

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 684 of 1993

Date of Decision: April 11, 2019.

Surinder Kaur and others

..... APPELLANT (s)

Versus

Havaladar Harinder Singh and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Kulvir Narwal, Advocate
for the appellants.

Ms. Balwinder Kaur, Sr. Panel Counsel
for the respondent – Union of India.

LISA GILL, J.

This appeal has been filed by the claimants challenging award dated 01.02.1993 passed by the learned Motor Accident Claims Tribunal, Ferozepur (for short, the 'Tribunal') whereby the claim petition filed by them has been dismissed.

Brief facts necessary for the adjudication of the case are that, the appellants filed a petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') seeking compensation on account of death of Kulwant Singh in a motor vehicle accident which took place on 26.12.1990. It was pleaded that deceased – Kulwant Singh was going on a scooter bearing No.PBC-7376 from the side of Ferozepur city towards Zira on 26.12.1990. At about 2.40 p.m., Kulwant Singh (deceased) was proceeding in front of the farm/house of AW5 Buta Singh. The offending vehicle i.e., the military jeep

bearing registration No.86-B-413684 came from the side of Zira which was proceeding towards Ferozepur city. It was pleaded in the petition that the military jeep was driven by respondent No.1-Havaldar Harinder Singh in a rash and negligent manner. Kulwant Singh (deceased) was driving his scooter on his correct left side at a moderate speed. However, driver of the military jeep could not control the jeep and struck the same against the scooter. AW5 Buta Singh reached at the spot of the accident and identified Kulwant Singh (deceased), as Kulwant Singh was working as a Dispenser in the Sugar Mill, Zira and Buta Singh used to visit the Sugar Mill for sale of sugar cane etc. Kulwant Singh was rushed to the Civil Hospital, Ferozepur in the said military jeep itself, where he succumbed to his injuries. FIR No.523 of 1990 was registered against respondent No.1-Havaldar Harinder Singh. Post-mortem was carried out. FIR No.523 of 1990 was proved by AW2 HC Satnam Singh and post-mortem report was proved by AW1 Dr. M.S.Tinna. It was pleaded that the deceased was aged 32 years at the relevant time. He was working as a Dispenser in the Zira Cooperative Sugar Mill and was drawing a salary of ₹1,774/- per month, besides, free accommodation, bonus, production incentives etc. ranging from ₹4,000/- to ₹5,000/- per annum. Compensation was thus claimed.

Claim petition was resisted by the respondents, who took a categorical stand that the deceased-Kulwant Singh was driving the scooter in a zig-zag manner under the influence of liquor and it was the respondent-driver, who made every effort to avoid head-on collision but the scooterist dashed against the military jeep, thereby he received fatal injuries. Dismissal of the claim petition was prayed for.

Replication was filed by the claimants. On the basis of pleadings of the parties, following issues were framed by the learned Tribunal:-

1. Whether the claimants are the legal heirs of Kulwant Singh deceased? OPA
2. Whether Kulwant Singh died in the accident which has taken place due to rash and negligent driving of Jeep No.86-B-413484 of 16 Sikh Regiment C/o 56 APO by respondent No.1? OPA
3. Whether the claimants are entitled to any compensation, if so, to what extent and from whom? OPA
4. Relief.

Learned Tribunal on considering the facts and evidence of the case concluded that as per the evidence of AW1 Dr. M.S.Tinna, smell of alcohol was coming from the food material which was found in the stomach of the deceased at the time of post-mortem. It was held that the deceased consumed liquor before the accident and it was he, who was responsible for the accident in question. Claim petition was thus dismissed.

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

Learned counsel for the appellants has argued that material evidence on record has been ignored by the learned Tribunal. As per the chemical examiners report dated 25.03.1991 (Ex.PD) in respect to the viscera, no alcohol was detected in the contents of the stomach, kidney, spleen, liver or the blood samples sent for examination. Further reference was made to the statement of RW1 Major Ram Charan, M&G Area, Provost Unit, Bombay-5. It is argued that once RW1 Major Ram Charan specifically stated that it was he, who was driving the military jeep and not Havaladar Harinder Singh, the entire case set up by the respondents falls to the ground. It proves that effort from the very beginning, on the part of the respondents, was to shield respondent No.1. AW5 Buta Singh

specifically stated in his cross-examination that he was pressurized by the Army officials in this matter and it is due to this reason that he resiled from his statement in the criminal case. It is thus prayed that the impugned award dated 01.02.1993 be set aside. Just and proper compensation be afforded to the claimants. It is stated that the deceased was 32 years old at the time of his death, his date of birth being 01.04.1956. He was working as a Dispenser with the Zira Cooperative Sugar Mill and was to retire on 31.03.2016. He is survived by his widow, two minor children and an aged mother. It is thus prayed that compensation be afforded to the appellants accordingly.

Learned counsel for the respondents-Union of India, on the other hand, submits that a well reasoned and logical judgment has been rendered by the learned Tribunal. AW5 Buta Singh, propounder of the FIR has not supported his version before the criminal court. In fact, he did not even identify the accused in the criminal case who was acquitted by the learned trial court in the criminal proceedings. It is further submitted that arguments on behalf of the appellants should be rejected inasmuch as there is no evidence on record to show that there was any attempt on the part of the respondents to shield the officer in question. RW1 Major Ram Charan had, in fact, given a truthful version of the accident in question. He clearly stated that it was the scooterist who was at fault as he had consumed liquor and the accident occurred despite best efforts on the part of the driver of the military jeep who tried to save the scooterist. The driver of the jeep took the scooterist to the hospital in his jeep in order to save his life. Learned counsel for the respondents-Union of India submits that in case this Court comes to the conclusion that the accident was caused due to the rash and negligent

driving of the offending vehicle, the scooterist was also guilty of contributory negligence in this case. However, she does not dispute the age or income of Kulwant Singh (deceased) at the time of his death. It is further not denied that the appellants are the legal representatives of the deceased-Kulwant Singh. Dismissal of the appeal is prayed for.

I have heard learned counsel for the parties and have gone through the record.

Perusal of the record reveals that claimants, pleaded that Kulwant Singh (deceased) was involved in a motor vehicle accident caused by the offending vehicle i.e., the military jeep, which was being driven in a rash and negligent manner by its driver. Kulwant Singh (deceased) who was driving his scooter on the correct side of the road at a moderate speed was struck against by the jeep in question. Accident in question took place on 26.12.1990 at 2.40 p.m. and FIR No.523 of 1990 in this respect was recorded on 26.12.1990 itself at 5.00 p.m. on the statement Buta Singh, who has deposed before the learned Tribunal as AW5. AW5 Buta Singh categorically deposed about the accident in question and the sequence in which it occurred. AW5 Buta Singh specifically stated that the jeep was being driven at a high speed and the accident was caused due to the rash and negligent driving of the army jeep. When AW5 Buta Singh rushed to the spot, deceased-Kulwant Singh was taken to the hospital in the army jeep itself. FIR, in question, was registered on his statement.

AW5 Buta Singh categorically explained in his statement that he resiled from his statement in the criminal proceedings against Havaladar Harinder Singh due to the threats meted out to him by the army officials. There is a

reflection of truth in the explanation given by AW5 Buta Singh. I say so, for the reason that a perusal of the testimony of RW1, Major Ram Charan is a telling indicator in this regard. Surprisingly, RW1 Major Ram Charan in his testimony stated that it was he who was driving the offending vehicle. RW1, Major Ram Charan in his testimony deposed that he was travelling in his military jeep from Khalra to Ferozepur to attend an official conference on 26.12.1990. Havaladar Harinder Singh, Naik Hardip Singh and Capt. Surjit Singh were also travelling alongwith him in the said vehicle. RW1 Major Ram Charan stated that in the area of police station Sadar Ferozepur, they saw a scooterist coming in a zig-zag manner. Scooter was being driven in a rash and negligent manner and it was the scooterist, who turned towards his right hand side and rammed straight into the jeep. RW1 Major Ram Charan further stated that he turned the jeep towards right side to avoid collision, but the accident took place due to the negligent act of the scooterist. Furthermore, the scooterist consumed liquor and smell of liquor was coming from his mouth. The injured, it is stated, was taken to the Civil Hospital by RW1 Major Ram Charan himself in the military jeep in order to save his life.

Ring of truthfulness in the deposition of AW5 Buta Singh is further cemented by the fact that an apparent effort was made not only to save the official in question, but to project that it was the scooterist, who was under the influence of liquor. AW1 Dr. M.S.Tinna, SMO, Civil Hospital, Ferozepur in his cross-examination stated that undigested food material in the stomach of the deceased was emulsified, having a smell of alcohol. However, his statement is falsified by the chemical examiner's report (Ex.PD), wherein it is specifically mentioned that no poison or alcohol was detected in the viscera of stomach, which was sent for

chemical examination. Statement of AW1, Dr. M.S.Tinna is thus not worthy of any credence in this respect. Learned Tribunal has grossly erred in holding that the deceased was under the influence of liquor at the time of the accident while referring to the statement of AW1, Dr. M.S.Tinna in the light of the chemical examiner's report.

Accident in question is duly proved on record. In fact, it is so admitted by the respondents, though claiming it to be caused by the scooterist himself. Claimants have successfully proved that the accident occurred due to the rash and negligent act of the driver of the offending jeep, who was first mentioned to be Havaladar Harinder Singh, but thereafter RW1 Major Ram Charan in his testimony stated that it was he who was driving the vehicle in question. It is relevant to note that once RW1 Major Ram Charan was very much aware of the fact that he was driving the vehicle, in question, there is no reason as to why Havaladar Harinder Singh was even made to face a full blown criminal trial. The sequence of events and the evidence on record, therefore, lends a clear-cut ring of truthfulness to the explanation of AW5 Buta Singh as to why he resiled from his statement before the learned Chief Judicial Magistrate in the criminal proceedings against Havaladar Harinder Singh. Therefore, the acquittal of Havaladar Harinder Singh is of no use and avail to the respondents. Furthermore, the Chemical Examiner's report (Ex.PD) clearly proves that the deceased was not under the influence of alcohol etc. The sequence of events are reflective of a blatant attempt to derail the process of law. In the present case, the claimants have successfully proved their case on the touchstone of preponderance of probabilities.

Hon'ble Supreme Court in Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018(5) SCC 656 reiterated that the claimants in proceedings under this Act are required to prove their case on the touchstone of preponderance of probabilities and court is not to be swayed by technicalities, niceties or mystic maybes. In the factual matrix of the case, the learned Tribunal has clearly erred in dismissing the claim petition filed by the claimants. This finding of the learned Tribunal is, thus, set aside.

In respect to the compensation due towards the claimants, no dispensation or calculation has been made by the learned Tribunal in view of its finding on Issue No.2. Keeping in view the facts and circumstances, besides, the evidence available on record, I do not deem it appropriate to remand this matter before the learned Tribunal for this purpose.

Deceased-Kulwant Singh was admittedly 34 years old at the time of his death, his date of birth being 01.04.1956. There is no denial to the effect that Kulwant Singh (deceased) was working as a Dispenser with the Zira Cooperative Sugar Mill, Zira at the time of the accident and he was due to retire on 31.03.2016. He is survived by his widow, minor children and aged mother. AW3 Kulwant Singh, Time Office Clerk from the Zira Cooperative Sugar Mill, Zira has proved that deceased-Kulwant Singh was posted as a Dispenser with the said Mill. The fact that the widow of deceased-Kulwant Singh was given service in the Zira Cooperative Sugar Mill, Zira, can be of no avail to the respondents, neither does it detract from the rights of the claimants to compensation on account of death of Kulwant Singh.

Last pay drawn by the deceased for the month of November, 1990

was proved to be ₹1,839/- (Ex.PC). As per the salary details, date of birth of deceased-Kulwant Singh is mentioned as 01.04.1956, date of his joining service as 19.11.1980 and date of retirement is mentioned as 31.03.2016. As per certificate dated 11.04.1991 issued by the Managing Director of the Zira Cooperative Sugar Mill, Zira, it has been certified that the deceased had drawn a salary of ₹1,774/- for the days, he worked before his death in the month of December, 1990. It is further certified that in addition to the above, he was provided with rent free accommodation in the campus and the Sugar Mill was also contributing EPF at the prevailing rate of 10% of the salary, besides, the employee was also receiving payments of bonus and production incentive ranging between ₹4,000/- to ₹6,000/- annually. Income of the deceased is, thus, assessed as ₹1,839/- per month.

Addition in income at the rate of 40% on account of future prospects is awarded in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680.** Deduction of 1/4th towards personal expenses is to be effected as the number of dependents in this case are four. Multiplier of 16 is to be applied, the deceased being 34 years old at the relevant time. ₹15,000/- each on account of funeral expenses and loss of estate is awarded to the claimants. In view of the judgments of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333** as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (**Shri Ram General Insurance Company Ltd. v. Beant Kaur and others**), ₹40,000/- is awarded to claimant-widow on account of loss of spousal consortium, besides,

₹40,000/- to minor children on account of loss of parental consortium and a sum of ₹40,000/- is awarded to appellant No.4 for loss of filial consortium.

Appellants-claimants are, thus, entitled to compensation as under:-

<i>Sr.No.</i>	<i>Heads of Claim</i>	<i>Amount</i>
1.	Income	1839 p.m. i.e. ₹22,068/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	22,068 + (22,068 x 40%) = 30,895
3.	Net income after 1/4 th deduction on account of personal expenses	30,895 – (30,895 x 1/4) = 23,171
4.	Total dependancy after applying a multiplier of 16	(23,171 x 16) = 3,70,736
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of spousal consortium to appellant No.1	40,000
8.	Loss of parental consortium to appellants No.2 and 3	40,000
9.	Loss of filial consortium to appellant No.4	40,000
Grand Total		₹5,20,736/-

Appellants-claimants shall be entitled to interest on the amount of compensation at the rate of 7.5% per annum from the date of filing of the petition till realization. Claimant-widow is entitled to 70% of the awarded amount, the children to 15% and mother of the deceased to 15% thereof. Offending jeep was not insured, thus respondents No.2 and 3 are jointly and severally liable to pay the compensation.

Appeal is accordingly allowed.

(LISA GILL)
JUDGE

April 11 , 2019.
'om'

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