

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

F.A.O. No. 2609 of 2001

DATE OF DECISION :- November 14, 2019

Harvinder Singh and another

...Appellants

Versus

Gurdebo alias Debo and others

...Respondents

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

Present:- Mr. Rubai J. Singh, Advocate for the appellants.

Mr. K.S. Hissowal, Advocate for the respondents No. 1 to 3.

Mr. Suman Jain, Advocate for respondent No. 6

Briefly stated the facts of the case are that on 9.10.1998, one Gurdebo along with her husband Gurdass were coming on a bicycle and when they had gone a little ahead of Model Town crossing and were proceeding towards Jail Bridge, Ambala City and the time was about 9.30 A.M. then a Tanker bearing Registration No. HR-37-5649 being driven by respondent No. 1 Mehar Singh in a rash and negligent manner came from Ambala Cantt side and hit the bicycle from behind. Resultantly both the riders namely Gurdebo and Gurdass fell down and suffered injuries. Gurdass succumbed to the injuries at the spot and was declared dead when he was taken to hospital whereas Gurdebo had suffered injuries on the right leg and foot besides other parts of the body.

Gurdebo had filed a claim petition bearing MACT case No. 169

against respondents i.e. Mehar Singh-driver, Harvinder Singh and Rajiv Bansal-owners of Tanker bearing Registration No. HR-37-5649, Sikander Singh being co-owner of the said vehicle whereas The New India Assurance Company, Ambala Cantt. was impleaded as insurer of the offending Tanker. She has filed another claim petition along with her minor daughters Dikaha and Pooja such claim petition bearing MACT case No. 170 against those very respondents on account of death of Gurdass in the road side accident. According to case of the claimants Gurdass was aged about 27 years and was working as a Mason earning Rs.6,000/- per month. A sum of Rs.10 lacs was claimed as compensation on account of his death in the road side accident. With regard to the injuries suffered by Gurdebo, according to claimant she had sustained injures on the right leg and foot besides other parts of the body and was unable to do any work. A sum of Rs.50,000/- was spent on his treatment and special diet. She had claimed compensation of Rs.3 lacs.

On being given notice respondents no. 2, 3, 3A and 4 had put in appearance and filed written statements contesting the claim petitions whereas respondent No. 1 had not appeared despite service and was proceeded against ex-parte. Subsequently respondent No. 3 was also unrepresented and was proceeded against ex-parte. Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence. Since both the claimants have filed petition arisen out of the same accident they were tried together by the Motor Accident Claims Tribunal, Ambala.

On conclusion of trial both the claim petitions were accepted. Gurdebo sole claimant was allowed compensation of Rs.6,000/- for the injuries suffered by her whereas in other claim petition No. 170 of 1998 compensation of Rs.4,63,600/- along with interest at the rate of 9% per annum from the date

of filing of claim petition till actual realization was awarded. The liability to this amount was held to be that of driver and owner of the vehicle whereas Insurance Company was not found to be liable for the reason that vehicle had been insured at 3.05 P.M. on 9.10.1998 and at the time of accident the vehicle was not insured. The driver and owner of the vehicle felt aggrieved by the said Award and had preferred an appeal before this Court, notice of which was given to the claimants respondents who have put in appearance through counsel.

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

The Tribunal on the basis of eye witness account provided by PW1 Gurdebo and PW2 Siri Ram who had categorically stated that the accident had taken place on account of rash and negligent driving of tanker in question by respondent No. 1, in light of the fact that respondent no. 1 is facing trial in the Court of JMIC Ambala City for causing the accident for offences under Sections 279, 337, 304A IPC deposed by RW1 Arun Kumar, Ahlmad of that Court and further that respondent No. 1-driver had not chosen to step into the witness box concluded that the accident had occurred on account of rash and negligent driving by respondent No. 1 Mehar Singh. Such finding is proper and appropriate and does not call for any interference. With regard to the compensation awarded on account of death of Gurdass, the Tribunal has taken his age to be 27 years, his avocation as a Mason and his monthly income as Rs.2100/- disbelieving the version of the claimants that he was earning Rs.6000/- per month. Though no deduction towards personal and living expenses has been made but at the same time no addition towards future prospects has been allowed when 40% of the monthly income is to be added

towards future prospects in terms of the law settled by the Apex Court in '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*'.

The Tribunal has awarded a sum of Rs.5000/- as funeral expenses and Rs.5000/- on account of loss of consortium whereas in view of judgment '*National Insurance Company Limited Versus Pranay Sethi and Others 2017 (4) R.C.R. (Civil) 1009*' Rs.70,000/- is to be awarded under conventional Heads. Compensation of Rs.4,63,600/- is proper and adequate and does not call for any reduction. Similarly a sum of Rs.6,000/- awarded to Gurdebo for suffering injuries can certainly be not termed to be on higher side though it appears to be some what on the lower side. It needs to be mentioned here that after suffering injuries Gurdebo had remained admitted in hospital at Ambala and then referred to PGI, Chandigarh. As is evident from OPD Card she was in family way at the time of accident. She had spent a sum of Rs.2553/- on her medical treatment in terms of bills Ex.P4 to P30. The amount awarded to her under various Heads can be said to be meager but certainly not on higher side.

The appeal is without any merit, therefore, the same stands dismissed.

**(H.S. MADAAN)
JUDGE**

November 14, 2019

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No