

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

FAO No. 2184 of 2014(O&M)

Date of decision: 18.8.2017

Kamlesh and anotherAppellants

VERSUS

Ravinder and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Inderjeet Sharma, Advocate for the appellant.

Mr. Naresh Kaushik, Advocate for respondent No.1.

Mr. M.B. Jain, Advocate for respondent No.3.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 04.10.2013 passed by the Motor Accidents Claims Tribunal, Panchkula (in short 'the Tribunal') whereby application under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') filed by unfortunate parents of Jyoti Sharma for grant of compensation in regard to death of their daughter in a mother vehicular accident that took place on 30.12.2010 was ordered to be dismissed, in view of findings of the Tribunal on issue No.1.

The facts relevant for disposal of the present appeal are that as per allegations raised in the application by the claimants, on 30.12.2010 Jyoti Sharma was going from old Panchkula to B.C.W. Surajpur on a scooty bearing No.HR-03L-0541 driven by Videsh Nandi on which Jyoti Sharma was a pillion rider. At about 3:30 PM, when they reached near plant of C & C Company, Chandimandir on Panchkula - Pinjore road,

truck bearing registration No.HR-37-A-6911 driven by respondent No.1 in a negligent manner came from behind and hit the scooty. Videsh Nandi and Jyoti Sharma were run over under wheels of the truck and both of them died on the spot. The truck driver stopped his truck at a distance of about 35 – 40 yards and then fled away. The accident took place on account of negligent driving of truck No.HR-37A-6911 driven by Ravinder Singh – respondent no.1, owned by respondent No.2 and insured with respondent No.3.

Jyoti Sharma was 19 years of age and a student of B.Sc. Ist year in Government College, Sector 1 Panchkula. She had earning capacity of Rs.10000/- per month. The claimants had high hopes from the deceased. They spent Rs.40,000/- on transportation of dead body, funeral and last rites etc.

Respondents No.1 and 2 filed their joint written statement, raised preliminary objections on maintainability and suppression of true and material facts from the Court. However, they denied the accident with the averments that false FIR has been registered at the instance of claimants. Respondent No.3 also filed reply denying its liability to pay compensation. It has been averred that the scooty driver Videsh Nandi did not have a valid driving licence. If any accident had taken place, it was due to sole negligence of Videsh Nandi who drove the scooty at a high speed in a rash and negligent manner.

Following issues were framed by the Tribunal for adjudication:-

1. Whether Jyoti Sharma and Videsh Nandi had died on account of injuries suffered in the accident in question which took place on account of rash and negligent

driving of offending truck bearing registration No.HR37A-6911, as alleged? OPP

2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, to what amount and from whom? OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so, to what effect? OPR.
4. Relief.

Kamlesh, one of the claimants appeared in the witness box and examined Amit Kumar PW-2. The insurance company examined Suresh Quatnala, Senior Assistant from the Office of RTO Rishikesh, Uttarakhand RW-1 and Surender Kumar- respondent was examined as RW-2. The learned Tribunal in paras 20 and 21 of the award dealt with evidence adduced by the claimants to discharge onus of issue No.1 and eventually recorded a finding that the claimants have failed to establish that the accident took place on account of rash and negligent driving of truck bearing No.HR37A-6911 as alleged.

Counsel for the appellants has submitted that findings recorded by the Tribunal on issue No.1 are erroneous and is the result of non-application of mind as well as failure to appreciate the evidence in right perspective. To bring home his contention, it is argued that Amit Kumar PW-2 has categorically deposed by way of his affidavit Ex.PW2/A that FIR was lodged at the behest of Amit Kumar son of Dalbir Singh and not by him. It is further argued that the mere fact that author of the FIR was not examined in the case is not sufficient to discard testimony of Amit

Kumar son of Dalal Singh, another eye-witness to the occurrence. It has further been argued that on the basis of FIR lodged by Amit Kumar son of Dalbir Singh narrating a detailed account of the occurrence, due investigation was conducted by the police and Ravinder Singh driver of the offending vehicle was put to trial for committing criminality by causing accident due to rash and negligent driving resulting in death of Jyoti Sharma and Videsh Nandi, occupants of the scooty. It is further argued that Ravinder Singh driver of the offending vehicle did not cause appearance to counter testimony of Amit Kumar PW-2, when otherwise the respondents failed to elicit any facts in his cross examination to establish that testimony of Amit Kumar PW-2 is not worthy of credence and reliance.

Counsel representing respondent No.1 has supported findings of the Tribunal on issue No.1 with the submission that the very fact that the claimants failed to examine Amit Kumar son of Dalbir Singh author of the FIR is sufficient to show that a false criminal case was registered against Ravinder Singh. It is further argued that the Tribunal, on a detailed consideration of evidence adduced by the claimants, has rightly recorded its conclusion that the claimants failed to prove the accident, if caused due to rashness or negligence on the part of driver of the alleged offending vehicle.

Counsel representing the insurance company has submitted that as the appeal against respondent No.2 (registered owner of the vehicle) has been dismissed vide order dated 28.04.2016, the insurance company has no liability to discharge even if findings of the Tribunal on issue No.1 are set aside by this Court. However, it has been argued by him that there is no reference in the FIR that Amit Kumar son of Dalal Singh PW-2 was

present at the spot nor he has been cited as a witness of the prosecution in the challan presented in the Court.

I have heard counsel for the parties, perused the paper-book and the records.

Indisputably, Amit Kumar son of Dalbir Singh, author of FIR No.245 dated 30.12.2010 has not been examined. The claimants examined Amit Kumar son of Dalal Singh stated to be an eye-witness to the occurrence. Amit Kumar PW-2 tendered into evidence his affidavit Ex.PW2/A wherein he has given a detailed account of the date, time and manner of the accident in question. He has also explained as to how he happened to be available at the spot when the unfortunate occurrence took place resulting in sustaining of serious injuries by Videsh Nandi and Jyoti Sharma which proved fatal for the occupants of Scooty No.HR03-L-0541. In the concluding lines of his affidavit, he has deposed that FIR was lodged with the police of Police Station Chandimandir on the statement of car driver namely Amit Kumar son of Dalbir Singh also a resident of village Surajpur, District Panchkula. In his cross examination, he has candidly stated that FIR of this accident was not lodged on his statement. He has emphatically denied that he was not an eye-witness to the accident. A careful perusal of testimony of Amit Kumar PW-2 leaves no matter of doubt that the witness was cross examined at length by both sets of respondents represented by different counsel(s) but no tangible material has been brought forth to shatter evidentiary value of his deposition. Counsel representing the owner and driver of the offending vehicle suggested to the witness that accident in question took place because of negligence of driver of scooty and auto rickshaw. Meaning thereby that respondents No.1 and 2 before the Tribunal have indirectly admitted

presence of Amit Kumar PW-2 at the spot and further his being a passenger in the auto rickshaw. Under the circumstances, it can be safely held that the Tribunal has failed to appreciate testimony of Amit Kumar PW-2 in a proper manner resulting in misreading of evidence and error in recording findings on issue No.1. This apart, it is not denied that on the basis of FIR lodged at the behest of Amit Kumar son of Dalbir Singh, the police conducted investigation and challaned Ravinder Singh for causing this accident and committing offence under Sections 279 and 304-A IPC. Ravinder Singh did not appear in the witness box to controvert allegations raised by the claimants and deposition of Amit Kumar PW-2. An adverse inference is to be drawn against Ravinder Singh for his failure to appear in the witness box without any justifiable reason. Examined from any angle, it can be safely held that the Tribunal seriously erred in negating plea of the claimants by determining issue No.1 against them. As a result, findings recorded by the Tribunal on issue No.1 cannot be allowed to sustain and accordingly set aside. Resultantly, issue No.1 is answered in favour of the appellants and against respondent No.1- driver of the offending vehicle.

Jyoti Sharma, daughter of the claimants sustained injuries due to rash and negligent driving of aforesaid offending vehicle. The claimants are the parents of deceased Jyoti Sharma, therefore, they are entitled to get compensation.

Kamlesh, mother of Jyoti Sharma appeared in the witness box and tendered into evidence her duly sworn affidavit Ex.PA. She has reiterated her version that the deceased aged 19 years was a student of B.Sc. Ist year at Government College Sector 1 Panchkula. She had earning capacity of Rs.10000/- per month. There is no challenge to statement of

Kamlesh that the deceased was a student of B.Sc. Ist year in a Government College. Taking into consideration the minimum wage available to a casual worker coupled with the educational qualification of the deceased, income of the deceased for assessing loss of dependency is determined at Rs.7,000/- per month. The deceased was a young girl aged 19 years. After completing her education parents would have discharged their obligation of performing her marriage. As per the settled position in law compensation to be assessed by the Court can neither be a bonanza nor a source of profit or largesse. The Court has an obligation to assess just and reasonable compensation sufficient to make good the loss suffered by victim(s) in terms of money. In the given facts and circumstances, notional income of the deceased is assessed at Rs.7,000/- per month but compensation would be determined without any addition towards future prospects. As the deceased was an unmarried daughter of the claimants, admissible deduction would be 50%. In view of age of the deceased, a multiplier of 18 is admissible. In this manner, loss of dependency comes to Rs.7,56,000/- [Rs.15,12,000/- (Rs.7,000/- x 12 x 18) – Rs.7,56,000/- (50% towards personal expenses)].

The claimants shall be entitled to an amount of Rs.25,000/- for expenses on funeral. Mother of the deceased is awarded an amount of Rs.50,000/- for loss of love and affection.

In view of the above, total compensation comes to Rs.8,31,000/- which shall carry interest at the rate of 7.5% per annum from the date of petition till realization. Only respondent No.1, driver of the offending vehicle, would be liable to pay compensation as appeal against the registered owner stands dismissed vide order dated 28.04.2016.

Therefore, the insurance company is exonerated of its liability to indemnify the insured.

For the foregoing reasons, the appeal is partly allowed in the aforesaid terms. No order as to costs.

AUGUST 18, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no