

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

FAO-2717-2001(O&M)

Date of decision:-17.12.2019

Heera Lal and another

...Appellants

Versus

Kamrudeen and others

...Respondents

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

Present: Mr.B.S. Walia, Advocate
for the appellants.

Ms.Shamsher Kaur, Advocate
for respondent No.3 – Insurance company.

H.S. MADAAN, J.

Petitioners/claimants Heera Lal – father and Smt. Rama Devi – mother of Jai Singh, aged about 18 years, an unfortunate victim of a road side accident had initially brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against the respondents i.e. Kamrudeen – driver, Prem Parkash – owner of jeep bearing registration No.HR-13/7015. With regard to the insurance company of the offending vehicle, its particulars were not given and rather it was mentioned that those would be supplied later on by respondents No.1 and 2. Subsequently, The Oriental Insurance Co. Ltd., New Delhi and Satyabir Singh existing owner of the jeep were added as respondents No.3 and 4, respectively.

As per the version of the claimants on 16.3.1998, deceased

Jai Singh along with one Nathu Ram boarded a jeep bearing registration No.HR-13-7015 from village Dharuhera to reach his village Kapriwas; the said jeep reached within the revenue estate of village Malpura, which is situated adjacent to village Kapriwas; the jeep was being driven by respondent No.1 – Kamrudeen in a very rash and negligent manner; when respondent No.1 Kamrudeen slowed down the jeep for a moment, the deceased thought that the jeep had reached his destination and he tried to alight from the jeep but respondent No.1 – Kamrudeen immediately accelerated the speed of the jeep as a result Jai Singh and one more passenger fell down and another four-wheeler bearing registration No.HR-47/320 struck against Jai Singh and his co-passenger. Both of them sustained injuries; Jai Singh died at the spot, whereas the other co-passenger was taken to Delhi, in that way the accident had taken place due to negligence of respondent No.1 – Kamrudeen driver of jeep No.HR-13-7015 and driver of four-wheeler bearing registration No.HR-47/320 but particulars of four-wheeler could not be ascertained, therefore its driver, owner and insurance company could not be impleaded as respondents. FIR No.115 dated 16.3.1998 for the offences under Sections 279, 337 and 304-A IPC was registered with Police Station Dharuhera with regard to the accident. Postmortem examination on the dead body of Jai Singh was conducted at Civil Hospital, Bawal. The petitioners/claimants prayed for grant of compensation of Rs.4 lakhs with interest and cost.

According to the claimants, the deceased Jai Singh was a student and in addition to that he used to extend his helping hand to his parents in the agricultural work value of which was Rs.2,000/- per month.

Notice of the claim petition was given to all the respondents. Respondents No.1 and 2 did not appear despite service and as such were proceeded against ex parte. However, respondent No.3 – insurance company had appeared and filed written statement contesting the claim petition. During the trial, it came out that Satybir Singh son of Ram Chander, resident of village Khandsa, District Gurgaon had purchased jeep No.HR-13-7015 from its previous owner, as such he was also impleaded as respondent No.4 in the claim petition. Notice was issued to him but he failed to put in appearance despite service and was proceeded against ex-parte.

In the written statement filed on behalf of respondent No.3 – insurance company, it took up various legal objections contending that petition was bad for non-joinder of necessary parties inasmuch as the alleged accident, if any had happened due to rash and negligent driving of four-wheeler No.HR-47-320 and the driver and owner of that vehicle had not been impleaded as respondents, therefore, petition was liable to be dismissed against the answering respondent; that the deceased was an unauthorized passenger, therefore petitioners were not entitled to get compensation; that the alleged accident had not been caused by the jeep in question, therefore the answering respondent does not have any liability; that the answering respondent would not liable to indemnify the insured in case the alleged jeep was found to be used in contravention of the provisions of the Insurance Policy and its driver was not holding a valid and effective driving licence at the time of alleged accident. The answering respondent denied the accident but contended that in case the

Tribunal came to the conclusion that both the vehicles were negligent and deceased was also negligent, then proportionate, composite and contributory negligence be fixed on both the vehicles. On merits, such respondent denied the material assertions in the claim petition, in the end praying for dismissal of such claim petition.

Issues on merits were framed. Parties were afforded adequate opportunities to lead evidence.

On conclusion of the trial, the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as the Tribunal) while allowing the petition vide award dated 1.2.2001, awarded compensation of Rs1,92,000/- to the claimants. It was held to be a case of contributory negligence and the liability to pay compensation was apportioned between owners, drivers and insurers of both the vehicles in equal shares. Therefore, respondent No.1 – Kamrudeen – driver, respondent No.4 – Satyavir Singh – owner and respondent No.3 – insurance company of the jeep No.HR-13-7015 were directed to pay 50% of the compensation amount coming to Rs.96,000/- with interest at the rate of 9% per annum from the date of the accident till the date of actual payment to the claimants.

Feeling that the compensation awarded to them was on lower side, the claimants have filed the present appeal seeking enhancement of compensation, notice of which was given to respondents and respondent No.3 (insurance company) has put in appearance through counsel.

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

Learned Tribunal on analysis of the evidence adduced before it in light of the facts and circumstances of the case came to the conclusion that respondent No.1 – Kamrudeen, driver of jeep bearing No.HR-13-7015 was rash and negligent in driving and because of his rashness and negligence, deceased Jai Singh had fallen from the jeep. The driver of four-wheeler bearing No.HR-47/320 was also rash and negligent, in that way, it was held to be a case of contributory negligence on the part of drivers of both the vehicles in question.

I find that the verdict so given is not proper and appropriate. PW1 Nathu Ram, who had provided eye-witness account of the accident stating that he was also travelling in the same jeep in which Jai Singh was travelling had contended that after some time driver of the jeep had slowed down the jeep and PW1 Nathu Ram and Jai Singh thought that the jeep had reached their village and they started getting down from the jeep but driver of the jeep suddenly accelerated the speed in a rash and negligent manner, as a result, Jai Singh fell down and received injuries; by that time another vehicle TATA 407 No.HR-47/320 came at a fast speed and it was also being driven in a careless manner and it struck Jai Singh; resultantly Jai Singh died. Then there is FIR Ex.P1 recorded regarding the accident. The contents of the FIR and the eye-witness account of the accident provided by PW1 Nathu Ram point out that primarily it was rash and negligent driving of the jeep by respondent No.1 – Kamrudeen, which had resulted in the accident. Kamrudeen being driver of the jeep from which deceased was alighting, it was his duty to ensure that the jeep was at standstill till the deceased and other passengers had got down from it

and he should have put it into motion thereafter. Of course there was lack of care and caution on the part of the jeep driver and his action is obviously indicative of rashness and negligence on his part resulting in the deceased falling down and receiving injuries. Thus rashness and negligence on the part of the jeep driver was the direct and proximate cause of the accident. The four-wheeler driver could not be expected to anticipate that a person would fall down from the jeep in such a manner and then to take necessary precautions. The deceased can also be not blamed in any manner in happening of the accident. How the Tribunal has come to the conclusion that it was a case of contributory negligence is not very clear from the discussion in the impugned award. As it transpires rash and negligent driving of the jeep by respondent No.1 was the direct and proximate cause of the accident and it cannot be taken to be a case of contributory negligence. It needs to be mentioned here that respondent No.1 driver of the jeep did not step into the witness-box to state that he was not at fault in happening of the accident or for that matter blame for the accident was to be shared by driver of the four-wheeler to some extent. Therefore, finding of Tribunal on issue No.1 is not fully correct. The same is modified holding that the accident in question had taken place on account of rash and negligent driving of offending jeep by respondent No.1 – Kamrudeen.

Issue No.3 was decided by the Tribunal against the respondent – insurance company holding that since it had failed to lead any evidence regarding violation of terms and conditions of the insurance policy, it is jointly and severally liable with other respondents for payment

of compensation. This finding is proper and does not call for any interference.

Now coming to issue No.2 while quantifying the compensation, the Tribunal has taken age of deceased to be 18 years and considered him to be a student of Class 11th. The minimum wages of Rs.1,000/- had been taken. But I find that such approach of the Tribunal was not correct.

In **R.K. Malik & Anr. Versus Kiran Pal & Ors., 2009(3) RCR(Civil)403** Hon'ble Apex Court while dealing with a case of death of 29 school going children in a motor vehicular accident when they were travelling in a bus, has observed that multiplier method normally be adopted for assigning value of future annual dependency and pecuniary compensation be awarded keeping in view second schedule of Motor Vehicles Act. Whereas with regard to non pecuniary compensation, it was observed that it should not be fixed on the basis of economic wealth and background since the loss of expectancy of life and pain and suffering on that account are common and uniform to all regardless of status. It was observed that there are emotional attachments involved and loss of a child can have a devastating effect on the family and that it is extremely difficult to quantify the non-pecuniary compensation since it is to a great extent based upon the sentiments and emotions.

Learned counsel for the appellant has further referred to judgment **Kishan Gopal and another Versus Lala and others, 2013(4) RCR(Civil)276** by the Apex Court when dealing with death of child aged 10 years when the child was assisting his parents in agricultural

occupation, it was observed that had the deceased child been alive, he would have contributed substantially to the family of the appellants by working hard, the notional income of the child was taken as Rs.30,000/-. Since his parents were young aged 36 years, multiplier of 15 was applied and Rs.50,000/- were awarded under the conventional heads i.e. loss of love and affection, funeral expenses and last rites and total compensation of Rs.5 lakhs was awarded.

In a judgment by a Co-ordinate Bench of this Court passed in FAO-7140 of 2017 titled ***Reena Kanwar and another Versus Gautam Ray and others*** and FAO No.7143-2017 titled ***Reena Kanwar and another Versus Gautam Ray and others*** decided on 26.4.2018, when in cases of death of a child aged 8 years and 6 years, compensation of Rs.9,15,000/- was awarded. Similarly judgment passed by Co-Ordinate bench of this Court in FAO No.9410-2014 titled ***Prem and another Versus Parlad and others*** decided on 27.11.2018 was referred wherein in case of death of a child aged 10 years and 14 years, compensation of Rs.8,60,000/- was awarded.

I find that since in the present case, the accident had taken place on 16.3.1998 i.e. more than 21 years earlier, it would be proper and appropriate if the compensation in this case is enhanced to Rs.5 lakhs and it is ordered accordingly.

The Tribunal had directed respondent No.1 – Kamrudeen – driver, respondent No.4 – Satyavir Singh – owner and respondent No.3 – insurance company of the jeep No.HR-13-7015 to pay 50% of the compensation amount coming to Rs.96,000/- with interest at the rate of

9% per annum from the date of the accident till the date of actual payment to the claimants.

In this way, the additional amount comes out to Rs.4,04,000/- (5,00,000 - 96,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the additional amount of Rs.4,04,000 /-. Respondent No.1 – Kamrudeen being driver, respondent No.3 – Oriental Insurance Company – insurer and respondent No.4 - Satyavir Singh – owner of the jeep bearing No.HR-13/7015 are liable to pay the compensation amount jointly and severally. The additional amount be apportioned among both the claimants in equal shares.

With such modification, the appeal is allowed partly with costs.

17.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No