

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

FAO-834-1993 (O&M)
Date of decision: 24.09.2019

Prem Arora and another

...Appellants

Versus

Mast Ram and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. P.S. Rana, Advocate for the appellant.

Ms. Harmeet Kaur, Advocate for
Mr. Chandan Deep Singh, Advocate for respondent No.3.

Mr. Ravinder Arora, Advocate for respondent No.5.

H.S. MADAAN, J.

Briefly stated facts of the case as per version of claimants are that on 10.11.1990, deceased Mainderpal Singh along with Kulwant Singh, Amarjit Singh and Jaspal Singh were travelling in a car bearing registration No.DL-2CA-4772 and going from Delhi to Ludhiana to attend a marriage party. The car was being driven on its correct side. When it reached in the area of Village Mohri, then truck bearing registration No.HIS-1581 driven by respondent No.1 Mast Ram in a rash and negligent manner came from opposite side of the road and hit the car by going on wrong side of the road, causing the accident, resulting in death of Mainderpal Singh and injuries to other occupants of the car. Parents of deceased Mainderpal Singh, namely, his mother Smt. Prem

Arora and father Baldev Singh Arora had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Mast Ram-driver, Jagir Singh-owner of the truck as well as Kulwant Singh-driver of car, M/s Premier Auto Industries through its partner Kulwant Singh, Delhi-owner of car and New India Insurance Company Ltd., New Delhi-insurer of car No.DL-2CA-4772, contending that if the Tribunal comes to the conclusion that both the drivers were negligent in causing the accident, then, the claim petition be accepted and compensation to the tune of Rs.7 lacs be awarded against both the vehicles, jointly and severally.

On notice, respondent Nos. 1 & 2 and respondent Nos.4 & 6 besides respondent No.6 put in appearance. As a matter of fact, there was no respondent at Sr. No.3. Respondent Nos.1 & 2 opposed the claim petition, whereas, respondent Nos.4 & 5 did not offer any contest. Respondent No.6-Insurance Company contested its liability to pay compensation.

On pleadings of the parties, the following issues were framed:-

1. Whether the accident took place because of the rash and negligent driving by respondent Mast Ram or by Kulwant Singh respondent parties.
2. If issue No.1 is proved, to what amount of compensation is the claimant entitled to and from whom?OPP.
3. Relief.

The parties led evidence in support of their respective

claims. After hearing arguments, the Motor Accidents Claims Tribunal, Kurukshetra, on the basis of evidence adduced by the parties, came to the conclusion that there was no direct evidence as regards the cause of accident. Coming to the circumstantial evidence, the Tribunal noticed that if collision had taken place then, Kulwant Singh driving the car would have also suffered injuries and not the deceased, who was sitting on the rear seat of the car and it seems to be a case of substitution because if the deceased was shown to be the driver of the vehicle, he would not be able to claim any compensation from the owner and insurance company of the car and otherwise also, in the absence of any evidence, one way or the other, nobody could be held liable for the accident. In the end, the Tribunal concluded that the claimants had failed to prove that the accident had taken place because of rash and negligent driving of respondent-driver of the truck and there was no proof that the car was being driven by any person other than the deceased. However, compensation of Rs.25,000/- along with interest @ 12% p.a. was awarded to claimant No.1, payable by respondent Nos.1 & 2. It was so done, vide award dated 01.10.1992.

The claimants felt aggrieved by the said award and have approached this Court, by way of filing the present appeal, notice of which was given to the respondents, however, only respondent Nos.4 & 5 put in appearance to offer a contest.

I have heard learned counsel for the parties besides going through the record.

One thing which is apparent from the record is that Mainderpal Singh had lost his life in a road side accident and at that time, he was travelling in the car in question and there was collision between that car and truck No. HIS-1581. As per version set up by the claimants, drivers of both the vehicles were at fault in happening of accident. The car was being driven by Kulwant Singh and the truck by Mast Ram. The Tribunal has given a very strange finding with regard to responsibility for happening of the accident. The Tribunal by total misappraisal of the evidence and wrong interpretation of law has come to the conclusion that it seems to be a case of substitution because if the deceased was shown to be driver of the car, then, he would not be able to claim any compensation from the owner of the car, otherwise, the owner of the car could be made liable for the compensation. It has to be taken note of that the FIR in this case was recorded on the basis of statement of Kulwant Singh, who had stated therein that he was driving the car in question. Amarjit Singh and Jaspal Singh other occupants of the car in their statements to the police had also stated that the car was being driven by Kulwant Singh. The conclusion drawn by the Tribunal that the claimants have failed to prove that the accident took place because of rash and negligent driving of respondent-driver of the truck. This conclusion is totally wrong and erroneous. The Tribunal has though noticed that in the accident, the car had suffered extensive damage, whereas, head light of the truck was also damaged. That shows, involvement of the truck in the accident. Respondent No.1 truck driver has been sent up to face trial for causing the accident and copy of final report under Section 173 Cr.P.C., was

produced in evidence by the claimants. The very fact that respondent No.1 was booked for causing the accident by his rash and negligent driving of the offending truck and sent up to face trial, after completion of investigation, prima facie goes to show his rashness and negligence. The Tribunal totally ignored that fact and on the basis of conjectures, surmises and guess work gave a clean chit to the truck driver, propounding a strange hypothesis that it was a case of substitution of driver and if the deceased was sitting on the rear seat of the car, he would not have suffered so much injuries. On which basis and on what evidence, the Tribunal had drawn that conclusion is not forthcoming. It being a head on collision, the car driver was also to share blame for the accident. Rather, it comes out to be a case of composite negligence.

The Tribunal fell in error in placing much reliance upon photographs of the place of accident as well as site plan prepared by the police during the investigation of the case, totally ignoring the other facts and circumstances. The rashness and negligence on the part of vehicle driver is to be determined, keeping in view the facts and circumstances of the case; the evidence brought on record by the prosecution; the stand taken by the accused in his statement under Section 313 Cr.P.C.; the defence evidence adduced by him in the light of legal position and simply by giving overdue importance to the photographs, the Tribunal should not jump to a particular conclusion. There was no cogent and convincing evidence on record to show that the deceased himself was driving the car, since, the respondents did not examine any person, who might have stated that the deceased was driving the car at the relevant time and not Kulwant

Singh-respondent. As such, finding of the Tribunal on issue No.1 is reversed and this issue is decided, holding that the accident had taken place on account of rash and negligent driving of the offending truck by Mast Ram-respondent No.1 as well as rash and negligent driving of the car by Kulwant Singh.

Coming to issue No.2, as per version of the claimants, deceased was a graduate and he was partner with his father in a firm, doing business and he used to earn Rs.5000/- per month. The Tribunal took note of the fact that in the year 1990-91, the exemption limit for income tax was Rs.22,000/- p.a., as such, his monthly income was assessed to be Rs.1500/-. Keeping in view the circumstances, the reasoning given by the Tribunal and the fact that the accident relates to the year 1990 when wages were quite low, I do not find it proper to interfere with such figure taken by the Tribunal as tentative income of the deceased per month. However, 40% of the amount is to be added towards future prospects. Doing that, the monthly income of deceased can be taken to be Rs.2100 (1500+600). This is in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009.**

Keeping in view the fact that the deceased was a bachelor, 50% of the amount is to be deducted towards his personal and living expenses. Therefore, the dependency of claimants comes out to Rs.1050/- per month.

The Tribunal has taken up hyper-technical view in the matter, stating that claimant No.2 father of the deceased could not be said

to be dependent upon his earning but the Tribunal has lost sight of the fact that an earning son does provide financial support to his father by giving money in cash or in the form of gifts on various occasions and further both the claimants have been deprived of love and affection of their young son by his death in a road side accident. A young son usually helps his parents in various matters. Therefore, depriving father of the deceased from share in the compensation was not justified, in view of the discussion above, the monthly dependency of claimants comes out to Rs.1050/- and , annual dependency Rs. 12600/-.

Since, the deceased was aged about 22 years at the time of his death in the road side accident, multiplier of 18 is to be used in terms of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77.** Doing that the compensation comes out to Rs.2,26,800/-.

Adding Rs.30,000/- under the conventional heads, i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- towards funeral expenses in terms of Apex Court authority **Pranay Sethi (supra)**. Thus, the total compensation payable is arrived at Rs.2,56,800/- along with interest @ 7.5% p.a., from the date of filing of claim petition till actual realization besides costs throughout. The amount would be apportioned amongst the claimants in equal shares. Since, it comes out to be a case of composite negligence, the liability to pay this amount would be joint and several of the respondents.

The appeal stands partly allowed.

24.05.2019

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(H.S. MADAAN)
JUDGE

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