

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

FAO-5995-2010(O&M)

Date of decision:-27.9.2019

Mrs.Bhawna Sharma and others

...Appellants

Versus

Ram Davan and others

...Respondents

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

Present: Mr.Kunal Muthreja, Advocate
for the appellants.

Mr.Sameer S.Tiwari, Advocate
for respondents No.1 and 2.

Mr.Gopal Mittal, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, facts of the case as per the version of the claimants are that Ms.Balwant Gargi along with her co-employee Saurabh Chawla were returning to Faridabad from Noida in an Indica car bearing registration No.HR38N(T) 3004, which was being driven by Lalit Sharma and when they reached near turning of Bata on G.T. Road, a truck bearing registration No.HR-38G-9784 (hereinafter referred to as the offending vehicle) being driven by respondent No.1 – Ram Davan in a rash and negligent manner at a high speed without blowing horn, came from behind and while trying to overtake the car, struck against it on the driver side; all the occupants of the car sustained injuries; formal FIR with

regard to the accident was lodged. Lalit Sharma and Ms.Balwant Gargi succumbed to the injuries.

The parents of deceased Smt.Balwant Gargi, namely, Sh.Mohinder Singh – father and Mrs.Suraj Kanwal - mother had brought a claim petition bearing MVA No.178 dated 5.10.2007 against respondents i.e. Ram Davan – driver, Rattan Lal Goyal – owner and United India Insurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.25 lakhs.

The legal representatives of deceased Lalit Sharma i.e. Smt.Bhawna Sharma – wife, Baby Riya, aged about three and half years – minor daughter, Master Madhav Sharma, aged about two years – minor son and Smt.Usha Sharma – mother had also brought a claim petition bearing No.RBT/143 dated 23.10.2008 against the above-said respondents, claiming compensation to the tune of Rs.15 lakhs.

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

Issues on merits were framed and the parties were afforded adequate opportunities to lead evidence.

On conclusion of trial, both the claim petitions were dismissed by the Tribunal vide Award dated 20.10.2009.

The claimants in Claim Petition No.RBT/143 dated 23.10.2008 have approached this Court by way of filing an appeal praying that the impugned award passed by the Tribunal be set aside and their claim petition be accepted and compensation be awarded to them.

On notice, respondents No.1 to 3 have appeared through counsel.

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

To prove that the accident in question had taken place due to rash and negligent driving of the offending truck by respondent No.1 – Ram Davan, the claimants had examined HC Om Parkash as PW2, who had brought the summoned record proving the copy of FIR as Ex.P2. PW6 Rakesh Kumar had provided the eye-witness account of the accident. Since he had not supported the case of the claimants fully, he was got declared a hostile witness and was confronted with his previous statement Ex.P6. PW9 Saurabh Chawla in his affidavit Ex.PW9/A provided eye-witness account of the accident supporting the case of the claimants on material points. It was he who had lodged FIR Ex.P2 regarding the accident. PW8 Mahender Singh, Ahlmad had brought the summoned file and stated that Ram Davan was facing trial and the vehicle had been taken on superdari on 10.7.2007. Learned counsel for the claimants had tendered copy of report under Section 173 Cr.P.C. as Ex.P19.

In rebuttal, respondent No.1 had got his statement recorded as RW2 submitting his affidavit Ex.RW2/A denying the accident stating that he had written an application to the police authorities on 10.7.2007 when he was falsely implicated by the police in collusion with the claimants. However, he admitted that he was facing trial.

The findings of the Tribunal on issue No.1 are obviously

erroneous based upon wrong interpretation of law and misappraisal of evidence. Learned Tribunal proceeded to decide the issue as if it was dealing with a criminal case and not a petition for compensation under Section 166 of the Motor Vehicles Act. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions.

The Tribunal was influenced by the fact that the vehicle number and the name of the driver are not mentioned in the FIR. But then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime.

The fact remains that respondent No.1 was booked for causing death of deceased in the motor vehicular accident by his rash and negligent driving of the offending motorcycle. The investigating agency had found evidence against him, for that reason he was sent up to face trial, formal charge had been framed against him, the prosecution had adduced evidence. The judgment of a criminal Court is not binding upon the Civil Court or Tribunal under motor vehicular accident. The Tribunal has to reach its own conclusion on the basis of evidence adduced before it, therefore such contentions put forward by learned counsel for the appellant – insurance company do not result in finding fault with verdict given by the Tribunal in the form of impugned award.

In *Girdhari Lal Versus Radhey Shyam and others, 1994(1) ACJ 168*, it was observed that when a driver is tried on account of rash driving that leads to a prima facie conclusion that the accident occurred due to his rash and negligent driving.

Under the circumstances, the verdict recorded by the Tribunal on issue No.1 is not sustainable and is set aside holding that respondent No.1 was author of the accident by his rash and negligent driving of the offending truck in which Lalit Sharma had suffered injuries to which he had succumbed.

With regard to quantum of compensation payable to the legal representatives of deceased Lalit Sharma, the Tribunal has assessed income of the deceased to be Rs.4,000/- and his age was taken to be 32 years. However, no addition towards future prospects was made.

In view of the guidelines laid in the judgment *National*

Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4)

RCR(Civil)1009, by the Apex Court, keeping in view the age of deceased to be 32 years, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.4,000 + 1,600 = Rs.5,600/-.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3)** **RCR(Civil)77** by Hon'ble Supreme Court deduction of 1/4th is to be made towards personal expenses. Doing that the dependency of claimants comes out to Rs.4,200/- per month, annual dependency comes out to Rs.4,200 x 12 = Rs.50,400/-.

As per guidelines laid down in judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra) multiplier of 16 would be appropriate. Doing that the compensation payable comes out to Rs.56,700 x 16 = 8,06,400/-.

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. 8,06,400 + 70,000 = 8,76,400/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization.

Of the compensation awarded, the liability shall be joint and several of both the respondents. The amount shall be apportioned as

follows:

1. Petitioner No.1 – Smt.Bhawna(wife) - 40%
2. Petitioners No.2 and 3 – Riya and Madhav(minors) – 25% each
3. Petitioner No.4 – Smt.Usha Sharma(mother) - 10%

It is directed that the shares of minor petitioners/claimants shall be kept deposited in the form of fixed deposit with some nationalized bank for the period till they attained majority.

Therefore, the appeal stands allowed accordingly.

27.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No