

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

FAO No.459 of 2007 (O&M)

Date of decision: 04.12.2019

Smt. Babi Rani and others

....Appellants

Versus

Gurdial alias Bhura and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Akshay Jindal, Advocate,
and Ms. Stuti Goel, Advocate,
for the appellants.

Mr. Vinod Chaudhri, Advocate,
for insurance company-respondent No.4.

RITU BAHRI J. (Oral)

This appeal is directed against the Award dated 11.11.2006 passed by the Motor Accident Claims Tribunal, Kurukshetra (hereinafter referred to as 'the Tribunal') dismissing the claim petition filed by the claimant-appellants seeking compensation on account of death of Rajbir in a motor vehicular accident which took place on 28.09.2004. Appellant No.1 is widow, appellant Nos.2 & 3 are children of deceased Rajbir.

Brief facts of the case are that on 28.09.2004, at about 5.30 A.M., Rajbir (since deceased) along with Tarsem Kumar was going on a bicycle towards Ladwa *Sabji Mandi* for purchasing some vegetables. At about 6.00 A.M., when they crossed the bus-stand of village Gudha, in the meantime, a tractor-trolley being driven by Gurdial Singh @ Bhura-respondent No.1 in a rash and negligent manner, came from the side of Mustafabad and struck against the bicycle, as a result of which, Rajbir fell

where, he was referred to LNJP Hospital, Kurukshetra. Thereafter, he was referred to PGI, Chandigarh, where he succumbed to the injuries on 29.09.2004. With regard to the accident, FIR No.86 dated 29.09.2004, under Sections 279/304-A IPC was registered against respondent No.1 at Police Station, Babain. Consequently, the claimant-appellants filed a claim petition under Section 166 of the Motor Vehicle Act before the Tribunal.

After going through the entire evidence led by the parties, the Tribunal had observed that initially, name of the driver of offending vehicle was given by Tarsem Kumar (PW-3) as Basu son of Sadhu Ram, resident of village Gudha, which later on, was changed vide supplementary statement Mark-P3, as Gurdial alias Bhura son of Beeru Ram, resident of village Gudha. Eye witness Tarsem Kumar (PW-3), during his cross-examination, stated that Basu was known to him by face and the persons, who had gathered at the spot, had also told him that the said accident was caused by Bhura. Tribunal has further observed that when Tarsem Kumar came to know about name of Gurdial alias Bhura being driver, it had not been explained as to why he had mentioned Basu son of Sadhu Ram as the driver of the offending vehicle. It has further been observed that Gurdial alias Bhura had been later on introduced as driver because Basu son of Sadhu Ram might not having a driving license. On the basis of these findings, Tribunal came to a conclusion that the claimants have failed to make out a case that said accident had been caused by respondent No.1 while driving the offending tractor bearing registration No. HR-02-D-9278. Ultimately, the claim petition was dismissed. Hence, the present appeal.

Heard. A perusal of the impugned award shows that

in this case, FIR Mark P-2 was registered on the statement of

Tarsem Kumar (PW-3), who was an eye witness of the accident. The Tribunal has observed that initially, name of the driver was mentioned by Tarsem Kumar as Basu son of Sadhu Ram, resident of village Gudha. Later on while recording his supplementary statement Mark P-3, name of the driver was changed to Gurdial alias Bhura son of Beeru Ram, resident of village Gudha. The Tribunal has further observed that in his cross-examination, Tarsem Kumar (PW-3) has stated that Basu was known to him by face and his name was given by the persons, who had gathered on the spot. In this backdrop, Tarsem Kumar had introduced the name of Gurdial @ Bhura in order to save Basu as he might not having a driving licence.

On 14.11.2019, learned counsel for the insurance company sought time to get the relevant information with respect to the records of the criminal trial. Today, learned counsel for the insurance company has shown a copy of judgment dated 05.03.2011, whereby driver Gurdial @ Bhura has been acquitted of the charges in criminal trial. A perusal of the said judgment shows that the trial Court has observed that prosecution had examined four witnesses and none of them have stated even a single word with regard to rash and negligent driving on the part of accused Gurdial @ Bhura. A perusal of the said judgment further shows that Tarsem Kumar was not examined (in that case) as a witness by the prosecution. However, this witness had appeared before the Tribunal as PW-3 and stated that he had accompanied Rajbir on 28.09.2004 on a cycle and when the offending tractor struck against Rajbir, he fell down and sustained injuries. His arm was found amputated. Thereafter, Rajbir was shifted to Government Hospital, Ladwa for first aid and thereafter, he was referred to LNJP Hospital, Kurukshetra, from where, he was taken to PGI, Chandigarh. In his

supplementary statement Mark P-3, this witness had stated that earlier, he had given the name of driver as Basu son of Sadhu Ram, which was incorrect. Later on, he had corrected it and given the name of driver as Gurdial alias Bhura.

It is not in dispute between the parties that tractor, involved in accident in question, is owned by Sadhu Ram. Another important factor is that the claim petition was dismissed by the Tribunal on 11.11.2006, whereas the driver has been acquitted by the criminal court on 05.03.2011 after a gap of more than five years and it is a case where the prosecution has not examined Tarsem Kumar as one of the prosecution witnesses. He was eye witness of the accident, who had initially taken the deceased to the hospital. His presence at the time of accident is not in dispute. On the ground that the prosecution has miserably failed to lead evidence before the criminal Court, claim petition filed under the Motor Vehicle Act, could not be dismissed. There was sufficient evidence before the Tribunal to proceed for calculating the compensation on account of death of Rajbir. Mechanical test report (Annexure A-3) of the offending tractor shows that the said vehicle was involved in the accident. In these circumstances, the claimants are held entitled to get compensation on account of death of Rajbir in the motor vehicular accident, which had taken place on 28.09.2004. While deciding issue No.2, the Tribunal has assessed the income of deceased as Rs.2400/- per month. The deceased was 25 years of age at the time of accident. Further, the Tribunal has also held that Gurdial alias Bhura-respondent No.1 was having a valid driving licence as on 28.09.2004 and the tractor bearing registration No. HR-02-D-9278 was insured with United India Insurance Company-respondent No.5 (respondent No.4 before the

Tribunal) as per insurance policy Ex.R4. In the peculiar facts and circumstances of the case, to meet the ends of justice, the compensation is hereby assessed in view of the judgments passed by Hon'ble the Supreme Court in **Sarla Verma and others vs. Delhi Transport Corporation and another**, 2009 (3) RCR (Civil) Page 77, **National Insurance Company Limited vs. Pranay Sethi and others**, Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017), and **Magma General Insurance Company Ltd. vs. Nanu Ram alias Chuhru Ram and others**, Civil Appeal No.9581 of 2018, as under:-

Sr. No.	HEADS	CALCULATIONS
(i)	Income	Rs.2400/- per month
(ii)	40% of (i) above to be added as future prospects	2400 + 960 = Rs.3360/-
(iii)	1/4 th of (ii) above is deducted as personal expenses of the deceased	3360 – 840 = Rs.2520/-
(iv)	Compensation after multiplier of 18 is applied	Rs.2520/- x 12 x 18 = Rs.5,44,320/-
(v)	Loss of estate	Rs.15,000/-
(vi)	Funeral expenses	Rs.15,000/-
(vii)	Loss of consortium to widow-appellant No.1	Rs.40,000/-
(viii)	Loss of filial consortium to the children-appellant Nos.2 and 3	Rs.80,000/- (Rs.40,000/- each)
(ix)	TOTAL COMPENSATION AWARDED	Rs.6,94,320/-

Total amount of compensation of **Rs.6,94,320/-** shall be payable by respondent No.5-Insurance Company (United India Insurance Company Ltd.) being insurer of offending vehicle to the claimants, within a period of two months from the date of receipt of certified copy of this order. The amount of compensation shall carry interest @ 9% per annum from the date of filing of the claim petition, till its realization, in view of the

judgment of Hon'ble the Supreme Court in the case of “**Dara Singh @ Dhara Banjara vs. Shyam Singh Varma and others**, Civil Appeal No.4528 of 2019 (arising out of SLP (C) No.5720 of 2019) (decided on 01.05.2019).

The appeal is allowed in the above terms.

(RITU BAHRI)
JUDGE

04.12.2019

ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No