

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

FAO No.3669 of 2007 (O&M)

Date of Decision: April 20, 2018

Narender Kumar and another

...Appellants

Versus

Jarnail Singh and others

...Respondents

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

Present: Mr.Ashwani Bhardwaj, Advocate
Amicus Curiae for the appellant.

Ms.Vandana Malhotra, Advocate
for respondent No.3 – Insurer.

HARINDER SINGH SIDHU, J.

This appeal is filed by the claimants for enhancement of compensation, as awarded by the Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal') vide its award dated 1.6.2006.

Brief facts as disclosed in the claim petition are that on 6.10.2005 in the area of Ganda Nala, Babarpur, District Panipat a vehicular accident took place involving Indica car No.HR 03E-8992(herein for short 'the offending vehicle'), wherein, Anjali aged about 6 years lost her life. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered.

The appellants, her parents filed claim petition under section 163-A of the Motor Vehicle Act, 1988 before the Tribunal. The Tribunal concluded that the accident had taken place due to the rash and negligent

driving of Jarnail Singh, the driver of the offending vehicle and awarded Rs.55,000/- as compensation to the claimants. Amount of Rs.7000/- as 'performance of last rites' was also awarded. In all, compensation of Rs.62000/- along with interest was awarded.

Feeling dissatisfied with the quantum of compensation, the claimants have approached this Court.

Learned counsel for the appellants has relied on the decision of Hon'ble Supreme Court in Kishan Gopal and another vs. Lala and others, (2014)1 SCC 244, besides decisions of this Court in Ali Mohammed and another vs. Nigam Dutt and others 2017(1)PLR 423 and FAO No.10056 of 2014 Ram Swaroop vs. Ombir and others decided on 22.10.2016 to contend that the compensation of Rs.5,00,000/- should have been awarded.

On the other hand, Ld. Counsel for the respondent – Insurance Company has contended that the claim petition was filed under Section 163-A of the Motor Vehicles Act, and the compensation should have been assessed as per the structured formula in the Second Schedule of the Act

Heard learned counsel.

It is true that as per its title the claim petition is “Claim petition under under Section 163-A of the Motor Vehicles Act”, but in the petition, it was specifically pleaded that the accident had been caused due to rash and negligent driving of the offending vehicle by respondent No.1 Jarnail Singh.

To prove their case the claimants examined PW2 Dharam Pal, the author of the FIR registered regarding the accident. The claimants also examined Rajesh Kumar, Ahlmad as PW1, who proved the pendency of the

criminal proceedings against the driver of the offending vehicle. The Tribunal returned its findings as under:

“10. In order to prove rash and negligent driving of the offending vehicle, the claimants examined Dharam Pal, the author of FIR as PW2 besides examining Rajesh Kumar, Ahlmad as PW1. The version of the claimants is that the accident involving the offending vehicle took place due to rash and negligent driving of that vehicle by respondent No.1 and in which, their daughter Anjali received serious and multiple injuries and which proved fatal for her. PW2 Dharam Pal is the author of the FIR. It is proved from his testimony that the death of her niece Anjali was result of involvement of motor-vehicle. Despite lengthy cross-examination, his testimony could not be shattered in any way. Then, from the testimony of Rajesh Kumar PW1, it is proved that a case for rash and negligent driving of the offending vehicle was registered against respondent No.1 and he is facing trial. So, from the oral as well as documentary evidence adduced by the claimants, it is proved that the death of Anjali was result of use of motor vehicle. So, the claimants being her parents have every locus standi to file and maintain the claim petition. So, this issue is accordingly held in favour of the claimants.”

From the above it is clear that it was established before the Tribunal that after the accident an FIR for rash and negligent driving of the offending vehicle was registered and respondent No.1 Jarnail Singh was facing trial in that case. It was also established that the death of Anjali was the result of the use of the offending vehicle.

It has been settled in a long line of cases that on registration of FIR, filing charge-sheet and commencement of trial against the driver of the offending vehicle, it may be prima facie safe to conclude in a case for compensation under the Motor Vehicles Act that the accident was caused

due to rash and negligent driving of the offending vehicle.

In Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109, this Court observed about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, 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”

Accordingly, it is held that the accident was a result of rash and negligent driving of the offending vehicle.

It is well settled that the object of the Motor Vehicles Act is to award just compensation. Even if in the pleadings no specific claim was made under Section 166 of the Motor Vehicles Act the party should not be deprived from getting just compensation if a case is made out under law.

In Ningamma and another vs. United India Insurance Company Limited, (2009) 13 SCC 710 , Hon'ble Supreme Court observed as under:

“34. Undoubtedly, Section 166 of the MVA deals with "Just Compensation" and even if in the pleadings no specific claim was made under Section 166 of the MVA, in our considered opinion a party should not be deprived from getting "Just Compensation" in case the claimant is able to make out a

case under any provision of law. Needless to say, the MVA is beneficial and welfare legislation. In fact, the court is duty bound and entitled to award "Just Compensation" irrespective of the fact whether any plea in that behalf was raised by the claimant or not."

The Hon'ble Supreme Court in **Raj Rani v. Oriental Insurance Co. Ltd., (2009) 13 SCC 654** observed that it is not necessary in a proceedings under the Motor Vehicles Act to go strictly by the pleading or evidence. It is the duty of the Court to award 'just compensation' irrespective of the fact that any such plea has been raised by the claimant or not :

"13. ... It is not necessary in a proceeding under the Motor Vehicles Act to go by any rules of pleadings or evidence. Section 168 of the Act speaks about grant of just compensation. The court's duty being to award just compensation, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not."

In view thereof, the appellants are entitled to grant of compensation under Section 166 of the Motor Vehicles Act.

Now coming to the quantum of compensation, in **Kishan Gopal's** case (supra) in case of death of a ten year old child Hon'ble Supreme Court had awarded compensation of Rs.5 lacs. In **Ali Mohammed's** case (supra) this court had awarded compensation of Rs.5 lacs in case of death of nine year old child. Similarly, in **Ram Swaroop's** case (supra) compensation of Rs.5 lacs was awarded in the case of death of a 8 year old child. The deceased in the present case was a child of six years and similar compensation is liable to be awarded.

Accordingly, the Award of the Tribunal is modified by enhancing

the compensation to Rs.5,00,000/-from Rs.62,000/- as awarded by the

Tribunal. The enhanced amount of Rs.4,38,000/- be paid to the appellants along with interest @ 7.5% per annum from the date of filing of claim petition till realisation.

The respondent – Insurance Company is directed to disburse the compensation to the appellants within three months of receipt of certified copy of this judgment and submit compliance report before the Tribunal.

April 20, 2018

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(HARINDER SINGH SIDHU)

JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No