

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

FAO-2339-2009 (O&M)
Date of decision: 04.05.2018

PINKI AND ANR.

... Appellants

Versus

SAT PAL AND ORS.

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Chiranshu Bansal, Advocate for
Mr. Vikram Singh, Advocate
for the appellants.

None for respondents No.1 and 2.

Ms. Vandana Malhotra, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

CM No.4278-CII of 2018

Prayer in this application is for permitting the applicant/appellants to pursue their remedy in their own right as they have become major. The application is supported by an affidavit of one of the applicants namely Pinki Sharma.

Heard.

Allowed as prayed for. The applicants/appellants are allowed to pursue the appeal in their own right.

Amended memo of parties is taken on record.

Disposed of accordingly.

Main Case

The present appeal directs challenge against award dated 28.02.2009 passed by the Motor Accidents Claims Tribunal, Panipat whereby application for compensation filed by minor children of deceased Tulsi namely Pinki and Bhavnesh through Sh. Sat Pal Singh (retired Kanungo) claiming compensation on account of death of Tulsi in a motor vehicular accident that took place on 10.11.2007 has been dismissed.

As per the case set up by claimants, Harish Kumar son of Tungal Ram got recorded his statement with ASI Lal Singh, Police Station Samalkha to the effect that on 10.11.2007 at about 4.00 pm, he (Harish Kumar) was standing at bus stand Patti Kalyana for going to Samalkha and talking to Dinesh son of Jagdish. In the meantime, a tractor trolley came from the side of Samalakha, driven in a rash and negligent manner. After crossing the road, the vehicle hit Tulsi who was Priest of temple. Tulsi sustained injuries on head and other injuries. Tulsi became unconscious and was bleeding from head and mouth. The driver of tractor make Mahendra 265 red color ran away from the spot along with tractor trolley. Tulsi was admitted to CHC, Samalkha for treatment. He was referred to General Hospital, Panipat and thereafter to PGIMS, Rohtak where he succumbed to injuries.

Respondents No.1 and 2 filed joint written statement and in turn denied that accident had taken place with vehicle in question. Tulsi met with an accident with some unknown vehicle while crossing the road

without observing traffic rules. He was very old having weak eye sight.

The insurance company filed reply denying its liability to pay compensation on the premise that no accident was caused by Sat Pal, driver of the alleged offending vehicle and driver did not have valid and effective licence on the day of accident.

The Tribunal framed following issues for determination:-

1. Whether the accident in question took place due to rash and negligent driving of tractor bearing No.HR60-A-2438 by respondent No.1?OPP
2. If issue No.1 is proved to what amount of compensation, the claimants are entitled to receive and from whom?OP parties
3. Whether respondent No.3 is not liable to pay the compensation in view of preliminary objections taken by it in its written statement?OPR3
4. Relief.

The claimants examined Harish Kumar PW1 and Sat Pal PW2.

They tendered into evidence following documents:-

- | | |
|-----------|---|
| Ex. PW1/A | Copy of FIR |
| Ex.P1 | Copy of report under Section 173 Cr.P.C. |
| Ex.P2 | Copy of site plan |
| Ex.P3 | Copy of FIR |
| Ex.P4 | Copy of PMR of Tulsi deceased |
| Ex.P5 | School certificate of Master Bhavnesh
Sharma @ Deepak Sharma |
| Ex.P6 | School certificate of Pinki Sharma daughter
of Tulsi Sharma. |

To rebut evidence of the claimants, Sat Pal respondent No.1 appeared in the witness box and copy of the insurance policy Ex.R1 was tendered into evidence.

After having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No.1 against the claimants and as a result, application for compensation was ordered to be dismissed without recording findings on issue Nos.2 to 3.

Counsel for the claimants would argue that testimony of Harish Kumar, eye witness to the occurrence is sufficient to establish plea of the claimants that accident was caused due to rash and negligent driving of tractor trolley by Sat Pal respondent No.1 who was admittedly working as driver on tractor No.HR60-A-2438 owned by Prem Singh respondent No.2. It is further argued that on due investigation of FIR registered at the behest of Harish Kumar, Sat Pal was chargesheeted for committing offence punishable under Section 304-A IPC and he faced trial. The tractor trolley was taken into possession and got released on sapurdari by Prem Singh respondent No.2. Sat Pal, driver of the offending vehicle appeared in the witness box and voluntarily stated in the last line of his cross-examination that accident in question took place due to negligence of deceased Tulsi. It is argued that if Sat Pal was not present at the spot, how could he know that accident was the result of negligence of the deceased. It is none of the plea of respondent No.1-Sat Pal that though he did not cause the accident while driving tractor No.HR-60A-2438 but he was otherwise present at the spot.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 by contending that in the FIR registered at behest of Harish Kumar, there is neither reference to registration particulars of the vehicle nor driver of the said offending vehicle. Harish Kumar in his testimony before the Court has not deposed about particulars of the vehicle that caused accident, therefore, testimony of Harish Kumar is not sufficient to connect the offending vehicle with the occurrence in question in order to fasten liability upon the driver and insured of the offending vehicle.

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

The occurrence in question took place on 10.11.2007 at about 4.00pm. The FIR was lodged at the behest of Harish Kumar on 10.11.2007 at 8.50 pm but offence under Section 304-A IPC was added on 11.11.2007 because the injured passed away on the next day of occurrence. In the FIR, name of driver is stated to be Jai Narayan son of Fakir Chand resident of Bodhwal Majri. The vehicle has been described as tractor make Mahendra 265 red color attached with a trolley. Indisputably, on due investigation of FIR, Sat Pal son of Jai Narayan resident of Bodhwal Majri was chargesheeted by the police for facing trial qua offence punishable under Sections 279 and 304-A IPC. Harish Kumar in his statement on oath has stated that the accident took place due to sole negligence of driver of tractor driven by Sat Pal son of Jai Narayan. In his cross examination, he has

reiterated that driver of the tractor was Sat Pal. He has denied that he had got written name of the driver as Jai Narayan.

Sat Pal son of Jai Narayan, driver of the offending vehicle appeared in the witness box to say that no accident took place with his vehicle on the alleged date of accident. However, in his cross examination, he has admitted that Prem Singh is owner of tractor No.HR-60A-2438. He was driving this tractor for the last five years. He was facing criminal trial in FIR No.362 dated 10.11.2007 under Sections 279 and 337 IPC, Police Station Samalkha and later Section 304-A was added in this case. The case is pending in the Court of JMIC at Panipat. He has further admitted that he has not filed any representation or appeal regarding the said case nor filed any revision against the charges framed against him by the Court.

There is nothing on record suggestive of the fact that Harish Kumar PW1 had any ill-will and enmity against Sat Pal son of Jai Narayan. Harish Kumar is not a beneficiary in case compensation is awarded to children of deceased Tulsi who were minor at the time of occurrence and filed application for compensation through Sh. Sat Pal (retired Kanungo) examined as PW2. Sat Pal son of Jai Narayan has every reason to deny the accident to escape his criminal and civil liability for causing death of Tulsi due to rash and negligent driving of the offending vehicle. In this view of the matter, I am of the considered opinion that the Tribunal has failed to appreciate evidence on record in right perspective and grossly erred by answering issue No.1 against the claimants.

The claimants in para 24 of the application for compensation has averred that deceased was crossing the road carefully when the offending tractor along with trolley came from wrong side at a high speed and directly hit the deceased while the vehicle was being driven rashly and negligently. Harish Kumar PW1 has also made a statement to the similar effect that tractor driven by respondent No.1 came from wrong side being driven at high speed, rashly and negligently and hit Tulsi Pujari. However, statement of Harish Kumar does not explain as to how the tractor came from wrong side and was driven rashly and negligently. The tractor attached with a trolley cannot be driven at a high speed. As per version of the claimants, deceased was crossing the road when the accident took place. Taking a cumulative view of the facts pleaded in the application for compensation, brought forth in the testimony of Harish Kumar PW1, it can be safely concluded that accident is the result of contributory negligence of the offending vehicle as well as the deceased. The deceased did not take reasonable care while crossing the road and failed to ensure that no vehicle was coming from either side of the road to enable him to cross the road without being caught in a difficult situation. In this view of the matter, 50% negligence in causing the occurrence is liable to be attributed to the deceased. Accordingly, findings of the Tribunal on issue No.1 are modified to the effect that accident took place due to contributory negligence of the deceased and that of the offending vehicle driven by Sat Pal son of Jai Narayan and negligence to the extent of 50:50 is attributed to the deceased

and offending vehicle.

Issue No.2

There is no dispute that claimants are the minor children of deceased Tulsi, therefore, entitled to get compensation. The deceased was working as Priest in a temple. There is no clear evidence with regard to his income. Taking a clue from minimum wage available at the relevant time, income of the deceased is assessed at Rs.3510/- per month. The deceased was 56/57 years old and appropriate multiplier would be 9. Deduction of 1/3rd for personal expenses is allowed. Claimants shall be entitled to benefit of future prospects @ 10%. In this manner, loss of dependency comes to Rs.2,77,992/- (Rs.3510 x 12 x 9) + (10% future prospects) – (1/3rd deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.30,000/- i.e. Rs.15,000/- for funeral expenses and Rs.15,000/- for loss to estate.

Total compensation is Rs.3,07,992/- and claimants shall be entitled to 50% of the assessed amount i.e.1,53,996/-. The respondents shall be jointly and severally liable to pay compensation.

Accordingly, issue No.2 is determined in favour of the claimants.

Issue No.3

Counsel for the insurance company would urge that Sat Pal son of Jai Narayan, driver of the alleged offending vehicle appeared in the

witness box but failed to produce his driving licence in discharge of primary obligation of the driver and insured of the vehicle that driver possessed a valid and effective licence on the day of occurrence. It is further argued that as the insured failed to produce driving licence, if any, possessed by driver, there was no opportunity with the insurance company to substantiate its plea that the driver did not possess an effective licence or he was not qualified to hold the same in view of preliminary objection No.2 raised in the written statement. In support of his contention, she has relied upon the latest judgment of Hon'ble the Supreme Court **Pappu and others Vs. Vinod Kumar Lamba and another, 2018(1) PLR 425.**

There is no representation on behalf of respondents No.1 and 2 earlier being represented by counsel to say something with regard to driving licence of Sat Pal.

As the insured failed to produce driving licence of Sat Pal, an adverse inference is to be drawn against the insured that Sat Pal, driver of the offending vehicle did not possess driving licence. As the vehicle was being driven by a person who did not possess driving licence, the insured is guilty of violating the terms and conditions of insurance policy. As such, the insurance company shall be entitled to recover amount of compensation from the insured after payment to the claimants. In this context, reliance can be placed upon **Pappu's case (supra)**. Issue No.3 is answered accordingly.

For the foregoing reasons, the appeal is partly allowed.

Claimants shall be entitled to compensation of Rs.1,53,996/- with interest @ 7.5% per annum from the date of petition till realization. The driver, owner and insurer of the offending vehicle shall be jointly and severally liable to pay compensation to the claimants but the insurance company shall be entitled to recover the amount of compensation from the insured after discharging liability towards the claimants.

No order as to costs.

04.05.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No