the registration of FIR against the driver of the truck and the framing of charges against him was brushed aside by learned Tribunal by observing that mere registration of an FIR is of no consequence and that the issue of negligence has to be determined on the basis of evidence led before the Tribunal. Having decided issue No.1 against the claimants, the Tribunal did not consider the other issues.

Accordingly, both the claim petitions were dismissed.

Sh. Ashit Malik, learned counsel for the appellants has contended that the learned Tribunal has not correctly appreciated the evidence on the record and has adopted a wholly hyper- technical and legalistic approach not warranted in the circumstances. He argued that the site plan Ex R-6 clearly indicated that the spot where the accident took place is near the road divider. Meaning thereby, that the accident took place when the scooter had crossed the road on which the truck was approaching. He argued that this fact has been asserted by PW1 Anil Kumar and also admitted in his cross examination by RW1 Ruldu Singh, the driver of the Truck. He argued that as the accident had occurred when the scooter had crossed the road and was near the road divider, the responsibility for the accident squarely rests with the driver of the Truck.

Sh. Subhash Goyal, learned counsel for respondent Insurance company on the other hand supported the finding of the Tribunal and argued that as per Regulations 6 and 7, it was the duty of the driver of the scooter not to enter the intersection until it was clear and was to give way to the vehicles proceeding along the main road. Hence, the accident that resulted

was entirely due to the negligence of the claimant. He relied on certain decisions in his support **M/s Sachdeva Rice Mills vs. Smt.Raj Anand**, 2003(1) Civil Court Cases 582 (P&H), **Ravinder Kaur and others vs. Haryana State and another** 2001 ACJ 635, **Rawat Singh and another vs. Sube Singh and others** 1995 ACJ 679, **Ram Karan vs. Zile Singh** 2001(3) R.C.R.(Civil) 582, **Rita Sharma vs. Pan Chand** 1997(4) R.C.R.(Civil) 98, **Secretary, Communication Ministry, Government of India, Department of P&T, New Delhi and others vs. Ramrao alias Ramdas and others** 1991 ACJ 278.

Heard Ld. Counsel for the parties and perused the record.

As per the site plan Ex. R-6 the accident had taken place at Mark 'A'. In this plan, the GT Road is marked in the North to South direction. Pipli is towards the north. Panipat is towards the south. The truck was going from Ambala to Delhi. As per this plan, it was going from north to south (from the side of Pipli towards Panipat). The claimant Anil Kumar was coming from the Kunjpura side. The site of the accident Mark 'A' is close to the ITI intersection which is near the divider of the GT Road. This indicates that at the time of the accident the claimant after having entered the GT road from the side road from Kunjpura side had reached the middle of the GT road (the divider) near the ITI intersection. The scooter, thus, having virtually crossed the road on which the truck was approaching, the onus clearly was on the truck driver to have noticed the scooter and avoid collision with it.

It would be relevant to refer to the cross-examination of PW-1, wherein, he states as under:-

“We started our journey after attending the marriage at about 10.45/11.00 PM. The place of marriage is at a distance of 100 meters from the place of accident. No police man was present at ITI Chowk at the place of accident. It is correct that traffic was coming and going on the GT road at the time of accident. The truck in question was coming from Ambala side and going to Delhi side. Right front portion of the truck struck right back side of the scooter. It was standing at the divider in the middle of the GT road at the time of accident. It is incorrect to suggest that I was not standing at the divider rather I was in the process of crossing the GT road. I had noticed the truck in question first time when it was at a distance of 100/150 yards. It is wrong to suggest that the accident in question took place due to my fault or that I was driving the scooter in a rash and negligent manner, careless, zig zag manner, without observing the traffic on the GT road and traffic rules and at a very high speed. It is further wrong to suggest that respondent No.1 was not at fault and a false FIR was got registered against respondent No.1.”(emphasis supplied).

The relevant part of the cross-examination of Ruldu Singh driver of the truck, is as under:-

“I have been falsely implicated in the case registered under Section 304-A of IPC in FIR No. 183 dated 25.4.2008. It is correct that I am facing trial for causing the accident. It is incorrect to suggest that the accident has taken place on the divider of the road as I was trying to overtake the vehicle going ahead of me. The scooter had crossed the road, on which I was going and the accident took place on the right portion of the road if one goes from Karnal to Panipat. It is incorrect to suggest that the accident took place because of my rash and negligent driving of the vehicle as I was driving the vehicle without observing the traffic rules. It is correct that my TATA-1109 driven by me stopped about 50 yards from the accident. It is incorrect to suggest that I am deposing falsely and I hit the skitteriest as I was rash and negligent and was driving the vehicle at high speed.” (emphasis supplied)

PW1 Anil Kumar (the claimant- driver of the scooter) in his cross examination stated that the right front portion of the truck struck right back side of the scooter and it was standing at the divider in the middle of the GT

road at the time of the accident. RW1 Ruldu Singh, the driver of the Truck specifically admitted in cross examination that the scooter had crossed the road on which the truck was going and the accident took place on the right portion of the road if one goes from Karnal to Panipat. The aforesaid statements of both, the claimant and the Respondent, corroborate each other in this respect. These statements along with site plan clearly indicate that the accident took place at a spot near the divider of the road, thereby indicating that the scooter had crossed the road on which the truck was approaching. Hence, it is difficult to accept the findings of the Tribunal that the accident was caused due to the negligence of the driver of the scooter merely based on the Regulations. To the contrary, the evidence points to the negligence of the truck driver in causing the accident. The judgments which have been relied on by Mr. Goyal, no doubt refer to the Regulations, but they have been rendered in the light of the facts obtaining in those cases. The factual position in those cases supported the finding of negligence on the part of the vehicle approaching the main road from the side road who also disregarded the duty of care enjoined on those approaching a road intersection from the side. But here the facts are totally different and consequently lead to a different conclusion as the scooter had already crossed the road and reached near the divider. It can never be contemplated that the drivers of heavy vehicles on the main road have a licence to drive in total disregard of the presence of any vehicle which after having entered from the side road may have safely crossed the road and reached the road divider.

Additionally, though the mere registration of an FIR may not be the sole basis for returning a finding of negligence but it can be considered

as material to form a prima facie view. This court in **Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109**, observed 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*”

In case of **Mallamma vs. Balaji and others, 2004 ACJ 368**, the Karnataka High Court while reversing the finding of the Tribunal on the issue of negligence, held as under:-

“12. *Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same.*”

In **The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006**, decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

“xxx xxx xxx *In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.*

21. *Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was*

negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle”

The Tribunal has erred in totally disregarding the aspect of registration of FIR against the truck driver. The registration of the FIR against the truck driver lends further support to the issue of negligence of the truck driver which independently stands established by the evidence on record.

Thus, the findings of the Ld. Tribunal on the issue of negligence are set aside. It is held that the accident had occurred due to the negligence of the driver of the Truck.

As in view of its finding on the issue of negligence, the Tribunal has not returned a finding on the other issues ordinarily the matter may have been remanded to the Tribunal for determination in the light of the findings of this Court on the issue of negligence. However, as the accident pertains to the year 2008 and the relevant evidence is already on record, it is deemed appropriate to decide the remaining issues in the present appeal on the basis of the evidence on record.

Mahesh Kumar, Junior Assistant, office of DTO Muktsar, Punjab, who was examined as RW1 by the insurance company, in his cross examination admitted that the licence of Ruldu Singh driver of the truck was valid for HMTV for the period 04.08.2005 to 03.08.2008. Thus, at the time of the accident the driver of the truck had a valid driving licence. PW3 Jaswant Rai, Ahlamad of the Court of CJM, Karnal had produced the registration certificate of vehicle No.PB-13M-4671 which was in the name of Surinder

son of Kuldeep c/o Robin Roadways Stadium Road, Malerkotla, District Sangrur which was attached with the file of the criminal case in FIR No.183 dated 25.4.2008, State Vs. Ruldu Singh. He also produced insurance policy regarding the said vehicle in the name of Surinder, which was valid from 28.1.2008 to 27.01.2009. Thus, on the date of the accident, i.e 24.04.2008 the driver Ruldu Singh possessed a valid driving licence for HMV Vehicle and the vehicle was insured at that relevant time.

Hence, it is held that the claimants are entitled to receive compensation which is to be payable by the respondent insurance company. Having held as above, I now proceed to assess the compensation in the two appeals as under:

FAO No. 2125-2011 :

This appeal was filed by Anil Kumar Sharma (husband) and Amit Sharma and Neha Sharma minor children of the deceased claiming of compensation for the death of Pramod Kumari. It has been pointed out by learned counsel for the appellants that Anil Kumar, appellant No.1 in FAO No.2781 of 2011 died after the filing of this petition on 18.04.2012. Thereafter, C.M. No.27144-CII of 2014 was filed for correcting the memo of parties and bringing on record Amit Sharma and Neha Sharma (children of deceased Anil Kumar Sharma) as his legal heirs. The said application was allowed vide order dated 04.02.2015. Thus, this appeal now survives qua Amit Sharma and Neha Sharma children of the deceased.

To prove the income of the deceased, the claimants have examined Rajiv Gupta, partner of Inder Trading Company as PW-2. He

stated that Parmod Kumari was working with Inder Trading Company,

Nehru Palace, Karnal at a yearly package of Rs.1,08,000/-. Her salary was increased to Rs.9,500/- per month in April 2008. He had also tendered in evidence the salary certificate Ex.P-3 which had been issued by him and bore his signatures. In his cross-examination, he stated that Inder Trading Company was a partnership firm and also an income tax assessee. Accounts and ledgers of the firm were being maintained in the regular course of business. There were 12 to 13 employees in the said firm. The firm did not issue any appointment letter to any employee at the time of appointment. No salary register was maintained by the said firm. Only salary receipts were maintained which he had not brought.

The salary certificate produced by PW2 indicates that the deceased had been working with the firm for the last eight years. In the year 2007-08 she was getting a salary Rs.9,000/- per month.

Before the Tribunal, the learned counsel for the claimants had tendered the salary account of Parmod Kumari as maintained by Inder Trading Company which was taken on record as Mark 'Z'. This salary account is for the years April 2001 to April 2008. It indicates that during the period 01.04.2001 to 31.3.2002 an amount of Rs.5500/- per month was debited towards the salary paid to the deceased Parmod Kumari. From April 01.04.2002 to 31.03.2003 the salary paid is shown to be Rs.6000/- per month. From 01.04.2003 to 31.03.2004 the salary paid is shown Rs.6,600/- per month. For the year 01.04.2004 to 31.03.2005 the salary paid is shown as Rs.7,200/- per month. For the year 01.04.2005 to 31.03.2006 the salary is Rs.7,800/- per month. For the year 01.04.2006 to 31.03.2007 the salary is Rs.8,400/- per month. For the year 01.04.2007 to 31.03.2008 the salary is

shown to Rs.9,000/- per month. From 01.04.2008 to 24.04.2008 she has been paid Rs.7,600/-.

There is no reason to disbelieve this salary account which has been maintained in the regular course of the business. Accordingly, it has to be held that the deceased was drawing salary of Rs.9,500/- per month at the time of her death.

As per the post mortem report, the age of the deceased was 35 years. PW-1 Anil Kumar in his evidence has also stated that the age of the deceased was 35 years. Accordingly, the age of the deceased is taken to be 35 years.

In the light of the above, the compensation payable is assessed as under:

<i>Sr.No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	<i>Income (Rs.9500 per month)</i>	<i>1,14,000/-per annum</i>
(ii)	<i>40% of above (i) to be added as future prospects (deceased aged 35 yrs.)</i>	<i>Rs.114000+45600 = 159600/-</i>
(iii)	<i>1/3rd of (ii) deducted as personal expenses of the deceased (presently two claimants as the third claimant Anil Kumar died during the pendency of the appeal)</i>	<i>Rs.159600-53200 = 1,06,400/- per annum</i>
(iv)	<i>Compensation after multiplier of 16 is applied</i>	<i>Rs.106400 x 16 = 1702400/-</i>
(v)	<i>Loss of Consortium</i>	<i>Rs.40,000/-</i>
(vi)	<i>Loss of Estate</i>	<i>Rs.15,000/-</i>
(vii)	<i>Funeral Expenses</i>	<i>Rs.15,000/-</i>
	<i>Total</i>	<i>Rs.17,72,400/-</i>

The appellants are awarded compensation of Rs.17,72,400/-, payable by the respondent – insurer along with interest at the rate of 7.5%

per annum from the date of filing of claim petition till realisation. The

amount of compensation shall be paid to the claimants/ appellants in equal shares.

FAO No.2781-2011:

The claimant Anil Kumar (since deceased) in his evidence stated that he had sustained injuries in the accident and spent a sum of Rs.1,00,000/- on his treatment. He was employed with Ganesh Trading Company at Nehru Palace, New Delhi at monthly salary of Rs.10,000/- per month. He was also getting overtime of Rs.5,000/- per month. As a result of his accident, he had gone into depression and had to look after his children as there was no other member in the family to look after them. He stated that he had to leave service and had suffered a loss of Rs.15,000/- per month. Though, the orthopaedics surgeon, Haryana Nursing Home, Sector-14, Karnal had recommended a surgery of shoulder, but due to lack of funds, he had not been able to undergo the same.

The medical reports (MLR – Ex.P5 and X-ray report - Ex.P-7) produced on record indicate a fracture of the right clavicle. The medical bills Ex.P-10 to P-54 totalling Rs.18,512/- have been produced. A salary certificate of Mahesh Trading Company certifying that the deceased had been working with the Company for the last four years and was getting Rs.10,325/- per month, inclusive of all perks, has been exhibited as Mark-X. Though, the deceased claimed that as a result of the accident, he had to leave his job, there is nothing on record beyond his bald statement to corroborate the said assertion.

Moreover, Anil Kumar died after the filing of this petition on 18.04.2012. Hence, in this case as very fairly submitted by the Ld. Counsel

for the appellant only the actual medical expenses incurred are payable. As indicated above bills totalling Rs.18,512/- have been produced.

Thus, a compensation of Rs.20,000/- is awarded which would be payable to his two children Amit Sharma and Ms. Neha Sharma (appellants) in equal shares. The amount shall be paid along with interest @ 7.5% from the date of filing of the claim petition till realisation.

Accordingly, the award of the Tribunal dismissing the claim petitions is set aside and the appeals are allowed in the above terms.

December 15, 2017

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No