

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

**FAO No. 4122 of 2012
Date of decision:- 29.09.2017**

Sumitra and others ...Appellants

Versus

Jagmal Singh and others ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Rakesh Arora, Advocate
for the appellants

Mr. T.K. Joshi, Advocate
for respondent-Insurance Company

RITU BAHRI J. (Oral)

1. The present appeal has been preferred by the claimants-appellants (for short 'the appellants'), against award dated 29.05.2012 passed by the learned Motor Accident Claims Tribunal, Gurgaon (for short, 'the Tribunal') whereby the claim petition filed by the appellants under Section 166/140 of the Motor Vehicles Act, has been dismissed.

FACTS NOT IN DISPUTE

2. On 03.05.2011, when Pirbhu (since deceased) along with Mukesh reached near the fields of Hawa Singh, a Tata 407 bearing registration No.HR-55-K-9144 being driven by respondent No. 1 came at high speed, rashly and negligently hit the deceased and Mukesh from behind, as a result of which, the deceased Pribhu fell on the edge of the road whereas Mukesh fell in the field of Parkash. The deceased had suffered multiple injuries on the body and succumbed to the injuries on the spot. The respondent No. 1 fled away from the spot. The accident was witnessed by Hawa Singh who noted down the registration number of the offending vehicle.

3. The learned Tribunal took the salary of the deceased at Rs.3250/- per

month, which was proved by Mahender Singh (Headmaster of the the school) who stated that the deceased was working as part time sweeper in their school and was getting the wages of Rs.3250/- per month at the rate fixed by the Deputy Commissioner. Thereafter, the learned Tribunal deducted 1/3rd on account of personal expenses and applied the multiplier of 16. Rs.10,000/- was awarded on account of loss of consortium. Rs.5000/- was awarded towards loss of estate and Rs.5000/- towards funeral expenses. The total compensation was assessed at Rs.4,36,064/- but since the claimants failed to the involvement of the offending vehicle in the accident, the claim petition was dismissed.

4. The learned counsel for the claimants-appellants contends that the claim petition has wrongly been dismissed by the learned Tribunal by relying upon the judgment of this Court in a case of ***Ram Karan v. Zile Singh, 2001(3) RCR (Civil) 582 (P&H)*** wherein it has been held that the onus to prove the negligence is always upon the claimants and they have to discharge it before the Tribunal.

5. Learned counsel for the appellant submits that the eye witness Hawa Singh immediately informed to the police after the accident on telephone and thereafter, ASI Vinod Kumar reached at the spot and lodged F.I.R No.97 dated 03.05.2011 under Section 279/337/304-A IPC. After completing the investigation, challan has also been submitted against respondent No. 1. Thus, it has been established beyond any doubt that the accident had taken place with the offending vehicle, which was being driven by respondent No. 1.

6. In compliance of order dated 10.01.2017, today an affidavit dated 29.09.2017 of official of Insurance Company has been filed in the Court today and as per R.W.3/I i.e judgment dated 15.01.2016 whereby the Court below had acquitted the respondent from the charges against him by extending him benefit of doubt.

7. Learned counsel for the Insurance Company on the other hand stated that the learned Tribunal had rightly dismissed the petition of the claimants as they have failed to prove the negligence of the driver and further the driver had also been acquitted, vide judgment dated 15.01.2016

8. Heard learned counsel for the parties at length.

9. The question for consideration would be whether the accident had taken place due to rash and negligent driving by respondent No. 1 and if yes, whether the Insurance Company is liable to make the compensation?

10. Reference at the very outset can be made to the statement of eye-witness Hawa Singh on whose statement the F.I.R had been registered. He stated that when he was gathering wheat husk, he saw one TATA-407 Pick Up was coming from Malahed side driven negligently and rashly at a very high speed came towards village Sayed Shahpur along my fields and hit two persons from behind, who were gazing sheep near to the road. Out of them, one person fell on the edge of the road whereas the other fell in the field of Parkash. The deceased had suffered multiple injuries on the body and succumbed to the injuries on the spot. The driver of the offending vehicle fled away from the spot.

11. A bare perusal of the judgment dated 15.01.2016 (R.W.3/1) further shows that P.W.5 Vinod Kumar ASI deposed that he recorded the statement of the complainant i.e Hawa Singh (Ex PW5/A) and conducted police proceedings (Ex P.W.5/B), took the offending vehicle in possession vide recovery memo Ex P.W.5/E and x-ray report of the injured. After completion of investigation, he submitted the challan in the Court. Further the offending vehicle was taken on superdari vide superdginama Ex PW5/E. On the other hand, Hawa Singh was declared hostile.

12. This Court comes to a conclusion that on the information given by Hawa Singh, F.I.R was registered on the very same day. Thereafter, the offending

vehicle was also taken in to possession by the police. Merely on the fact that in the criminal proceedings, the witnesses turned hostile and the accused had been acquitted by extending him benefit of doubt, the claim petition of the claimants should not have been dismissed. Thus, it has been fully proved on record that the accident had been caused by driver who was driving the offending vehicle negligently and rashly. The Insurance Company is liable to give the compensation amount to the appellants, who had lost the bread earner of the family.

13. The claimants are entitled to get compensation, in view of the judgment "*Sarla Verma and others vs. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) Page 77', '*Rajesh and others vs. Rajbir Singh and others*, 2013 (9) SCC 54' and '*Munna Lal Jain and another vs. Vipin Kumar Sharma and others*, 2015(3) Recent Apex Judgments 459', '*Asha Verman and others vs. Maharaj Singh and others*, 2015(2) RCR (Civil) 520 and '*Kalpanaraj and others v. Tamil Nadu State Transport Corporation*, 2015(2) SCC (Civil) 193.

14. It is not in dispute that the offending vehicle was fully insured from the Insurance company. Its genuineness is also not under challenge.

15. Reference at this stage can be made to a judgment passed by Hon'ble the Supreme Court in a case of *New India Assurance Co. Ltd v. Gopali and others*, 2012 (12) SCC 198 whereby Hon'ble the Supreme Court in an old case of 1992 had taken the monthly income of deceased at Rs.3000/- and cut of 1/10th was imposed, keeping in view the fact that a person having a minimum income of Rs.3000/- could not think of spending 1/3rd of his income on himself.

16. Reference at this stage can further been made to a judgment of Hon'ble the Supreme Court of India in a case of *Jakir Hussein vs. Sabir and others*, 2015 ACJ 721 wherein Hon'ble the Supreme Court has held

that the wage rate as per the minimum wage notification is only a yardstick and not an absolute factor to be taken to determine the compensation under the future loss of income. Minimum wage may at times fail to meet the requirements that are need to maintain the basic quality of life since it is not inclusive of factors of cost of living index.

17. Keeping in view the above mentioned judgments, the compensation is assessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculations</i>
(i)	Salary	Rs.5000
(ii)	50% of (i) above to be added as future prospects=	Rs.5000+Rs.2500=Rs.7500/-
(iii)	1/10 of (ii) deducted as personal expenses of the deceased=	Rs.7500-750=Rs.6750/-
(iv)	Compensation after multiplier of 17 is applied	6750X12X17=Rs.13,77,000/-
(v)	Loss of consortium	Rs.1,00,000/-
(vi)	Loss of love and affection to three minor daughters	Rs.3,00,000/- (Rs.1,00,000/- each)
(vi)	Loss of love and affection to two minor boys	Rs.1,00,000/- (Rs.50,000/- each)
(vii)	Funeral charges	Rs.25,000/-
(viii)	Total Compensation awarded	Rs.19,02,000/-

8. Resultantly, the appeal is allowed and order/award dated 29.05.2012 passed by the learned Tribunal is set aside. The appellants are hereby awarded a compensation of **Rs.19,02,000/-** which shall be payable by the Insurance Company within a period of forty five days from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in a case of ***Kumari Kiran through her father Harinarayan vs. Sajjan Singh and others, 2015(1) SCC 539.***

September 29, 2017
G Arora

Whether speaking/reasoned

Whether reportable

(**RITU BAHRI**)
JUDGE

Yes
No