

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

**FAO No.4947 of 2003 (O&M)
Date of Decision: January 11, 2019.**

Sandeep Malhotra and others

.....APPELLANT(s).

VERSUS

The State of Haryana and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Shifali Goyal, Advocate for
Mr. Varun Issar, Advocate
for the appellant (s).

Ms. Dimple Jain, A.A.G. Haryana
for respondents No.1 and 2.

SURINDER GUPTA, J.

This is appeal by claimants Sandeep Malhotra and others against the award passed by Motor Accident Claims Tribunal, Chandigarh (later referred to as 'the tribunal'), dismissing their petition filed under Section 166 of Motor Vehicles Act, claiming compensation for the death of Brij Mohan, father of appellants-claimants No.1 and 3 and husband of claimant-respondent No.2 in a motor vehicle accident with Gypsy bearing registration No.HR-03-9552 driven by respondent No.2 and owned by respondent No.1.

Brij Mohan, husband of appellant-claimant No.2 and father of appellants-claimants No.1 and 3 died in a motor vehicle accident on 15.01.1999 and the matter was reported to the police by a rickshaw puller Ram Kumar on whose statement, FIR No.13 dated 15.01.1999 was

registered at Police Station East Chandigarh. Complainant Ram Kumar in his statement has stated that on the day of occurrence at about 1.30 p.m., he was going from Grain Market to TPT light point, he saw a clean shaven person going on cycle ahead of him. When that person reached ahead of local bus stand, a blue coloured Gypsy, which was being driven in a rash and negligent manner, came from the side of Grain Market and hit the cyclist from behind, as a result of which, he (cyclist) fell on the ground and suffered injuries. Gypsy driver sped away from the spot and he noted the number of the gypsy as 9552. The accident had taken place due to rash and negligent driving of the Gypsy driver.

In the claim petition, compete number of the Gypsy (referred to as the offending vehicle in latter part of judgment) was given as HR-03-9552, which belongs to Haryana Police. It is alleged that Ishwar Singh-respondent No.2 was driving this vehicle at the time of accident. As it was a police vehicle, the matter was closed by Senior Superintendent of Police, Chandigarh on 23.03.1999 within a period of one month of recording of FIR. Claimant No.1 filed CRM-18013-M-2000 in this Court in which it was stated on behalf of Chandigarh police that there was no vehicle with the number 9552. Under the order of this Court, Gypsy involved in the accident bearing No.HR-03-9552 was traced. The Court verified the log book of the Gypsy, which indicated its involvement in the accident and thereafter, challan against its driver was presented in the Court. Claimants alleged that Chandigarh police had earlier closed the case under the pressure of Haryana Police.

In the written statement filed by the State of Haryana, the

allegations levelled by the claimants were contested, controverted and denied. However, the presence of offending vehicle at the spot was admitted with the submissions as follows:-

“In fact, the Gypsy in question was being driven on a normal speed. It is wrong to say that Respondent No.2 was driving the Gypsy (which) hit the bicycle of deceased from the back side and respondent No.2 did not stop the Gypsy. In this regard, it is submitted that the Gypsy reached near the traffic lights, a person was seen lying unconscious. The Assistant Director, Technical, Madhuban and Sh. Rajinder Singh, Scientific Assistant, Technical Wing, CID (H) (now Scientific Assistant Photography in F.S.L. Madhuban) and Sh. Sushil Kumar Technician of M/s Rotax Electric Pvt. Ltd. 12 Shaheed Bhagat Marg, New Delhi were also travelling in the Gypsy. On humanitarian grounds, the Assistant Director Technical, Madhuban advised Sh. Rajinder Singh, Scientific Assistant to pick him and to send him in hospital. The deceased was put in a rickshaw of Shri Ram Kumar son of Sita Ram for taking him to the hospital and the Gypsy left for railway station so that the train may not miss. Hence, a false FIR has been registered on the statement of the Rickshaw puller and as such the petition is liable to be dismissed.”

Respondent No.2, who was impleaded as driver of the offending vehicle in his separate written statement alleged his false implication and denied death of Brij Bhushan in the accident with his vehicle.

In support of its case, claimants examined Sandeep Malhotra and Sheela Malhotra, son and wife of deceased as PW1 and PW3

respectively. D.P. Gupta, Proprietor of M/s Kishore Brothers appeared as PW2 and stated that deceased was employed with them and was being paid ₹1,750/- per month as salary, which he had been reflecting in his income tax return. He produced on file the salary ledger as Ex.P2 and stated that deceased used to leave their premises at 5.00 p.m. as he was doing part time business of selling Dhoop/Agarbatti etc.

Ranjit Singh, taxi driver, who appeared as PW4, stated that he had witnessed the accident, which was caused by the offending vehicle due to its rash and negligent driving.

Respondents examined Ishwar Singh, driver of the offending vehicle as RW1 and Harbhagwan, Assistant Director, Technical Wing, CID, Haryana as RW2.

Learned tribunal dismissed the claim petition with the observations that claimants have not been able to prove that the accident resulting in death of deceased took place with the offending vehicle. The testimony of PW4 Ranjit Singh was discarded on the ground that he had not seen the cycle after the accident. His presence at the spot was doubted as identity of Shakti Singh to whom he had disclosed about the accident, was not disclosed and he was also not cited as witness by the police in the criminal case. Learned tribunal observed that in case, this witness was present at the spot, then he must have made statement before the police. Complainant Ram Kumar, who lodged the FIR was not examined, as such, the claimants have withheld the best piece of evidence. The tribunal also took note of the fact that in the FIR, vehicle number is mentioned only as 9552, as such, claimants were not sure about number of the vehicle. Gypsy

in question was not apprehended at the spot and Ishwar Singh RW1 driver and Harbhagwan RW2, who was travelling in offending vehicle have specifically stated that no accident took place with their vehicle.

Learned counsel for the appellants-claimants has argued that it is a case where deceased was going on his cycle and was hit by the offending vehicle. FIR was got registered by a rickshaw puller, who happened to pass from that place and he gave description of type of vehicle, which caused accident as 'Gypsy' and its number as 9552. In the written statement filed on behalf of respondent No.2, the presence of vehicle at the spot was admitted, though the accident has been denied. Respondent No.2 has taken the plea that on seeing the accident, the Gypsy was stopped and injured was sent to the hospital in rickshaw of complainant, who lodged the FIR. Thereafter, the Gypsy left for the Railway Station so that the train may not be missed. The claimants could not contact complainant Ram Kumar, who was an unknown person and found another witness of the incident namely Ranjit Singh, who was examined as PW4. Though, initially the police had closed the case, it was on the intervention of this Court that further steps were taken; offending vehicle was traced and during investigation, respondent No.2 was found guilty and challaned. The claimants, who belong to lower strata of the society, have produced best evidence, which the tribunal has erroneously rejected while relying on the statement of respondent No.2 and a police official, who has given statement contrary to the averments in the written reply.

Learned State counsel has argued that the onus was on the claimants to prove that the accident was caused due to the rash and

negligent driving of the offending vehicle. Statement of PW4 Ranjit Singh is doubtful as he was not cited as witness by the prosecution in criminal case. Though respondent No.2 was challaned but the charges framed against him were not duly proved and he was acquitted. Learned tribunal looking into all the aspects have recorded the finding that claimants have failed to prove that offending vehicle was involved in the accident.

It is an unfortunate case in which a cyclist lost his life due to rash and negligent driving of offending vehicle. Though an attempt has been made by the respondents to take credit that the deceased was sent to the hospital on humanitarian ground after stopping offending vehicle but Harbhagwan RW2, who was one of the occupant of the vehicle, has nowhere stated that the vehicle had passed through that area or the deceased was seen lying at the spot and was given assistance on humanitarian ground. The tribunal, while recording the finding that the claimants have failed to prove that the accident took place with the offending vehicle, has not looked into the fact that the FIR was got registered by a rickshaw puller, who could not read the complete number of the vehicle and gave only its numerical numbers i.e. 9552 and also described type of vehicle, which caused accident as 'Gypsy'. The respondents have admitted the presence of the offending vehicle at the spot at the time of accident. The rickshaw puller, who lodged the FIR, was a stranger and had no relation with the deceased. The claimants could not locate and examined him. Even otherwise, a common man like a rickshaw puller will think hundred times before deposing against the police officials. During investigation, respondent No.2 was found guilty and challan was presented against him in Court. Even if, he has been

acquitted of the charge, the same is not going to affect the merits of this case. The tribunal was required to record its conclusion on the preponderance of evidence and not to evaluate/scrutinise the same as strictly as is the norm to prove the offence in a criminal case.

There is no evidence or even a suggestion to PW4 Ranjit Singh that he is related to claimants. He had stated that on the day of accident, he was present at local bus stop at Sector 26 and had witnessed the accident caused by the offending vehicle. He has categorically stated that the accident was caused due to rash and negligent driving of the offending vehicle by its driver. After the accident, he did not go to the hospital and went to his village after boarding the bus. He was not related to the deceased, as such, after the accident, he had not gone to the hospital with the victim and left for his routine work. There is no reason to discard his statement on this ground or for his testimony that he had not seen the cycle after the accident.

Learned tribunal has committed grave error while appreciating the evidence on record, which duly proves that the accident was caused due to the rash and negligent driving of the offending vehicle by respondent No.2. Ishwar Singh. Accordingly, the findings of the tribunal on issue No.2 are reversed and recorded in favour of the claimants.

Quantum of compensation:-

The tribunal has not recorded any finding regarding the quantum of compensation in view of its finding that the accident is not proved to have been caused by the offending vehicle.

The evidence on file shows that the deceased had left behind 3

dependants. He was 45 years of age and was employed with M/s Kishore Brothers, who were running the business of medicines. He was getting ₹1,750/- per month as salary. D.P. Gupta, PW2 submits that the deceased used to leave at 5.00 p.m. for his part time job of selling *Dhoop/Agarbatti* etc. PW1 son of deceased and PW3 wife of deceased have also stated that deceased was doing part time job of selling *Dhoop/Agarbatti*, kitchen items and was earning ₹2,500/- to ₹3,000/- per month from his part time job but no documentary evidence regarding the income from his part time job has been adduced on file. In these circumstances, I take the monthly income of the deceased as ₹2,400/- per month from all sources. As per the law settled by Hon'ble Apex Court in case of *National Insurance Company Limited Vs. Pranay Sethi and others 2017(4) R.C.R. (Civil) 1009*, claimants are also entitled to addition of 25% in the income of the deceased towards loss of future prospects. Keeping in view the number of dependants, 1/3rd income of the deceased is to be deducted towards his personal expenses. As per the law settled by Hon'ble Apex Court in case of *Sarla Verma and others Vs. Delhi Transport Corporation and Anr. (2009)6 SCC 121*, multiplier of 14 is attracted in this case. The accident had taken place in the year 1999. Keeping in view the price index prevailing at that point of time, claimants are also allowed a lump sum compensation of ₹50,000/- towards funeral expenses, loss of estate and loss of consortium.

As a sequel of my above discussion, the compensation to which the claimants are entitled, is tabulated as follows:-

Sl.No.	Heads	Calculation
(i)	Income of the deceased	₹2400 per month
(ii)	25% of above (i) to be added as future prospects	(₹2400+₹600)= ₹3000 per month

<i>Sl.No.</i>	<i>Heads</i>	<i>Calculation</i>
(iii)	Deduction of 1/3 rd towards personal expenses of the deceased	(₹3000-₹1000)= ₹2000 per month
(iv)	Compensation after multiplier of 14 is applied	(₹2000X12X14)= ₹336000
(v)	Compensation for loss of consortium, loss of estate and funeral expenses	₹50000
<i>Total</i>		₹3,86,000/-

Consequently, this appeal has merits and is accepted. Impugned award passed the tribunal is set aside. The claim petition is allowed and the appellants-claimants are allowed compensation of ₹3,86,000/- for death of Brij Bhushan. Both the respondents shall be liable to pay the compensation amount, jointly and severally. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petition till actual realisation. The amount of compensation shall be apportioned between the claimants as follows:-

- (i) Appellant-claimant No.2-widow : 60%
- (ii) Appellants-claimants No.1 & 3 : 20% each

Respondents No.1 & 2 will deposit the shares of appellants-claimants in their bank accounts or pay the same through demand drafts. The claimants shall also be entitled to costs of this appeal. Counsel fee is assessed as ₹10,000/- in this case. Memo of costs be prepared.

In case of demise of any of above claimant(s) before his/her share of compensation is disbursed, the same shall be apportioned equally amongst other surviving claimants.

January 11, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*