

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

**FAO-4737-2004 (O&M)
Date of decision : 30.4.2019**

Smt. Kela Devi and others

..... Petitioners

Versus

Sh. Ajmer Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Robin Dutt, Advocate and
Mr. Varun Sharma, Advocate for the petitioners.

Mr. D.K.Dogra, Advocate for respondent No. 4.

KULDIP SINGH, J.

Appellants are aggrieved by the order dated 1.6.2004, passed by learned Motor Accident Claims Tribunal, Ambala vide which claim petition filed by claimants-appellants was dismissed.

Brief facts of the case are that on 11.5.2003, Raj Kumar while driving Scooter No. HR-04-9111 was going towards his village on Saha Sahzadpur Highway. Anil Kumar was the pillion rider. At about 1.30. p.m., when Raj Kumar just reached ahead of Shah Grain Market and was in the process of overtaking a tractor-trolley No. HR01M-0877 being driven by respondent No. 3 namely Ravinder Kumar, tractor driver without giving any indication or signal, turned his tractor-trolley towards the right side in a rash and negligent manner. Raj Kumar could not stop his scooter which dashed against the right side wheel of the tractor. As a result of the accident,

scooter of Raj Kumar was dragged to a considerable distance. Raj Kumar suffered multiple injuries on his vital parts of the body. Anil Kumar fell on the road side and suffered minor injuries. Raj Kumar was removed to PGI, Chandigarh by Anil Kumar in a private vehicle. However, Raj Kumar succumbed to the injuries on the next day at about 6.00 P.M. On the statement of Anil Kumar, police registered an FIR No. 96 under Sections 279/337/304-A of the Indian Penal Code at Police Station, Mullana.

It is stated that the deceased-Raj Kumar left behind his widow, three minor children and also his widow mother. Raj Kumar was 38 years of age at the time of accident and was working as mason. He was having the income of Rs. 6000/- per month. Claimants claim Rs. 20.00 lacs as compensation.

Respondents No. 1 and 3 owner and driver of the tractor in their joint written statement claimed that their tractor has been falsely involved in the accident to claim compensation. No accident was caused by the tractor. Insurance Company in its written statement denied the involvement of tractor No. 877 in the accident and also denied the liability to pay the compensation.

From the pleadings, following issues were framed: -

1. Whether the death of Raj Kumar took place due to rash and negligent driving of tractor No. HR01M-0877 by respondent No. 3? OPD.
2. Whether the claimants are the only legal heirs of deceased Raj Kumar and entitled to compensation. If so, how much and from whom? OPP.
3. Whether respondent No. 4 is not liable for payment of compensation, as alleged in the preliminary objections of the

written statement? OPR.

4. Relief.

While deciding issue No. 1, the Tribunal disbelieved the statement of eye-witness-Anil Kumar and recorded the findings that Anil Kumar was not riding as a pillion rider on the scooter of his maternal uncle-Raj Kumar at the time of accident. It was further held that there is no other evidence. Hence, issues No. 1, 2 and 3 were decided against the claimants and the claim petition was dismissed.

Heard, learned counsel for the parties and have carefully perused the lower Courts record.

The first and foremost question arises for consideration is as to whether it is proved that respondent No. 3-Ravinder Kumar was driving tractor i.e. New Holland Ford Tractor No. HR01-M-0877 in rash and negligent manner which resulted in accident with the scooter being driven by Raj Kumar, resulting in his death.

The Tribunal has taken the view that Anil Kumar did not get himself medically examined so as to show that he actually suffered injuries. There was no document that Anil Kumar had removed Raj Kumar to the hospital. Anil Kumar had made the statement before the police at 8.00 PM in PGI on 12.5.2003 whereas according to Anil Kumar, police reached at the spot within few minutes. Further in the FIR, only make of the tractor name i.e., New Holland 3630 was given and registration number was not given. However, during the evidence, Anil Kumar stated that number of the tractor was 877.

First of all taking up the post mortem report (Ex. PA), it comes

out that it is recorded by the doctor in the post mortem report that it is a case of road side accident. Therefore, death of Raj Kumar is attributed to road side accident. Now the question is as to whether the statement of Anil Kumar is to be believed or not? Copy of the FIR (Ex. PB) shows that Anil Kumar had stated that it was tractor i.e. New Holland 3630. The name of the driver is not mentioned in the FIR.

Learned counsel for the Insurance Company has heavily relied upon the fact that Anil Kumar had stated that he was also dragged on the road for long distance along with the scooter. However, Anil Kumar did not get himself medically examined. He claimed in the cross-examination that he suffered minor injuries.

I am of the view that the fact that Anil Kumar did not get himself medically examined cannot be made sole basis to discard his testimony. Raj Kumar was driving the scooter and there is every possibility that Raj Kumar was stuck in the scooter when it was hit by the tractor from the rightside. While there is every possibility that the pillion rider fell down on the one side and did not receive major injuries. Since Raj Kumar was serious, Anil Kumar was justified in not immediately indulging in the formalities of getting his statement recorded before the police and getting himself medically examined. He was justified in rushing Raj Kumar to the hospital. The fact remains that Raj Kumar was immediately removed to PGI, Chandigarh. In the examination in-chief, he stated that he had first removed the injured to Civil Hospital, Ambala Cantt., from where he was referred to PGI, Chandigarh. Since the place of accident is near Ambala and even if the injured is removed in such a condition to Civil Hospital, Ambala,

considering the serious condition of the patient, the hospital might have advised the witness to take him to PGI, Chandigarh. In the cross-examination, a suggestion was put to Anil Kumar that accident was caused by some other vehicle which fled from the spot and that he was not present at the spot with his maternal uncle.

It goes to show that the accident is not denied. Since Anil Kumar also fell down and was in hurry to remove the injured to the hospital and the tractor driver fled away, therefore, the witness is most likely to remember fewer details of the tractor. Therefore, the fact that he mentioned the make of the tractor i.e., New Holland 3630 only in the FIR is no ground to discard his testimony.

In the statement, he has specifically given the number of the tractor as HR01-M-0877. Therefore, there is no ground to discard the testimony of Anil Kumar. As such it is held that respondent No. 3-driver drove the truck No. HR01-M-0877 rashly and negligently and caused the accident which resulted into the death of Raj Kumar.

Hence, the findings on issue No. 1 are reversed.

Now coming to the question of compensation, it is stated by Anil Kumar and his wife that deceased was a mason. He was aged about 40 years as per the post mortem report. The monthly wages of a skilled worker in the year 2003 were around Rs. 2740/-. Since the deceased was self employed and considering his age as 40 years, 25% is to be added as future prospects which comes to Rs. 685/-. His total income comes to Rs. 3425/- from which 1/4th i.e. 856 is to be deducted. The effective income comes to Rs. 2569/-. Since the multiplier of 15 is to be applied, the amount comes to

Rs. 2569x12x15 which comes to Rs. 4,62,420/-. Rs. 70,000/- on account of conventional heads i.e. loss of estate, loss of consortium and funeral expenses are allowed. Since the deceased left behind his three minor children, Rs. 40,000/- is allowed to each appellant towards loss of love and affection and consortium which comes to Rs. 1,20,000/- in terms of the authority of Hon'ble Supreme Court contained in '*Magma General Insurance Company Ltd. vs. Nanu Ram @ Churu Ram*', 2018(4) RCR (Civil) 333. Hence, the total amount comes to Rs. 6,52,420/-. Since the offending tractor was ensured with the Insurance Company, Insurance Company shall be liable to pay the amount of compensation.

In view of the foregoing discussions, appeal is allowed. The impugned award passed by Motor Accident Claims Tribunal on 1.6.2004 is set aside. Respondent-Insurance Company is ordered to pay an amount of Rs. 6,52,420/- as compensation to the claimants-appellants along with interest @ 7% per annum from the date of filing of claim petition i.e. 13.6.2003 till payment. It is further ordered that out of the amount of compensation 10% shall go to the mother of the deceased, if she is alive. Otherwise her share will also go to the remaining claimants. Remaining compensation shall be equally shared by claimants No. 1 to 4 in equal shares. Memo of costs be also prepared.

Appeal stands allowed accordingly.

(KULDIP SINGH)
JUDGE

30.4.2019
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