

FAO-4700-2012(O&M) and
FAO-4701-2012((O&M)

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

(1) FAO-4700-2012(O&M)

Suman and others

...Appellants

Versus

Anil Kumar and others

...Respondents

(2) FAO-4701-2012(O&M)

Pardeep Kumar

...Appellant

Versus

Anil Kumar and another

...Respondents

Date of Decision:-29.4.2019

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

Present: Mr.Ramender Chauhan, Advocate
for the appellants.

Mr.Pardeep Kumar, Advocate
for the Insurance Company.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-4700-2012 filed on behalf of appellants/claimants Suman and others and FAO-4701-2012 filed on behalf of appellant/claimant Pardeep Kumar, which have arisen out of the same accident.

Briefly stated, the facts of the case as per the version of the

claimants/petitioners are that on 22.3.2010 Pardeep Kumar son of Dharambir, resident of village Bhangarh, Tehsil & District Bhiwani along with Sh.Krishan Kumar son of Mahabir, resident of the same village were returning to their village Bhangarh from Bhiwani on a motorcycle having registration No.HR16E-8165; the motorcycle was being driven by Pardeep Kumar at a moderate speed on the left side of the road; that when the motorcycle with the riders aforesaid had reached near village Haluwas turn, then an Ambassador car bearing registration No.DL-4S-AC-0004 (hereinafter referred to as the offending vehicle) driven by respondent No.1 – Anil Kumar in a rash and negligent manner came from the opposite side and struck against the motorcycle, as a result both the riders of motorcycle fell down and suffered multiple injuries; that the motorcycle had also fallen on the ground; after the mishap, the offending vehicle driver sped it away; that Pardeep Kumar injured was hospitalized and he was medically treated, whereas injured Krishan Kumar had succumbed to the injuries suffered by him in the accident; the accident was witnessed by one Sh.Sanjay son of Sh.Mahabir; the matter was reported to the police by one Sh.Vinod son of Sh.Mahavir, resident of village Bhangarh, on the basis of which formal FIR No.124 dated 23.3.2010 for the offences under Sections 279, 337, 304-A IPC was registered with Police Station Sadar, Bhiwani.

Petitioner/claimant – Pardeep Kumar had filed a claim petition bearing MACT Case No.184 of 2010/2011 under Section 166 of Motor Vehicles Act against respondents i.e. Anil Kumar – driver-cum-owner and New India Assurance Company Ltd. - insurer of the offending

vehicle claiming compensation on account of injuries suffered by him in the motor vehicular accident.

The legal representatives of Sh.Krishan Kumar, who had lost his life in that very accident, namely, Smt.Suman aged 26 years – wife, Master Mohit – minor son, Baby Dipika – minor daughter and Sh.Mahabir – father had also brought a claim petition bearing MACT Case No.183 of 2010/2011 under Section 166 of the Motor Vehicles Act against those very respondents claiming compensation.

Both the claim petitions were tried together since those related to the same accident.

After contest, both the claim petitions were dismissed by the Tribunal vide Award dated 21.12.2011, which left the claimants aggrieved and they have filed separate appeals before this Court, notice of which were issued to the respondents. Only respondent – insurance company put in appearance to offer contest.

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

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 in this case has obviously done so, which has resulted in miscarriage of justice. The claimants had successfully proved that respondent No.1 was author of the accident by his rash and negligent driving of the offending car, as a result of which Krishan Kumar had lost his life, whereas Pardeep Kumar had suffered injuries. The claimants had adduced oral as well as documentary evidence in that regard.

The oral evidence comprised of statement on oath of PW7 Pardeep Kumar, who deposed in consonance with the case of claimants as given in the claim petition. Although he was cross-examined at length on behalf of the respondents, but his credibility could not be shattered on any material point. He having suffered injuries in the accident is a stamped witness and his presence at the spot at the relevant time cannot be doubted. PW2 Sanjay Kumar also provided the ocular version of the accident supporting the case of the appellants on material aspects. Again there is nothing to shake credibility of this witness. PW3 Dr. B.L. Bagri,

Medical Superintendent, Sarvodya Multispeciality Hospital, Hisar also lent support to the case of claimants stating that on 23.3.2010 at 12:30 a.m., Pardeep son of Dharambir, aged 28 years male, resident of Bhangarh, District Bhiwani was admitted in their hospital with alleged history of sustaining injuries due to a road side accident while he was going on a bike collided with unknown vehicle at about 8:00 p.m. on 22.3.2010 followed by profused bleeding and recurrent vomiting and oronasal bleeding. He stated that the injured was taken to General Hospital, Bhiwani where first aid was given and he was referred to PGIMS Rohtak, but he was brought to their hospital for further treatment. He proved copy of his MLR as Ex.PW3/A stating that the injured was discharged on 16.4.2010, proving the copy of discharge card as Ex.PW3/B. He had proved various other documents. PW8 SI Suresh Chand from Police Station Sadar, Bhiwani had brought the police file of FIR No.124 dated 23.3.2010 for the offences under Sections 279, 337, 338 and 304-A of Police Station Sadar, Bhiwani having title 'State Versus Anil'. This witness deposed that the FIR was lodged on the statement of Vinod son of Mahavir against unknown driver and unknown vehicle on 23.3.2010. He proved copy of FIR as Ex.P58 stating that the offending vehicle was involved in the accident and it was taken into possession on the statement of Sanjay son of Mahabir, resident of Sewa Nagar, Gawar Factory, Bhiwani and that statement of Sanjay was recorded on 17.4.2010. Going further, the witness stated that the statement of Pardeep was also recorded on 17.4.2010, who had deposed regarding involvement of that very vehicle in the accident. He proved photocopies of statement of both

the witnesses as Ex.PW8/A and Ex.PW8/B.

The claimants have placed on record copy of charge-sheet Ex.P56, certified copy of challan Ex.P57.

Whereas in rebuttal respondent No.1 did not appear in the Court to state on oath that he was not author of the accident by his rash and negligent driving or that the offending vehicle belonging to him was not involved in the mishap. Therefore, the evidence adduced by the claimants has gone un rebutted.

The Tribunal has completely ignored all these facts and wrongly discarded the evidence adduced by the claimants. A fact which seems to have weighed very heavy on the mind of the Tribunal was that the FIR was lodged against an unknown vehicle and unknown driver and details of the vehicle were given on 17.4.2010. However, the legal and factual position has not been interpreted by the Tribunal in a proper manner. The Tribunal lost sight of the fact that FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. It is only during investigation, after registration of the FIR that the investigating agency probe the matter and find out as to whether any cognizable offence is disclosed against the accused. Here PW8 SI Suresh Chand, the Investigating Officer has clearly stated that during the investigation involvement of the offending vehicle was found to be there in the accident and respondent No.1 – Anil Kumar was booked for the accident and since sufficient incriminating evidence was found against him and he was forwarded to face trial and formal charge has been framed against him. Those facts were completely ignored by the Tribunal.

Furthermore with regard to the delay in giving the registration number of the offending vehicle and details of its driver, it has to be kept in mind that Pardeep Kumar injured remained hospitalized for quite some time on account of injuries suffered by him in the mishap and as deposed by PW3 Dr.B.L. Bagri, Pardeep Kumar was admitted in their hospital on 23.3.2010 and discharged on 16.4.2010. He had made statement to the police on the very next day on his discharge giving necessary details of the vehicle involved in the accident. Therefore, such delay cannot be said to be intentional or deliberate. With regard to the other eye-witnesses not giving such details to the police earlier, for such omission on their part the case of the claimants cannot be made to suffer. Learned counsel for the insurance company has contended that after conclusion of the criminal trial respondent No.1 – accused had been acquitted since PW7 Pardeep Kumar and PW2 Sanjay eye-witnesses cited by the prosecution had failed to identify respondent No.1 – accused as driver of the offending vehicle and to disclose the registration number of such vehicle and this aspect has been dealt in detail in the judgment by the criminal Court, therefore, the witnesses have played fraud upon the Court and the claim petition was rightly rejected by the Tribunal. In support of such arguments learned counsel for the insurance company has referred to a judgment passed in FAO No.55 of 2013 titled 'The Oriental Insurance Co. Ltd. Versus Kamla and others' decided on 4.3.2016 by a Co-ordinate Bench of this Court. Even if it is taken that conviction of accused could not be procured in the criminal case that does not effect the merit of this case since as already discussed above, the yardstick for decision of a

criminal case and a claim petition under Section 166 of the Motor Vehicles Act is quite different. The judgment of criminal case is certainly not binding upon the Tribunal. The Tribunal has to reach its own conclusion on the basis of evidence adduced before it. Even it is taken that the eye-witnesses had resiled during the trial, however, if they support the case of claimants in proceedings under Section 166 of Motor Vehicles Act, their depositions cannot be rejected solely for the reason that they had not supported the case of prosecution in the criminal trial. The argument advanced by learned counsel for the insurance company is not convincing and plausible and the same is hereby rejected. The judgment referred to by him is also not applicable due to different facts and circumstances of the case and the context in which such observations had been made. It has to be taken into view that every case has got its own facts and observations made by the Court are to be interpreted in light of circumstances of the case, where the observations had been made and not in isolation. In the present case taking into view the totality of the facts, it does not come out that the claimants are playing any fraud upon the Tribunal or foundation of their case is laid on falsehood. Therefore, findings of the Tribunal on issue No.1 is obviously wrong and are reversed deciding the issue in favour of the claimants and against the respondents holding that the accident which took place on 22.3.2010 at 10:30 p.m. causing injuries to Pardeep Kumar in MACT Case No.184 of 2010/2011 and death of Krishan Kumar son of Mahabir was due to rash and negligent driving of Ambassador car bearing No.DL-4S-AC-0004 by respondent No.1 Anil Kumar.

The Tribunal has left issue No.2 undecided when verdict with regard to that issue should have been given. Now this issue is taken up for decision now.

Firstly taking up MACT Case No.184 of 2010/2011 filed on behalf of petitioner/claimant Pardeep Kumar. As per the evidence available on the record, Pardeep Kumar was aged about 28 years at the time of accident. In view of the testimony of PW4 Sh.Bhupender Singh, Proprietor of Bhawani Electronic, Bhiwani, who had submitted his affidavit Ex.PW4/A in which he had stated that Pardeep Kumar was working as Salesman at their shop since April, 2008, getting Rs.8,000/- per month as salary. He had proved the salary certificate as Ex.P31. Keeping in view the fact that the accident had taken place in the year 2010 and the prevalent wages of unskilled/semi skilled workers and for that matter the wages payable to the persons working as manual labourers amount cannot be said to be on higher side. From the statement of PW3 Dr.B.L. Bagri, it comes out that the injured was hospitalized on 23.3.2010 and was discharged on 16.4.2010. Considering the nature and extent of injuries suffered by Pardeep Kumar, he would not have been able to perform his normal work for considerable time. Learned counsel for the insurance company has referred to a circular issued by Labour Commissioner, Haryana showing that the wages payable w.e.f. 1.1.2010 for unskilled labourers were Rs.4,214.23, semi-skilled Rs.4,344.23, skilled Rs.4,604.23 and 4,734.23 and for highly skilled Rs.4,864.23. But since no documentary evidence to substantiate those assertions had been produced with no assertions that Pardeep Kumar was a semi skilled or a

skilled worker, his monthly income is taken to be Rs.4,475/-. Therefore, a sum of Rs.20,000/- is awarded to him under the head loss of work.

Such claimant had just placed on file copy of disability certificate as Mark PX. He was required to summon the doctor, who had issued the certificate to prove that he had suffered permanent disability, which he failed to do so. Under the circumstances, no compensation can be awarded to him for permanent disability. However, he is entitled to be compensated for the money spent by him on his medical treatment. As stated by PW3 Dr.B.L. Bagri, a sum of Rs.54,000/- was charged from injured Pardeep Kumar by their hospital and items used in the operation were of the value of Rs.21,483. He has proved various other bills for medicines, for purchase of blood etc. He had proved various supporting documents i.e. investigation receipts Ex.P1 to Ex.P22, original receipt of blood bank Ex.P23 to Ex.P27, medicines bills Ex.P29 and items used in the operation Ex.P30. As is a matter of common knowledge that it is very difficult to have all the medical bills, receipts secured at home. Some of the bills/receipts get lost whereas some times the medicines etc. are purchased in hurry without asking for issuance of bill/receipt. Some amount is to be awarded to the claimant towards future medical expenses also. Therefore, I deem it proper and appropriate to award a sum of Rs.1,25,000/- to the petitioner/claimant Pardeep Kumar towards medical expenses.

As regards special diet, a person suffering injuries does need special diet for early and proper recovery. A award a sum of Rs.25,000/- under that head.

Keeping in view the period of hospitalization and nature of injuries and that claimant would have gone to the hospital for follow up treatment also, a sum of Rs.25,000/- is awarded to him on account of transportation.

The claimant having suffered injuries did require help of an attendant during the period of his hospitalization and then going to hospital for follow up treatment. A sum of Rs.25,000/- is accordingly awarded to the appellant/claimant on that score.

In my view considering the number of injuries suffered by the claimant, period of hospitalization, it is very difficult to quantify the pain and suffering undergone by a person suffering injury requiring long hospitalization, surgeries and follow up treatment. Keeping in view the facts and circumstances of the case, I award a sum of Rs.30,000/- under that head.

The claimant on account of injuries suffered by him would not be able to walk, run or sit as he was prior to the accident. A sum of Rs.25,000/- is awarded to him on account of loss of amenities and loss of expectation of life.

Thus, the total compensation comes out to Rs.2,75,000/-. The appellant/petitioner/claimant would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. Both the respondents made liable to make the payment.

Now taking up MACT Case No.183 of 2010/2011 filed on behalf of petitioners/claimants Suman and others. As per the case of the claimants, deceased Krishan Kumar was aged about 28 years and was

working as a Carpenter, earning Rs.12,000/- per month. PW1 Smt. Suman widow of Krishan Kumar had proved her affidavit Ex.PW1/A wherein she has made such assertions stating that the claimants were dependent upon earnings of the deceased Krishan Kumar. In the matriculation certificate of deceased, his date of birth is mentioned as 12.1.1979. The accident had taken place on 22.3.2010. Therefore, his age is taken as 31 years. The claimants had examined Sh.Ganga Bishan, Proprietor of M/s Standard furniture & Furnishing Glass Tower, Bhiwani as PW5, who in his affidavit Ex.PW5/A has contended that deceased Krishan Kumar was known to him, who was working as a Carpenter along with two helpers on contract basis for last 6-7 years and was earning Rs.10,000/- to Rs.12,000/- from that work. He proved his salary certificate Ex.PW5/A. The testimony of this witness is not supported by any documentary evidence. Considering the prevalent wages for workers skilled and unskilled at the relevant time and those payable to the manual labourers, I find it proper and appropriate to take the monthly income of deceased Krishan Kumar to be Rs.4,500/- per month.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.4,500} + 1,800 = \text{Rs.6,300/-}$.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** deduction of $1/4^{\text{th}}$ is to be made towards personal expenses.

Doing that the dependency of claimants comes out to Rs.4,725/- per month, annual dependency comes out to Rs.4,725 x 12 = Rs.56,700/-.

In terms of ratio of authority *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 = 9,07,200/-.

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. 9,07,200 + 70,000 = 9,77,200/-. 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 – Suman - 40%
2. Petitioners No.2 and 3 – Mohit and Deepika(minors) – 20% each
3. Petitioner No.4 – Sh.Mahabir - 20%

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.

The findings of the Tribunal on issues No.3 and 4 are obviously wrong. Pardeep Kumar having suffered injuries in the accident

and Krishan Kumar having lost his life. Pardeep Kumar and legal representatives of Krishan Kumar have got every locus standi to bring the claim petitions against the driver-cum-owner and insurance company of the offending vehicle and the claim petitions so filed by them are perfectly maintainable since cause of action did arise to them to bring the petitions.

Thus findings on issues No.3 and 4 are reversed and these issues are decided in favour of the claimants and against the respondents.

Issue No.5 was decided by the Tribunal in favour of respondent No.1 holding that respondent No.1 was having a valid driving licence on the date of accident. Though in the last lines with regard to discussion under issue No.5, it is mentioned that issue is decided in favour of respondent No.1 and against the petitioners but it is clarified that the issue is not decided against petitioners but respondent No.2.

With regard to issue No.6, which was not properly decided by the Tribunal since it is proved on record that the offending vehicle was insured with respondent No.2 – insurance company at the relevant time and no violation of any terms and conditions of the insurance policy is established on file, which might have helped respondent No.2 – insurance company in escaping its liability to indemnify respondent No.1. Respondent No.2 – insurance company is liable to indemnify respondent No.1 with regard to the compensation amount payable by respondent No.1 to the claimants in both the claim petitions. As a matter of fact, the liability of both the respondents is joint and several. Thus, this issue is decided against respondent No.2 – insurance company.

As regards issue No.7, this issue was decided by the Tribunal

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in favour of the petitioners and against respondents and no interference
therewith is called for.

Therefore, both the appeals filed by the claimants/appellants
stand allowed.

29.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No