

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

FAO No.850 of 2000 (O&M)

Date of Decision: February 28, 2018

Smt.Mukesh Tyagi and others.

...Appellants

Versus

Ajay Kumar and others

...Respondents

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

Present: Mr.A.P.Bhandari Advocate for the appellants.

Mr.Pardeep Goyal, Advocate
for respondent No.3-Insurance Company.

HARINDER SINGH SIDHU, J.

The claimants who are the widow, minor son and two minor daughters of deceased Satya Pal Tyagi have filed this appeal against the award dated 4.12.1999 of the Motor Accident Claims Tribunal, Faridabad (for short 'the Trbunal'), whereby, their claim petition has been dismissed.

The case of the appellants in the claim petition was that Satya Pal Tyagi had gone to meet one of his friends who was on night duty at Escorts Plant-II. When he reached in front of Escorts Plant-II on 23.6.1997 at about 8:30 AM, a DCM Toyota bus bearing registration No.DL-IV-1081 which was being driven rashly and negligently by Ajay Kumar respondent No.1 came and hit him from behind due to which he received serious injuries and died on the spot. The accident was witnessed by Ranpal and GD Verma. FIR was registered on the statement of Ramesh.

The respondents denied the allegations and claimed that no accident as alleged had taken place. It was claimed that respondent No.1 was

not the driver of the said bus. On 23.6.1997 one Satish Kumar was its driver.

In order to prove the allegations, the claimant examined PW-1 Madan Gopal, Assistant MHC, PW-2 CP Ratra, Senior Superintendent, Escorts Yahma Ltd., PW-3 Smt. Mukesh, PW-4, Ranpal Singh, PW-5, Ram Gopal, Assistant Ahlmed and PW-6, Keshav Ram ASI.

The respondents on the other hand examined RW-1 Ajay Kumar, respondent No.1, who tendered in evidence photocopy of his driving licence, Ex. R-3, photocopy of the RC Ex.R-4, photocopy of the Insurance Policy, Ex.R-6.

PW-1, Madan Gopal, Assistant MHC, Police Station Central Faridabad proved the FIR No.758 registered on 23.6.1997 under Sections 279/34-A, IPC on the statement of Ramesh.

PW-4 Ranpal Singh owner of Printing Press, resident of Sector VIII, Faridabad stated that on 23.6.1997 he had started for his house. On the way he was to meet his friend at Escorts Plant-II. But his friend was not there so he started from there at 8 am. He was on his scooter. He observed that from the opposite side bus No.DL-IV-1081 which was being driven by Ajay Kumar came at high speed and struck against Satpal who was coming from Bata side on foot from behind. Due to the accident, Satpal died at the spot. Ranpal stated that he informed to 2 to 4 persons who were present there about the accident and then proceeded towards his village. In his cross-examination, he stated that he did not know Satpal earlier. He came to know of his name after 5 to 6 days when he returned to his village and was present at his printing press. He stated that he came to know the name of the driver after two days when he went to the police station to record his statement. He

stated that he had gone the police station just by the way and not specifically to lodge the report regarding the occurrence. He admitted that at the place of the accident many people were coming and going. He stated that he did not know the persons to whom he had mentioned about the accident.

PW-6, Keshav Ram ASI affirmed that the name of the driver who was driving the vehicle at the time of accident was Ajay son of Kewal Ram. He had arrested Ajay Kumar on 29.8.1997 and produced him in the court on 30.8.1997. The statement of Ranpal Singh in which the name of Ajay Kumar was mentioned as driver of the vehicle was recorded on 7.8.97. The offending vehicle had been taken into possession but later on released on superdari. In his cross-examination he admitted that in the statement of Ranpal Singh, the name of the driver had not been mentioned though the vehicle number had been mentioned. He stated that brother of the deceased had witnessed the occurrence. He stated that he did not verify the timing of the vehicle for bringing the workers to the factory but had only inquired about the timings orally and did not make any inquiry in writing about it. He stated that he was informed that the vehicle in question brings the workers from the factory at 5.30 pm.

RW-1 Ajay Kumar deposed that he was not driver of the vehicle on 23.06.97. He denied that any accident had taken place. He stated that the bus stands in the name of his father Kewal Ram Sharma who is its registered owner. They owned two mini buses. Both the buses used to run from Faridabad to Delhi after taking the employees. Satpal was the driver of the bus on the day of the alleged accident. He asserted that he had been falsely involved in the case as he had a driving licence. In his cross-

examination, he admitted that he had a driving licence for driving heavy motor vehicle. He also admitted that on 23.6.97, the bus in question was coming from Delhi to Faridabad, Escorts. Though he denied the factum of accident, but admitted that he was challaned in the case.

The Ld. Tribunal noticing that PW-4 Ranpal had not been able to disclose the name of the 2 to 4 persons whom he claimed to have informed about the occurrence; he had stated that he had gone to the Police Station just by the way and not to lodge a report regarding the occurrence; he did not take the deceased to the hospital and did not lodge any report with the police immediately after the accident, concluded that he could not be believed and that he was not an eye-witness to the accident. The Ld. Tribunal further noted that the FIR had been lodged on the statement of Ramesh brother of the deceased who was not an eyewitness to the accident. PW-6 Keshav Ram, Investigating Officer of the case stated that he had recorded the statement of Ram Pal Ex.R-1 on 7.8.97 i.e. after about one and half month of the occurrence and even in that statement the name of the driver had not been mentioned and Ranpal had stated that he himself inquired about the number of the vehicle and came to know that the vehicle number was DL-IV-1081 which was being used for bringing the workers of Plant-II and he had given application in writing about this fact, also led to the conclusion that Ranpal was not an eyewitness to the accident. The Tribunal also was persuaded by the facts that the documents of the bus were taken into possession on 29.8.97 when Ajay Kumar was arrested. It found it strange that the bus was taken into possession at a very late stage when the number of the bus was mentioned by the witnesses much earlier. The learned Tribunal inferred that

it appeared that the number of the bus was introduced at the later stage. For all these reasons, Ld. Tribunal concluded that it had not been proved that the deceased had died due to injuries sustained in an accident caused by the rash and negligent driving of bus No.DL-IV-1081.

The question is whether the findings of the Tribunal are sustainable as has been argued by the Ld. Counsel for the respondent or from the evidence on record it can be concluded that the accident was caused by the rash and negligent driving of Bus No. DL-IV-1081 ?

There is no doubt that there are certain glaring gaps in the statement of PW-4 Ranpal as has been noticed by the Ld. Tribunal. But equally it cannot be denied that there are certain other facts which point to the involvement of the Bus No. DL-IV-1081 in the accident. The accident is alleged to have taken place at about 8.30 AM at Delhi-Mathura Road in front of Plant II Escorts Ltd. FIR No.758 dated 23.6.1997 u/s 289/304-A IPC was lodged soon thereafter at 12.20 P.M. No doubt in the FIR the vehicle causing the accident was not identified. It was only on 7.8.1997 that the statement Ex.R1 of Ranpal was recorded in which the vehicle number was mentioned. The name of the driver was disclosed even later. RW-1 Ajay Kumar admitted that the bus stands in the name of his father who owns two buses. Both the buses used to run from Faridabad to Delhi after taking the employees. He admitted that on 23.6.1997 the bus in question was coming from Delhi to Faridabad Escorts. Thus though respondent No. 1 has denied the accident, however, from his evidence the presence of the bus at the spot of the accident can be safely inferred. Respondent No. 1 also admitted that he had been arrested in the case and then released on bail. He also admitted

that charges had been framed against him in the case. The report under Section 173 Cr.P.C. was also proved before the Tribunal by PW-5 Ram Gopal Assistant Ahlmad in Court of ACJM, Faridabad.

In **Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109**, observations about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, were made 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 mere fact that the number of the bus was disclosed later and that the offending vehicle was bus was taken into possession some days after the bus number being disclosed to the police or there were other lapses in investigation cannot be held against the claimants.

Thus the findings of the Tribunal on the issue of negligence are set aside. It is held that the accident which took place on 23.06.1997 at about 8.30 A.M. at Delhi-Mathura in front of Plant II Escorts Limited in which Sat Pal Tyagi lost his life had taken place due to rash and negligent driving of DCM Toyota No. DL IV 1081 by respondent No. 1

Compensation :

PW-2 C.P. Ratra, Senior Superintendent, Escorts-Yamaha Limited, Faridabad stated that he knew deceased Sat Pal Tyagi. The deceased was employed as Helper in their Company at a monthly salary of Rs.4562.25 paise. The date of birth of the deceased was 12.4.1956. He proved the monthly salary certificate Ex.PB as having been issued by the Department and identified the signatures of Mahesh Airen Chief Manager (Personnel) on the certificate. PW2 also proved the document Ex.PC i.e. the salary certificate for one year. He further disclosed that the deceased was also getting incentive of Rs.1000/- per month. He categorically stated that

the incentive is given every month, though its amount varies. He further affirmed that the bonus paid is not included in the salary.

Thus, it is clear that as on June, 1997 the deceased was drawing a monthly salary of Rs.4562.25 p.m. He had received an average incentive of Rs.1000.00 p.m for the period from January 1997 to June 1997.

It has been held in **Sarita and another vs. General Manager, Haryana Roadways and others**, 2002(4) RCR (Civil) 370, that an incentive, though it may increase or decrease, is a part of wages and is to be included in the salary for determining compensation under the Motor Vehicles Act. Accordingly, the incentive being paid to the deceased has to be included in the salary for determining the loss of income.

Hence, at the time of accident, the monthly income of the deceased is assessed at Rs.5562/- (4562 + 1000). It has come in evidence that date of birth of the deceased was 12.4.1956 and accordingly, at the time of the accident in June, 1997, he was aged about 41 years. The deceased had four dependants i.e. widow and three children.

On the issue of liability to pay the compensation, the Tribunal on the basis of the evidence led by the parties has concluded that the vehicle was insured by respondent – insurer and was not being driven in violation of the terms and conditions of the Insurance Policy. Accordingly, the issue was decided against the insurer, making it liable to indemnify the loss caused by the offending vehicle.

In the light of the above and the judgment dated 31.10.2017 of the Hon'ble Supreme Court in **National Insurance Company Ltd. Vs. Pranay Sethi and others** SLP (Civil) 25590 of 2014 – 2017 SCC Online

SC 1270 the compensation, payable to the appellants-claimants, is assessed as under:-

Sr.No.	Heads	Calculation (In Rs.)
(i)	Monthly Income	5562/-
(ii)	30% of above (i) to be added as future prospects (deceased aged 41 yrs.)	5562+1668.60 = 7230.60
(iii)	Loss of income (1/4 th of (ii) deducted as personal expenses of the deceased - four dependants)	7230.60-1807.65 = 5422.95/- per month (rounded off at Rs.5423/-)
(iv)	Compensation after multiplier of 14 is applied	5423x12x14= 911064/-
(v)	Loss of Consortium (Exclusively payable to the widow of deceased)	Rs.40,000/-
(vi)	Loss of Estate	Rs.15,000/-
(vii)	Funeral Expenses	Rs.15,000/-
	Total	Rs.981064/-

Hence, the appeal is allowed and the impugned award of the Tribunal is set aside. The appellants – claimants are held entitled to compensation of Rs.9,81,064/- along with interest @ 7.5% per annum from the date of filing of claim petition till realisation. In addition to the amount of consortium, 50% of the balance compensation shall be payable to the widow of the deceased and the remaining 50% in equal shares to all the three children.

February 28, 2018

(HARINDER SINGH SIDHU)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No