

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

FAO No. 5649 of 2012 (O&M)

Date of decision : July 16, 2018

Manager, Mail Motor Service and others

.....Appellants

Versus

Ashwani Kumar and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Namit Kumar, Advocate and
Mr. Alankrit Bhardwaj, Advocate
for the appellants.

Mr. Mukesh Kumar Bhatnagar, Advocate
for respondents No. 1 to 3.

LISA GILL, J.

This appeal has been filed by the Manager, Mail Motor Service, Chandigarh and others challenging the compensation awarded to the claimants – respondents No. 1 to 4 vide award dated 09.08.2012 passed by the learned Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as the 'Tribunal').

Brief facts necessary for the adjudication of the case are that petition under Section 166 of the Motor Vehicles Act was filed by respondents No. 1 to 4 seeking compensation on account of death of Prabha Kumari. Claim petition was filed by the husband, two minor children and mother-in-law of the deceased Prabha Kumari. It is pleaded that on 19.01.2009, Prabha Kumari, who was working as Sub Inspector, Punjab Police posted as Public Relation Officer at Police Station Kotwali, Amritsar was coming from Bhandari bridge towards Putlighar at about 6.30 p.m. on

her scooter. In the meantime, a vehicle of the postal department i.e. Tata 407 bearing registration No. CH-01-G-1384 came from behind being driven in a rash and negligent manner by respondent No. 5 – Savinder Singh and hit her scooter. Prabha Kumari fell on the road and died at the spot. Accident in question took place near the Church Holy Heart School G.T. Road, Amritsar and was witnessed by Head Constable Baljit Singh, posted at Punjab Police, Circuit House, Amritsar. FIR No. 18 dated 19.01.2009 was registered against respondent No. 5. Petition was filed seeking compensation while averring that Prabha Kumari working as Sub Inspector in Punjab Police was drawing a sum of ₹21,614/- per month and she had 16 years of service still to go.

Learned Tribunal on considering the facts and circumstances of the case concluded that the accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent No. 5. Compensation to the tune of ₹22,04,000/- was afforded. Age of the deceased was taken to be 42 at the time of the accident while relying upon the Post Mortem Report (Ex. P2). Salary slip reflecting her salary to be ₹21,614/- was taken in account and her contribution to the family was assessed as ₹13,000/- per month. Multiplier of 14 was applied and dependancy worked out as ₹21,84,000/-. Sum of ₹5,000/- each was awarded on account of loss of estate and towards funeral expenses, besides ₹10,000/- to the complainant – husband on account of loss of consortium. Total compensation of ₹ 22,04,000/- was awarded to respondents No. 1 to 3.

Aggrieved therefrom, present appeal has been filed by the appellants.

Learned counsel for the appellants vehemently argues that the

accident in question is not proved to have occurred on 19.01.2009 due to rash and negligent driving of the offending vehicle by its driver Savinder Singh. Learned counsel refers to the cross examination of Head Constable Baljit Singh as PW2. It is contended that the said witness has expressed his ignorance about the contents of the affidavit submitted by him by way of examination-in-chief except that he had given the name of driver Savinder Singh. The vehicle in question was not taken in possession from the spot but from the premises of the department. Head Constable Baljit Singh, it is contended, admitted that both the deceased and her husband were working with the Punjab Police. Moreover, no identification parade was conducted for identification of the driver of the offending vehicle. This witness has even strangely expressed ignorance whether he was joined in the investigation pursuant to registration of the FIR or not. Learned counsel for the appellant submits that Head Constable Baljit Singh in his cross examination stated that he left the Police Post Circuit House, Amritsar at 6.30 p.m. The accident is also stated to have taken place at 6.30 p.m. This too reflects the falsity of the case. Therefore, much reliance cannot be placed on the testimony of such a witness, who is further admitted to be involved in a complaint case under Section 302 IPC in respect to death of a person in police custody. It is further submitted that the accused in FIR No. 18 dated 19.01.2009 under Section 304 IPC was acquitted by the learned Additional Sessions Judge, Fast Track Court, Amritsar vide judgment dated 11.11.2011 (Ex. RX). Therefore, finding of the learned Tribunal in this respect, it is prayed, should be set aside.

In the alternate, it is prayed that in case this Court upholds the finding of the learned Tribunal regarding accident being caused by the rash

and negligent driving of the offending vehicle by respondent No. 5, the quantum of compensation awarded to the claimant is on the higher side and should be reduced. Component of income tax should have been deducted. Learned counsel for the appellants relies upon judgment of the Hon'ble Supreme Court in **Ranjana Prakash and others versus Divisional Manager and another 2011 (14) SCC 639**. It is thus, prayed that this appeal be allowed.

Learned counsel for respondents No. 1 to 3 – claimants refutes the abovesaid argument while submitting that in the proceedings under the Motor Vehicles Act, the claimants proved their case on the preponderance of probabilities. Acquittal of the driver of the offending vehicle for the offence punishable under Section 304 IPC by itself does not indicate falsity of the claim set up by the claimants. The said driver has clearly been afforded the benefit of doubt while acquitting him of the charges against him. Reliance is placed on a Division Bench judgment of this Court in **Municipal Committee, Jullundur City versus Romesh Saggi and others 1969 A.C.J. 135**. The claimants in the present case, it is urged, have duly proved their case. It is submitted that the learned Tribunal has rendered a well reasoned and logical award on the basis of the evidence on record.

In respect to the quantum of compensation, it is submitted that though no appeal has been preferred by the appellants, there is no ground whatsoever for reducing the said amount as requisite compensation on account of loss of future prospects in any case has not been awarded. It is, thus, prayed that this appeal be dismissed.

I have heard learned counsel for the parties and have gone

through the record with their able assistance.

There is no dispute that the deceased Prabha Kumari as well as her husband – claimant/respondent No. 1 were working with the Punjab Police. This fact by itself cannot be sufficient to hold that the accident in question did not take place as alleged and the FIR was falsely lodged. I have perused the affidavit as well as cross examination of Head Constable Baljit Singh. It cannot be denied that FIR in question was registered promptly at about 7.30 p.m. Accident in question took place at 6.30 p.m. on 19.01.2009. As per the Post Mortem Report (Ex.P2), Prabha Kumari died due to shock, haemorrhage and injuries to vital organs, which was sufficient to cause death in ordinary course of nature. Head Constable Baljit Singh is not reflected to be an immediate subordinate of the deceased or her husband. Merely because he is a police official and happened to be present at the place of occurrence, does not necessarily make him a witness not worthy of credence. There is nothing on record to show that Head Constable Baljit Singh was not posted at Punjab Police, Circuit House, Amritsar on 19.01.2009 at the relevant time. Similarly, his involvement in the complaint case in respect to a custodial death cannot per se lead to negation of his testimony.

Perusal of judgment dated 11.11.2011, Ex.RX, wherein Savinder Singh has been acquitted reveals that benefit of doubt has been afforded to the said accused. RW1 Savinder Singh admitted in his cross examination that he was working as driver of the offending vehicle since about twenty (20) days prior to the accident. Lodging of the FIR against him is not in dispute. Registration number of the offending vehicle has been duly mentioned in the FIR, which was registered promptly. Contention

of learned counsel for the appellant that Head Constable Baljit Singh left the police post at 6.30 p.m., therefore, it was not possible for him to reach the spot of the occurrence at 6.30 p.m., is noticed only to be rejected. It is not in dispute that the place of occurrence was only about 2-3 killa/acres away from the police post. It is not necessary that the time of the accident or time of departure from the police post has been given with exactitude or precision by Head Baljit Singh. It is relevant to note at this stage that in the present proceedings the claimants have to prove their case on preponderance of probabilities which they have successfully done. There is indeed nothing on record to indicate that the accident in question did not take place as narrated. Decision of a Division Bench of this Court in **Romesh Saggi's** case (supra) is not applicable to the facts and circumstances of the present case. The claimants in the said case had miserably failed to prove their case. Learned Tribunal had dismissed their claim petition. It was in this situation that it was specifically held that they had manoeuvred and manipulated the events. This is not so in the present case. Therefore, finding on issue No. 1 has been correctly returned by the learned Tribunal.

In respect to the quantum of compensation, it is noticed that as per pay slip, the deceased was getting a sum of ₹21,614/- per month. No addition on account of loss of future prospects in terms of judgment of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and others 2017 (4) RCR (Civil) 1009**, has been awarded. Multiplier has been correctly applied. Therefore, I do not find it just and expedient to modify the amount of compensation on the ground that deduction on account of income tax has not been made.

Accordingly, finding no merit, this appeal is dismissed with no order as to costs.

July 16, 2018
rts

(Lisa Gill)
Judge

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