

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

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**CM-3985-CII-2018 in/and
FAO-3848-2009 (O&M)
Date of Decision : 20.12.2018**

Smt. Kavita alias Sunita and other

....Appellants

vs.

Desh Raj and others

...Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Gurinder Pal Singh, Advocate
for the appellant.

Respondent No. 2 is already exparte
(vide order dated 18.05.2018)

Mr. Paul S. Saini, Advocate
for respondents No.3

AJAY TEWARI, J. (Oral)

CM-3985-CII-2018

This is an application for early hearing of the main case.

For the reasons recorded in the application the same is allowed
and the case is taken up for hearing today itself.

Main Case

Service upon respondent No. 1 is complete vide office note
dated 14.08.2018. None has put appearance on his behalf. As such,
respondent No. 1 is proceeded against ex-parte.

This appeal has been filed against the dismissal of the claim petition.

As per the averments, on 17.11.2006 the deceased Braham Parkash was driving his three wheeler bearing registration No. HR-55A-8634 with three passengers from Pataudi to village Khor when the offending vehicle Toyota Qualis bearing registration No. HR-47A-2680 being driven rashly and negligently hit the aforesaid three wheeler. FIR was lodged after 2-3 days by the brother of the deceased-Braham Parkash in which, since there was no eye witness, it was mentioned that accident had been caused by unknown vehicle driven by unknown person.

The police ultimately was able to trace Vidhya Sagar one of the very seriously injured passengers (whose leg was amputated as a consequence of the said accident) His statement was recorded on 5.3.2007 when he disclosed the number and name of the offending vehicle. The Tribunal held that the delay in identification of the vehicle and driver was fatal to the case of the claimants and dismissed the claim petition without returning any finding on the other issues and that is why the present appeal has been filed.

Counsel for the claimants-appellants has argued that the Tribunal acted very harshly and pedantically while rejecting the sworn testimony of Vidhya Sagar only on the facile premise that it had been recorded about four months after the accident. As per learned counsel Vidhya Sagar had explained that he was referred from one hospital to another (and in fact was undergoing treatment even on the date of his deposition) and in these circumstances to have made such a mountain of the

facts that the vehicle was identified after four months is completely illegal. Counsel for the insurance company has tried to defend this finding. In my opinion, the contention of the appellant has to prevail. It is not disputed that Vidhya Sagar was referred from one hospital to another and ultimately lost his leg. In these circumstances, delay in identification of the vehicle particularly, when his testimony was unshaken during cross-examination, would, in my considered opinion, lead to preponderance of probability to the case of the claimants. Thus finding on the issue No.1 is reversed and it is held that it is proved that the accident was caused due to rash and negligent driving of the driver of Qualis.

That leaves this Court in a very piquant situation. On the one hand, counsel for the insurance company urges that since no finding was given on the other issues, the matter should be remanded back after reversing the finding of negligence. On the other hand, counsel for the appellants submits that here is a case where a young widow and her minor son have been languishing without any compensation for more than 12 years. As per learned counsel for the claimants there is ample evidence on the record to return findings on all other issues, and in these stark circumstances, to now remand the case back would be rubbing salt in the wounds of the claimants. I have considered the arguments and proceed to decide the other issues since the evidence is on the record.

Issue No.2 relates to the quantum of compensation. Counsel argued that as per evidence the deceased was owner of three wheeler and consequently, income had to be taken as per the provisions of the Minimum Wages Act for a skilled labourer and in the year 2006 the income of a

skilled worker was Rs.4000/- per month. Counsel for the insurance company is not in a position to deny this. Consequently, I hold the income of the deceased as Rs. 4000/- per month as per the provisions of the Minimum Wages Act in Haryana.

Counsel for the appellants has argued that in view of the Constitution Bench judgment of the Supreme Court in the matter of ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009*** 40% future prospects has to be granted. Counsel for the respondent No.3 is not in a position to deny this fact. Consequently, I award 40% future prospects.

Counsel for the insurance company has however pointed out that there were three dependents and as per the Supreme Court judgment ***Sarla Verma and others v. Delhi Transport Corporation and another, 2009 ACJ 1298***, the deduction towards personal and living expenses towards the deceased has to be calculated as 1/3rd of the monthly income. After deduction of 1/3rd of the income i.e. Rs.1866/- per month (on Rs.5600/-), the monthly dependency of the deceased comes to Rs. 3734/- per month and if the same is multiplied by 12 then the annual dependency of deceased comes to Rs. 44808/- per annum. As the deceased at the time of his unfortunate death was 28 years old (as per the driving licence is exhibited apparently), so, as per the ratio of the authority ***Sarla Verma and others (supra)*** the multiplier of 17 would be applied and if the aforesaid amount of 44808/- is multiplied by 17, then the total amount comes to Rs.7,61,736/-.

Further, I find that there are three claimants i.e. widow, minor

son and mother of the deceased and each of them had to be awarded Rs. 40,000/- per head on account of consortium/filial consortium, in view of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram 2018 (4) RCR (Civil) 333*** and Rs. 30,000/- for loss of estate and funeral expenses, in view of ***Pranay Sethi (supra)***. Consequently, I award amount of Rs. 1,50,000/- under the conventional heads. Thus, in all, the amount of compensation comes to Rs.9,11,736/-(Nine lakhs eleven thousands seven hundred and thirty six).

Coming to the question of interest in this case I find that the claimant have been deprived of compensation which was payable to them on 26.4.2007 (date of filing of the claim petition). In view of fact that 11 ½ years have elapsed, I grant 12% per annum interest in view of the judgment ***Magma General Insurance Co. Ltd.(supra)*** on the entire compensation. from the date of filing of the claim petition till the date of payment.

Out of the compensation amount 40% would go to the appellants No.1 and 2 each and 20% would go to the respondent No.5-mother of the deceased.

Issue No.3 relates to the question as to who would be liable to make payment of any compensation. I find that appellants had summoned the criminal file and in that file the original licence of respondent No.1-driver was there and as per the Ahlmad of the Trial Magistrate that original licence was only valid up to 2001 and for HTV only. No evidence was led by the respondents No. 1 and 2 to the contrary. Even before this Court they have not cared to appear. Resultantly, it has to be held that the driver was not holding the valid driving licence and consequently, the insurance

company-respondent No.3 would have recovery rights.

The appeal stands disposed of.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

20.12.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No