

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

Date of decision: 07.09.2018

FAO No.309 of 2015 (O&M)

Alka Rani

... Appellant

Versus

Diwan Chand and others

... Respondents

FAO No.926 of 2015 (O&M)

Alka Rani and another

... Appellants

Versus

Diwan Chand and others

... Respondents

FAO No.944 of 2015 (O&M)

Alka Rani

... Appellant

Versus

Diwan Chand and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the appellants.

Mr. S.S. Siao, Advocate
for respondents No.1 and 2.

Mr. Paul S. Saini, Advocate and
Mr. Vipul Sharma, Advocate
for the insurance company.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos.309, 926 and 944 of 2015 as these have emerged out of the same award dated 08.08.2014 passed by the Motor Accidents Claims Tribunal, Karnal whereby applications for grant of compensation in respect of injuries sustained by Alka Rani, death of Arun Kumar and damage to motorcycle bearing No.HR-99HLT-9805 have been dismissed on the basis of findings qua issue No.1.

For brevity, facts are taken from FAO No.309 of 2015.

In brief, case set up by the claimants is that on 14.05.2011 at about 4.30 pm, Arun Kumar @ Vishal (since deceased) along with his mother Alka Rani was going from Nilokheri towards their village Sandhir, Tehsil Nilokheri, District Karnal on motorcycle aforesaid now bearing registration No.HR-05AC-5088. The motorcycle was driven by Arun Kumar at slow and moderate speed and Alka Rani was on the pillion seat. When the deceased was crossing GT road, canter bearing No.PB-10CF-9562 driven by Diwan Chand respondent No.1 in a rash, negligent, careless and zig zag manner came from Pipli side and struck against the motorcycle. Both the occupants of motorcycle fell down on the road and sustained multiple grievous injuries. Arun Kumar succumbed to injuries at the spot whereas Alka Rani was taken to CHC, Nilokheri by Ashwani Kumar son of Maya Ram. The accident took place due to rash, negligent and careless driving of offending canter. FIR No.143 dated 14.05.2011 under Sections 279 and 304-A of IPC was registered in Police Station Butana on the

statement of Ashwani Kumar. The canter was owned by M/s D.S.Transport and insured with National Insurance Company Ltd.

Respondents No.1 and 2 filed their joint written statement and denied that accident took place with the canter in question as alleged. False FIR was registered against respondent No.1 in collusion with the police.

The insurance company also filed reply and denied its liability to pay compensation. Arun Kumar was minor and did not have driving licence and traffic sense. A plea of collusion between the claimants and respondents No.1 to 3 has been taken. Diwan Chand was not holding valid and effective licence at the time of accident. All other material averments of the petition have been denied with a prayer for dismissal of the same.

The controversy between the parties led to framing of following issues by the Tribunal:-

1. Whether the motor vehicular accident which took place on 14.05.2011 was caused on account of rash and negligent driving of vehicle bearing registration No. PB10CF-9562 by Diwan Chand, respondent No.1, resulting into injuries to claimant Smt. Alka Rani, death of Arun Kumar and damages to vehicle No. HR99HLT-9805 and now bearing registration No. HR05AC-5088. If so, its effect? OPP
2. If issue No.1 is proved, whether the claimant is entitled to claim any compensation. If so, how much and from whom? OPP
3. Whether respondent No.1 was driving the offending vehicle in violation of terms and conditions of policy of insurance? OPR
4. Whether the claim petitions are not maintainable? OPR

5. Whether the present claim petitions have been filed by claimant in collusion with driver and owner i.e. respondents No.1 and 2. If so, its effect? OPR

6. Relief.

The claimants examined Dr. Vineet Bhatia PW-1 and Suresh Raj PW-3 whereas Alka Rani claimant appeared as PW-2.

Respondents No.1 to 3 tendered into evidence copy of driving licence of respondent No.1 Ex.R1, certificate of fitness Ex.R2 and Ex.R3, copy of Registration Certificate Mark-A and copy of National Permit Mark-B.

The insurance company produced copy of insurance policy Ex.R4. The claimants tendered documentary evidence both by way of evidence in affirmative as well as rebuttal, noticed by the Tribunal in paras 10 and 13 of the award.

Having heard counsel for the parties on the basis of materials on record, the Tribunal answered issue No.1 against the claimants and as a consequence, the application for compensation was dismissed.

A relevant extract from material findings recorded by the Tribunal, reads as follows:-

“From perusal of report Ex.P6 it reveals that said Ashwani Kumar is non-else but uncle of the deceased. However, it is very strange that said Ashwani Kumar who is uncle of the deceased and witnessed the accident and also the author of the FIR, has not been examined by the claimants in support of their case, for the reasons best known to them. As per own pleadings of the claimants, the deceased was

crossing the G.T.Road. As per Ex.P6, said Ashwani in his statement to the police on the basis of which the FIR in the present case was registered, stated that his nephew was crossing G.T.Road in front of Isham Singh tea vendor. The claimants have also placed on record copy of site-plan Ex.P7 which was prepared by the police during the course of investigation of FIR No.143. In this site-plan point 'A' has been shown where the accident took place. This point is near the divider on Pipli to Delhi lane at G.T.Road. Village Sandhir has been shown towards PipliDelhi lane. The deceased was coming from Nilokheri side and while crossing G.T.Road he had to go towards village Sandhir but when he was near the divider on Pipli-Delhi lane, the accident took place. PW-2 Alka Rani in her cross-examination categorically stated that the canter in question was coming from Pipli side on due lane and that they were crossing G.T.Road for going to their village. She also stated that the accident took place on the metaled road on G.T.Road. When the canter in question was coming on due lane and the deceased was crossing G.T.Road the negligence for causing the present accident cannot be attributed to respondent No.1. Rather it can be said that the accident took place on account of negligent driving on the part of the deceased.

Apart from it, there is another most important aspect of this case that deceased Arun Kumar alias Vishal was minor at the time of accident and that he was not holding any driving licence to drive motor cycle. This very plea has been taken by respondent No.3 in its written statement. It was also argued by learned counsel for respondent No.3 that the claimants had also lodged OD claim with respect to the motorcycle in question with the insured of said motorcycle and that claim was rejected on the plea that the deceased was minor and was not authorized to drive motorcycle. PW-2, in her cross-

examination, has admitted that her son Arun Kumar was not having any driving licence. She also admitted that they informed about the accident to the Insurance Company of the motorcycle and that the Surveyor had demanded driving licence of her son but they could not produce the same as her son was not having driving licence. When the deceased was minor and just 15 years of age and further he was not holding any driving licence it cannot be said that he was having knowledge of traffic rules. Nowadays it is seen that the minors who are not having any sense of traffic ply the two wheelers in such a rash and negligent manner which cause danger to other traffic on road.”

Counsel for the claimants would argue that the learned Tribunal has failed to take into consideration various vital aspects of the matter having bearing on determination of issue No.1. It is argued that Diwan Chand was put to trial on due investigation of FIR lodged at the behest of Ashwani Kumar and certified copy of report under Section 173 Cr.P.C. is Ex.P6. Diwan Chand, driver of the canter did not appear in the witness box to counter testimony of Alka Rani or explain the circumstances under which the occurrence in question took place. The mere fact that the deceased who was driving the motorcycle was either minor or was not holding a licence to drive the motorcycle cannot be the basis to attribute sole negligence to Arun Kumar. For this purpose, reference has been made to judgment of Gujarat High Court **Minor Shaktisinh Zala Vs. Zala Ranvirsinh Ranubha and 4, 2016 AAC 1894**. Reliance has also been placed upon judgment of this Court **Harbans Lal and others Vs.**

Harvinder Pal and others, 2015(54) RCR (Civil) 947 wherein it has been held that strict liability need not be proved in motor accidents cases and once the investigating agency had pointed out towards the negligence of driver of offending vehicle by filing a report under Section 173 Cr.P.C. liability to pay compensation would fall on the respondents.

Counsel representing both the sets of respondents have supported findings of the Tribunal attributing sole negligence to deceased Arun Kumar for the unfortunate occurrence in which Arun Kumar succumbed to the injuries, Alka Rani sustained injuries and damage was caused to the motorcycle on which Arun Kumar and Alka Rani were riders.

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

The claimants have relied upon the site plan prepared during investigation of the case and the same is Ex.P7. It is the categorical plea of claimant Alka Rani that they were crossing GT road from the side of Nilokheri for going to their village Sandhir. As has been noticed by the Tribunal, the accident took place near the divider on the GT road leading from Pipli to Delhi. The canter was coming from Pipli side and was driven in the correct lane from Pipli towards Karnal, as admitted by Alka. Perusal of the site plan Ex.P7 would reveal that there is no cut in the divider at GT road for going towards village Sandhir. Though, it is not clear on record if Arun Kumar crossed his motorcycle from Nilokheri side towards other side of the GT road by crossing the divider or he was travelling on the wrong

side of GT road to go towards village Sandhir. However, it remains a fact that Arun Kumar was travelling on wrong side of the road when the accident in question took place whereas the canter was travelling on correct side of the road. Once Arun Kumar has taken the risk of crossing the divider unauthorisedly or going on wrong side of GT road meant for vehicles coming from Pipli towards Karnal, the entire blame for the occurrence has rightly been fastened against the deceased who was otherwise driving the motorcycle at a young age of 15 with a pillion rider and that too without having any driving licence. All these facts and circumstances taken together lead to an irresistible conclusion that accident took place due to sole negligence of Arun Kumar. I would hasten to add that Alka Rani in her cross examination had stated that she had seen the canter from a distance of 30-40 ft. There is nothing on record suggestive of the fact that as to what reasonable care was taken by Arun Kumar to avoid collision despite his knowing fully well that he was travelling on wrong side of the road. In the given scenario, I find it difficult to accept contentions of the appellants that findings recorded by the Tribunal on issue No.1 suffer from an error much less illegality, warranting intervention. That being so, the appellants cannot derive any advantage to their contention from the referred authorities rendered in view of peculiar facts and circumstance of the cases. Accordingly, findings of the Tribunal on issue No.1 are affirmed.

For the foregoing reasons, the appeals fail and are accordingly

dismissed, leaving the parties to bear their own costs. As the appeals have been decided on merits, applications for condonation of delay are of academic relevance only.

07.09.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No