

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

**FAO No.1155 of 2004 (O&M)
Date of Decision: 29.08.2018**

Usha Devi and others

..... Appellants

Versus

Narain Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sudhanshu Sharma, Advocate for the appellants.

Mr. I.S.Cooner, Advocate for
Mr. J.S.Cooner, Advocate for respondent Nos.1 and 2.

Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate for respondent No.3.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed by the claimants/appellants (*for short 'appellants'*) under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the impugned Award dated 05.12.2003, passed by learned Motor Accident Claims Tribunal, Ambala (*for short 'Tribunal'*), whereby their claim petition has been dismissed on the ground that they failed to prove that the accident was caused by respondent No.1 while driving the offending vehicle, which resulted into the death of Jasmeet Ram @ Jassi (*for short 'deceased'*).

Appellants are widow; minor son, minor daughter and mother respectively of the deceased. As per claim petition, deceased was 30 years of age, working as 'Wooden Contractor' as well as running Milk Dairy, thereby earning monthly income of ₹ 15,000/- (₹ 12,000/- + ₹ 3,000/- respectively) and all the appellants were dependent upon him.

(2) Brief facts of the case are that on 15.02.2002 at about 1:00 PM in the noon, deceased was standing at Bus Stand, Matheri Jattan, then a truck bearing registration No.HR-37-A-0335 (*for short 'offending vehicle'*) came from Jalbera side and struck against the deceased and crossed over his body. It is averred that respondent No.1-Narain Ram was driving the offending vehicle in a very rash and negligent manner and lost his control over the same. The accident was witnessed by one Faquir Chand, who was present on the spot at the relevant point of time. He reported the matter to the police and on the basis of his statement, FIR No.22 dated 15.02.2002, under Sections 279 and 304-A, IPC was registered at Police Station Sadar, Ambala. Post Mortem Examination of the deceased was conducted in Civil Hospital, Ambala City on the same day.

(3) Upon notice, respondent Nos.1 and 2 filed joint reply and denied the claim petition by submitting that the alleged accident had not taken place with the offending vehicle and respondent No.1 has been falsely involved in order to get the compensation.

Respondent No.3/Insurance Company filed separate reply and denied the averments made in the claim petition by submitting that respondent No.1 was not having a valid and effective driving licence at the time of accident and as such, Insurance Company is not liable to pay any amount of compensation.

(4) On the basis of pleadings of both the sides, learned Tribunal framed the following issues:-

1. *Whether the accident in question had taken place due to rash and negligent driving of HR-37-A-0335 by respondent No.1? OPP*

2. *Whether the petitioners are entitled to any compensation, if so, to what amount and from whom? OPP*
3. *Whether the offending vehicle was being driven by a person not holding a valid and effective driving licence at the time of alleged accident? OPR*
4. *Relief.*

(5) Claimants/appellants, in order to prove their case, examined Gulzar Singh as PW-1; Ram Chander, police official, Police Station Sadar, Ambala as PW-2; Usha Devi (appellant No.1) appeared as PW-3; Fakir Chand s/o Ganga Ram as PW-4 and Arun Sharma, Criminal Ahlmad to the Court of learned ACJM, Ambala as PW-5.

On the other hand, respondents examined Narain Ram (respondent No.1) as RW-1 and tendered into evidence copy of Driving Licence as Ex.RA and copy of Insurance Policy as Ex.RB.

(6) Learned Tribunal, while deciding Issue No.1, came to the conclusion that appellants have failed to prove that accident was caused by respondent No.1 while driving the offending vehicle and the Issue was decided against the appellants.

While deciding Issue No.2, learned Tribunal assessed the monthly income of deceased as ₹ 2500/- per month and calculated his annual income as ₹ 30,000/-. After making a deduction of 1/3rd towards his personal expenses, assessed the annual dependency to the tune of ₹ 20,000/-. Learned Tribunal found that deceased was 33 years of age at the time of accident and after applying the multiplier of 16, calculated the total compensation as ₹ 20,000/- x 16 = ₹ 3,20,000/-.

Learned Tribunal, while deciding Issue No.3, came to the conclusion that no evidence has been led by the Insurance Company

(respondent No.3), therefore, decided the same against the Insurer, but in view of the findings on Issue No.1, Insurance Company was not held liable for any compensation. Ultimately, while dealing with Issue No.4 regarding the relief, learned Tribunal dismissed the claim petition in view of the conclusion on Issue No.1. Hence, the present appeal.

(7) It is argued by learned Counsel for the appellants that learned Tribunal has committed a grave error of law as well as on facts while deciding Issue No.1 against the appellants and in favour of the respondents as there is sufficient material available on record to decide the same in favour of the appellants. Further argued that learned Tribunal, while deciding Issue No.2, has not properly taken into consideration the income and occupation of the deceased and as such, assessed the compensation on the lower side. Also argued that in view of the judgment of Hon'ble the Supreme Court in '***National Insurance Company Limited Versus Pranay Sethi and others***', (2017) 16 SCC 680 , appellants are entitled for addition of 40% amount towards future prospects as well as compensation under other conventional heads i.e. loss of estate, loss of consortium and funeral Expenses.

On the other hand, learned Counsel for the respondents opposed the contentions raised on behalf of the appellants and prayed for dismissal of the appeal by submitting that there is no illegality with the impugned award.

(8) Heard arguments from both sides and perused the record.

(9) The points for determination in the present appeal are as under: -

I. As to whether deceased died in the accident in question on account of rash and negligent driving of

the offending vehicle by respondent No.1 or not?

- II. *If Point No.I is decided in affirmative, then what should be the 'just compensation' for which the appellants are entitled in view of the facts and circumstances of the present case?"*

Point No.I

PW 1-Gulzar Singh deposed that Jasmeet Singh (deceased) died in the accident on 15.02.2002 at about 12:30/1:00 PM. At that point of time, one Fakir Chand, r/o Village Matharari Jatha and another Fakir Chand son of Ganga Ram, r/o Village Matharari Jatha were standing with him at Bus Stand and in the meantime, a truck bearing registration No.HR-37-A-0335 came from Jalbera side in a rash and negligent manner and struck against Jasmeet Singh and he died on the spot. Further deposed that deceased was maintaining a buffalo besides some agricultural land and also doing the business of sale purchase of Timber. Specifically deposed that the accident was caused due to rash and negligent driving of respondent No.1 and he gave the registration number of the offending vehicle to the police on the same day.

During cross-examination, this witness stated that he along with both Fakir Chand went to the Police Station for lodging the FIR and he denied the suggestion on behalf of respondent No.3/Insurer that offending truck was not involved in the accident in any manner.

PW 2-Ram Chander produced the copy of FIR No.22 dated 15.02.2002 as Ex.PW 2/A.

PW 4-Fakir Chand son of Ganga Ram, aged about 80 years, also deposed in the similar terms of PW 1-Gulzar Singh. He stated that offending truck was seen by him, causing the accident, which was coming

from Jalbera and going towards Ambala. The offending truck was being driven in a rash and negligent manner and hit Jasmeet Singh (deceased). Also deposed that deceased was doing the business of wooden and also running a dairy, thereby earning ₹ 10-12,000/- per month. FIR(Ex.PW2/A) was registered on the basis of his statement.

During cross-examination, this witness stated that he is an illiterate person and denied the suggestion that he is deposing falsely.

PW 5-Arun Sharma, Criminal Ahlmad produced the summoned file of criminal case relating to FIR No.22 dated 15.02.2002, under Sections 279, 304-A, IPC, registered at Police Station Sadar, Ambala and deposed that charges have already been framed against respondent No.1-Narain in criminal case and the same is fixed for prosecution evidence. He further deposed that offending truck was released on Superdari in favour of Satish Kumar Sachdeva (respondent No.2/owner) on 06.08.2002.

PW 3-Usha Devi w/o deceased-Jasmeet Singh deposed that her husband died in a road-side accident on 15.02.2002 in the area of Police Station Ambala City and at that time, he was 33 years of age. She also deposed that deceased was a Wooden Contractor and earning ₹ 6000/- per month. He used to pay entire amount to her for household expenses. Deceased was having 1-1/4th Killa of agriculture land and copy of his Kisaan Card was produced as Ex.PW3/A. She further deposed that deceased was also having buffalo and selling the milk, thereby earning ₹ 3000/-. She also deposed that Autopsy of deceased was conducted by the doctor(s) of Civil Hospital, Ambala and copy of the same is Ex.PW3/B and all the appellants were dependent upon the income of deceased.

During cross-examination, she stated that deceased was 8th standard pass. She denied the suggestion that deceased was not earning ₹ 3000/- per month by selling the milk or that he was not engaged in the work of wooden Contractor or that he was not earning ₹ 8000/- per month by doing that work.

RW 1-Narain Ram deposed that offending truck was not involved in the accident in question.

During cross-examination, this witness admitted that he was working as a Driver of the offending Truck with Krishan Lal Sachdeva (father of respondent No.2, who is the owner of the offending truck). Further stated that offending truck was being used for carrying bricks and he admitted that he was arrested in the criminal case arising out of FIR No.22 dated 15.02.2002 and facing trial. Also stated that he did not make any complaint to any senior Officer of the police or administration about his implication by the police in the aforesaid criminal case.

PW 1-Gulzar Singh and PW 4-Fakir Chand have duly supported the claim petition and even one of them i.e. Gulzar Singh has witnessed the accident in question and specifically deposed that deceased died in the accident on 15.02.2002, caused by respondent No.1, while driving the offending vehicle in a rash and negligent manner. Still further, PW 5-Arun Sharma produced the record relating to FIR No.22 dated 15.02.2002, registered against respondent No.1 and after investigation, report under Section 173 Cr.P.C. was submitted against him. Thereafter, trial Court found *prima facie* that respondent No.1 has committed the offence punishable under Sections 279 and 304-A, IPC and consequently, charges were framed and case was fixed for prosecution evidence. Even the

offending vehicle was released on *Superdari* to respondent No.2 and neither respondent No.1; nor respondent No.2 (driver and owner respectively) raised any grievance against the lodging of the FIR in the matter.

In these circumstances, there is sufficient material available on record to prove that Jasmeet Ram @ Jassi died on account of rash and negligent driving of the offending vehicle by respondent No.1. Therefore, the findings of learned Tribunal regarding Issue No.1 are not legally sustainable and the same deserve to be interfered. Resultantly, the findings on Issue No.1 are reversed and the same is decided in favour of the appellants and against the respondents. Therefore, it is held that deceased-Jasmeet Ram @ Jassi died on 15.02.2002 due to rash and negligent driving of the offending vehicle by respondent No.1. Thus, Point No.I is decided accordingly.

Point No.II

Usha Devi (appellant No.1) appeared as PW 3 and deposed that deceased was working as a wooden Contractor and earning ₹ 6000/- per month as well as ₹ 3000/- per month by selling milk. During cross-examination, she denied the suggestion that deceased was not doing the Contractor work or not earning ₹ 3000/- per month by selling milk. She produced the Kisaan Pass-Book (Ex.PW3/A), which shows that deceased was owner of 1-1/4th Acre of agriculture land.

In view of the above, the conclusion drawn by learned Tribunal, while deciding Issue No.2 regarding the income of deceased to the tune of ₹ 2500/- per month is on the lower side and the same deserves to be enhanced at least ₹ 5000/- per month.

Learned Tribunal has accepted that deceased was 33 years of age at the time of accident and he was married and there were four dependents upon him, therefore, in view of the law laid down by Hon'ble the Supreme Court in '**Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121**', 1/4th deduction is to be made towards personal expenses of the deceased and multiplier of 16 is attracted. Still further, in view of the judgment of **Pranay Sethi (supra)**, appellants are also entitled for addition of 40% of annual dependency towards future prospects as well as compensation under other conventional heads i.e. loss of estate, loss of consortium and funeral Expenses.

(10) Keeping in view the facts and circumstances, discussed hereinabove, in the opinion of this Court, the following amount of compensation would be the “just compensation” on account of death of Jasmeet Ram @ Jassi for which the appellants are entitled:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Monthly Income of the deceased	₹ 5,000
(ii)	Annual Income of the deceased	₹ 5,000 x 12 = ₹ 60,000
(iii)	1/4 th of (ii) deducted for personal expenses	₹ 60,000 - ₹ 15,000 = ₹ 45,000
(iv)	40% addition for future prospects	₹ 45,000 + ₹ 18,000 = ₹ 63,000
(v)	Net annual income of the deceased	₹ 63,000
(vi)	Multiplier	16
(vii)	Total Loss of dependency	₹ 63,000 x 16 = ₹ 10,08,000
(viii)	For loss of estate	₹ 15,000
(ix)	For loss of consortium	₹ 40,000
(x)	For Funeral Expenses	₹ 15,000
	Total Compensation	₹ 10,78,000

In view of the above, present appeal is allowed and the findings on Issue No.1 are reversed and the same is decided in favour of the appellants. The amount of compensation, assessed under Issue No.2, is modified and enhanced to the tune of ₹ 10,78,000/-. This Court, while taking recourse to the provisions of Section 171 of the Act, deems it appropriate to award interest @ 9% per annum from the date of filing of the claim petition till its realization in favour of the appellants. All the respondents are held liable for payment of compensation jointly and severally. Since learned Tribunal has already decided Issue No.3 regarding liability against the Insurer and that is not under challenge, consequently, in view of reversal of findings on Issue No.1, the payment of compensation will be made to the appellants by the Insurance Company within a period of six weeks from the date of receipt of certified copy of this order.

August 29, 2018

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes