

FAO-2631-2000(O&M) &
FAO-635-2001(O&M)

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

(1) FAO-2631-2000(O&M)

Sukhbir Singh

...Appellant

Versus

NK Vijay Kumar and another

...Respondents

(2) FAO-635-2001(O&M)

Hanuman Parshad Sharma and another

...Appellants

Versus

NK Vijay Kumar and others

...Respondents

Date of Decision:-19.12.2019

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

Present: Mr.D.K. Prajapati, Advocate
for the appellant(s).

Mr.Rajiv Verma, Advocate, Central Government Counsel
for respondents No.1 and 2.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-2631-2000 filed on behalf of appellant – Sukhbir Singh and FAO-635-2001 filed on behalf of appellants – Hanuman Parshad and another, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 8.11.1995 Ashok Kumar son of Hanuman Parshad along with Navin Gupta and Vijay were

travelling in a Maruti Car bearing registration No.HNA-24 coming from Jammu side after visiting Vaishno Devi Shrine; the car was being driven by Vijay son of Manphool; when the car reached near Sicop Gate on National Highway, a military trailer bearing No.27289E 9561 being driven by respondent No.1 – NK Vijay Kumar in a rash and negligent manner overtook a Tonga and struck against the Maruti car, resultantly Ashok Kumar died at the spot, whereas Navin Gupta and Vijay sustained injuries; the Maruti car was badly damaged; an FIR No.298 dated 8.11.1995 for the offences under Sections 279/337/304-A IPC was registered at Police Station Kathuwa; the damage of the car was got assessed from a Surveyor by its owner Sukhbir Singh and it was to the tune of Rs.91,550/-.

The owner of the damaged car had brought MACT Petition No.13 of 1996 against NK Vijay Kumar – driver and the Secretary, Government of India, Ministry of Defence, Unit No.633 C/o 56 A.P.O. - owner of trailer No.27289 E 9561 K (hereinafter referred to as the offending vehicle), claiming compensation on account of damage to the Maruti car.

Whereas widow of deceased Ashok Kumar, namely Smt.Kiran Bala had also brought a MACT Petition No.6 of 1996 against NK Vijay Kumar – driver, Union of India, Defence Department through its Secretary, New Delhi as well as insurance company of the trailer, which was mentioned to be not insured as well as Vijay Kumar – driver, Sukhbir Singh – owner and insurance company of Maruti car No.HNA-24 not insured, claiming compensation to the tune of Rs.20 lakhs.

Sh.Hanuman Parshad Sharma and Smt.Chameli Devi were arrayed as proforma respondents No.7 and 8.

Since both the claim petitions arose out of the same accident, those were tried together by Motor Accidents Claims Tribunal, Bhiwani(hereinafter referred to as the Tribunal).

On being put to notice, respondents No.1, 2, 4, 5, 7 and 8 had put in appearance. Since address of insurance company of the trailer at serial No.3 in MACT Petition No.6 of 1996 in the list of respondents was not available, notice to it could not be given.

In the written statement filed by respondent No.1 NK Vijay Kumar, he took up preliminary objections that the claim petitions were not maintainable and the petitioners had no locus standi to file the petitions; that the accident had taken place on account of rash and negligent driving of Maruti Car; that the petitioners had not approached the Court with clean hands; as a matter of fact respondent No.1 was on convoy duty on 8.11.1995 when the accident took place; he was driving his vehicle BA No.89E-9561-K-Tank Transporter at a normal speed of 30 kms. per hour on the left side of the road; that there was sufficient road space available for Maruti car driver to cross vehicle being driven by the answering respondent; the driver of the Maruti car was driving the car at a very fast speed and his car went out of control and dashed on the left side of the vehicle, therefore, the answering respondent could not be held liable for the accident; that the claim petitions have been filed just to extort money from the respondents; the expenses alleged to have been incurred on account of damages to the Maruti car are also excessive and

exorbitant without any basis.

The written statement submitted on behalf of respondent No.2 is almost on the similar lines as that of respondent No.1.

In the end, the respondents prayed for dismissal of the claim petitions.

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

1. Whether the accident in question was result of rash and negligent driving of trailer No.27289-E 9561 K by NK Vijay Kumar, respondent No.1, as alleged?
2. Whether the Maruti Car No.HNA-24 belonging to the petitioner was damaged in the said accident. If so, to what extent and to what effect?
3. To what amount of compensation, the petitioner is entitled and from whom?
4. Whether the petitioner has no locus standi to file the petition?
5. Whether the petition is not maintainable in the present form?
6. Whether the petition is bad on account of non-joinder and mis-joinder of necessary parties?
7. Whether this Court has no jurisdiction to try the petition? If so, to what effect?
8. Relief.

Following additional issue was also framed:

2A Whether Ashok Kumar s/o Hanuman Parshad died due to the injuries received by him in the accident caused by rash and negligent

driving of Trela No.898/5561/K-272 being driven by Vijay Kumar, respondent No.1 or by rash and negligent driving of Car NO HNA-24 by respondent Sukhbir Singh? OPP.

Both the parties were afforded adequate opportunities to lead evidence.

After recording evidence, the Tribunal decided issue No.1 against the petitioners in favour of respondents observing that the driver of Maruti car could avoid the accident, who was coming from the opposite side; the driver of the Maruti car was to control the vehicle so as to avoid the accident and this accident was caused because Maruti car was being driven at a very high speed and on seeing military trailer, driver of the Maruti car could not apply the brakes and caused head on collision, therefore, accident was not caused because of rash and negligent driving of respondent No.1 at all. Issues No.2 and 3 were decided against the petitioners/claimants holding that they were not entitled to receive compensation from respondents No.1 and 2. Issues No.4 to 7 were decided against respondents for the reason that no cogent evidence was led on those issues nor those issues were pressed at the time of arguments. Issue No.2-A was decided against the petitioners holding that petitioners have not been able to prove that accident had caused because of rash and negligent driving of respondent No.1.

After hearing arguments, both the claim petitions were dismissed by the Tribunal vide Award dated 6.10.1999, which left the claimants aggrieved and they have filed separate appeals before this Court, notice of which were issued to the respondents. Only respondents

No.1 and 2 put in appearance to offer contest.

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

The onus of proving that the accident had taken place on account of rash and negligent driving of military trailer by respondent No.1 – NK Vijay Kumar was upon the claimants. To discharge that onus the petitioners/claimants had examined PW4 Vijay Kumar, who deposed in consonance with the case of claimants. He proved FIR lodged with the police copy being Ex.PB and Ex.PC stating that the accident occurred because of rash and negligent driving of respondent No.1. The deposition of PW4 Vijay Kumar was cogent and convincing. He had stood the test of cross-examination well. There was no reason for him to depose falsely in favour of the claimants and against the respondents. The presence at the spot of this witness at the relevant time comes out to be natural and probable and account of the accident given by him to be worthy of credence. The deposition of this witness along with the fact that formal FIR with regard to the accident had been registered against respondent No.1 NK Vijay Kumar was more than sufficient to show that NK Vijay Kumar was author of the accident by his rash and negligent driving of the offending trailer but the Tribunal wrongly disbelieved such evidence and gave precedence to the proceedings by the military authorities, copy of such proceedings being Ex.R1. The respondent Vijay Kumar appearing as RW2 had admitted in his cross-examination that FIR was registered against him and he had faced criminal trial. He admitted that he had overtaken the Tonga and thereafter the accident had taken place. He

further stated that when he had crossed the Tonga, he was on the right side of the road when he had seen the Maruti car. That clearly goes to show that he was on the wrong side of the road and the accident had taken place on account of his fault and Maruti car driver was certainly not guilty of any rash and negligent driving.

The Tribunal is required to evaluate the evidence adduced before it and not to get unduly influenced by any proceedings by some Administrative Authority. Although NK Vijay Kumar – respondent No.1 appearing as RW2 stated that he was driving the trailer meant for carriage of tanks going from Pathankot to Sambha, then Maruti car in question came from the opposite side and struck against the trailer when the trailer was in stationary condition since he had already applied brakes, the accident had taken place. He stated that the accident took place because of rash and negligent driving of Maruti car by Vijay Kumar. However, in the proceedings by the Military authorities, it comes out that a conclusion was reached that the accident had been caused because of rash and negligent driving of Maruti car. In the written statement, the respondent had taken up the plea that the accident took place, when the trailer was overtaking a Tonga. It being so, it can be gathered that the trailer had gone on the wrong side, which means that the driver of the trailer should have been extra cautious and careful ensuring that the trailer did not hit any vehicle while he was in the process of overtaking a Tonga. However, accident seems to have been occurred on account of fault of respondent No.1 – driver of the trailer, who showed lack of care and caution on his part while driving the trailer and in the process had hit the car, in which the deceased

and others were travelling. The accident had in fact taken place on account of rash and negligent driving of the trailer by respondent No.1. The Tribunal by misappraisal of evidence and wrong interpretation of law and by faulty reasoning has wrongly concluded that the accident took place on account of fault of the Maruti car driver. There was sufficient evidence available before the Tribunal to return such finding but it unnecessarily started blaming the Maruti car driver for the accident. Therefore, finding on issue No.1 is reversed. The issue is decided in favour of the claimants and against the respondents holding that the accident in which Ashok Kumar had lost his life and Maruti car had suffered damages had taken place on account of rash and negligent driving of the trailer by respondent No.1 – NK Vijay Kumar.

The findings by the Tribunal on issues No.4 to 7 are correct and proper and do not call for any interference.

Whereas finding on issue No.2-A is wrong and liable to be set aside. In view of the detailed discussion above, this issue is decided in favour of the claimants and against the respondents holding that Ashok Kumar son of Hanuman Parshad had died due to the injuries received by him in the accident caused by rash and negligent driving of trailer by respondent No.1 – NK Vijay Kumar.

Similarly finding on issue No.2 is wrong and is set aside holding the the Maruti Car No.HNA-24 belonging to petitioner Sukhbir Singh was damaged in the accident, which had occurred due to rash and negligent driving of trailer by respondent No.1 – NK Vijay Kumar.

Now coming to issue No.3. The petitioner/claimant Sukhbir

Singh (petitioner/claimant in MACT Petition No.13 of 1996) is certainly entitled to get compensation on account of damage to his car from the driver and owner of the offending trailer. The petitioner/claimant Sukhbir Singh has examined PW2 Ved Parkash Sharma, Surveyor, Insurance Companies, Bhiwani, who deposed that Maruti Car was inspected by him on 12.11.1995; the said car was extensively damaged at the time of inspection and after the survey, he assessed the damage to the car to the tune of Rs.91,550/-, such assessment being Ex.PA. He further stated that he had also taken photographs of the damaged vehicle, which are part of his report Ex.PA. He had inspected the vehicle at the request of owner – Sukhbir Singh. In his cross-examination, he stated that model of car was 1987. After the report of surveyor on some parts of the vehicle, the depreciation is deducted due to wear and tear. He stated that he had given the total damage in his report and had not deducted the wear and tear as is generally deducted by the insurance companies. In his cross-examination on behalf of UOI, he stated that he could not tell how much miles had been covered by the vehicle at the time of accident. Petitioner/claimant Sukhbir Singh appeared as PW3 and he stated that he is owner of the Maruti car in question, which met with an accident on 8.11.1995; that Ashok Kumar deceased had taken his car due to his relations with him; on account of the accident, the car was extensively damaged and suffered loss to the tune of Rs.91,000/-. In his cross-examination, he stated that the car was of 1987 model and he had purchased it in the year 1995. He stated that he had purchased it for a sum of Rs.1,20,000/- on 8.3.1995. There is no evidence to show as to how much mileage had been covered by the car

at the time of accident. The Maruti car in question was 8 years old. The value of the car depends upon its condition and the mileage covered by it. The Surveyor engaged by the petitioner Sukhbir Singh had not taken into consideration the depreciation on account of wear and tear. The value of the salvage was also not considered. Therefore, in my considered view, the would be proper and appropriate, if the compensation of Rs.80,000/- is granted to the petitioner/claimant, payable by respondents No.1 and 2.

Now coming to the MACT Claim Petition No.6 of 1996 filed by Smt.Kiran Bala Sharma on account of death of Sh.Ashok Kumar. Sh.Ashok Kumar was stated to be aged about 23-24 years at the time of his death having his own showroom for sale of clothes at Bhiwani and his monthly income as per the claimants was Rs.10,000/- to 15,000/-. However, no documentary proof in that regard has been placed on record. Keeping in view the fact that the accident had taken place in the year 1995 when the wages were comparatively quite low, I find that it would be proper and appropriate to take his monthly income to be Rs.2,000/-. With the passage of time, such income was expected to increase. Considering his age, in view of ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.2,000} + 800 = \text{Rs.2,800/-}$.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, keeping in view the dependent family members of the deceased, $1/3^{\text{rd}}$ of the amount should be deducted towards self expenses.

Doing that the dependency of claimants comes out to Rs.1,867/- per month, annual dependency comes out to Rs.1,867 x 12 = Rs.22,404/-.

Keeping in view the age of deceased, multiplier of 18 should be applied. Doing that the compensation payable comes out to Rs. 22,404 x 18 = 4,03,272/-.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 4,03,272 + 70,000 = 4,73,272/-.

Accordingly, the appeals are accepted. The award in the appeals is set aside and compensation of Rs.80,000/- is awarded to the appellant/petitioner – Sukhbir Singh in FAO-2631-2000 and compensation of Rs.4,73,272/- is awarded in FAO-635-2001 with interest @ 7.5% per annum from the date of filing of claim petitions till actual realization, payable by respondents No.1 and 2 jointly and severally.

Of the compensation awarded in FAO-635-2001, the amount shall be apportioned as follows:

1. Smt.Kiran Bala(widow) - 40%
2. Smt.Chameli Devi(mother) – 40%
3. Sh.Hanuman Parshad (father) - 20%

19.12.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No