

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

FAO-4452-2013 (O&M)

Date of decision: 20.05.2019

Jyoti and others

...Appellants

Versus

Dr. Jyoti Kaushal and others

...Respondents

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

Present: Mr. Vivek Suri, Advocate for the appellants.

Mr. Paul S. Saini, Advocate for respondent Nos.1 & 2.

Ms. Anamika Mehra, Advocate for respondent No.3.

Mr. R.C. Gupta, Advocate for respondent No.5.

H.S. MADAAN, J. (Oral)

Appellants/claimants Smt. Jyoti aged about 30 years, wife, Master Abhishek, aged about 09 years and Master Rahul, aged about 07 years, minor sons and Smt. Luxmi Devi, aged about 51 years, mother of Parveen Kumar, an unfortunate victim of a road side accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Dr. Jyoti Kaushal-driver, Dr. Lalit Kaushal-owner, The New India Insurance Company Ltd., Manimajra, UT Chandigarh-insurer of Maruti Zen Car No.HR-31-D-0077 as well as Anil Jindal-driver, Arun Jindal-owner and The National Insurance Company Ltd., Manimajra, UT Chandigarh-insurer of Swift Car bearing No.

CH44-T-4299, claiming compensation to the tune of Rs.60 lacs.

As per version of the appellants/claimants, on 20.11.2011, Parveen Kumar, deceased was going towards market of Sector 10, Panchkula from M/s Jai Maa Departmental Store, MDC, Swastik Vihar, Sector-5, Panchkula on his motorcycle bearing No.HR-03-J-0460 and when he reached near Sanatan Dharam Mandir, in the meanwhile, a Maruti Zen Car bearing registration No.HR-31-D-0077 came from the side of Mandir and while going towards Sood Bhawan being driven by respondent No.1 Dr. Jyoti Kaushal at a very high speed and in a rash and negligent manner, directly hit the motorcycle of Parveen Kumar. Resultantly, Parveen Kumar struck with another car bearing No.CH-44-T-4299, which was wrongly parked on the road in front of Mandir by respondent No.4 Anil Jindal, as a result, Parveen Kumar fell down on the road and suffered injuries including multiple fractures in his right knee and right thigh. On being informed by one Sanjay Ahuja, the police reached at the spot. The injured was taken to Emergency Ward of General Hospital, Sector 6, Panchkula, however, he succumbed to the injuries.

According to the claimants, deceased Parveen Kumar was working as a Purchase Officer-cum-Sales Manager with M/s Jai Maa Departmental Store, Swastik Vihar, Sector 5 Panchkula and was earning Rs.15,000/- per month. All the claimants were dependent upon his earnings; that a sum of Rs.5,000/- was spent on medical treatment and Rs.80,000/- on last rites of the deceased. The claimants prayed that the claim petition be accepted.

On notice, all the respondents put in appearance. Respondent Nos. 1 & 2 filed a joint written statement, respondent No.3 came up with a separate written reply, respondent Nos.4 & 5 filed a joint written reply, whereas, respondent No.6 also filed separate written reply.

In the joint written reply submitted on behalf of respondent Nos.1 & 2, they alleged that the accident had taken place due to rash and negligent driving of deceased/motorcyclist, who was driving his motorcycle without wearing any helmet and without possessing a valid and effective driving license and that false FIR was lodged against respondent Nos.1 & 4; that respondent No.1 was driving the Maruti Car No. No.HR-31-D-0077 owned by respondent No.2. The car was insured with respondent No.3, vide insurance policy valid from 09.08.2011 to 08.08.2012. According to such respondents, if the tribunal came to the conclusion that compensation was to be awarded, then, the insurance company would be liable to pay the same.

In the written reply filed by respondent No.3-Insurance Company, it had raised preliminary objections that respondent No.2 had violated the terms and conditions of the insurance policy and no intimation was given to them about the accident; that the claim petition is bad for misjoinder and non-joinder of necessary parties. On merits, such respondent denied material averments in the claim petition.

In the written reply submitted on behalf of respondents No. 4 & 5, it was denied that respondent No.4 was negligent in any manner, rather, it was contended that the Swift Car No. CH-44-T-4299 was parked

at proper place and the accident had taken place due to rash and negligent driving of the deceased.

Respondent No.6 also contested the claim petition, raising various legal objections, contended that the petition had been filed by the claimants in connivance with the police and driver of Swift Car No. HR-44-T-4299 just to extract compensation and in fact, no such accident had taken place. Furthermore, the driver of Swift Car was not holding a valid and effective driving license. This respondent also came up with a plea that the deceased himself was at fault in happening of the accident and Maruti Zen Car driver was also guilty of faulty driving and the accident had taken place due to composite negligence of the deceased as well as Maruti Zen Car driver.

All the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether Parveen Kumar died on account of injuries sustained in the accident in question which took place on account of contributory rash and negligent driving of Maruti Zen Car bearing registration No. No.HR-31-D-0077 by respondent No.1 and Swift Car bearing registration No.CH-44-T-4299 by respondent No.4?OPP. .
2. If issue No.1 is proved, whether the claimants are entitled to any compensation, if so to what amount and from whom? OPP.
3. Whether respondent No.1 and 4 were not holding valid and effective driving licence at the time of accident in question, if so to what effect? OPR 3 & 6.

4. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Panchkula, vide award dated 11.04.2013, came to the conclusion that it was a case of contributory negligence and the deceased himself was at fault in happening of the accident to the extent of 50%, whereas, Dr. Jyoti Kaushal, respondent No.1, driver of offending Maruti Zen Car had also contributed to the accident by her faulty driving, amounting to rash and negligent driving. When the tribunal took the age of deceased to be 40 years, his monthly income to be Rs.10,000/- but without making any addition towards future prospects, applying multiplier of 15 had calculated the compensation, payable to Rs.13,90,000/-, however, 50% thereof was granted which was to the tune of Rs.6,95,000/- for the reason that the deceased was held to be responsible for the accident for remaining 50%. The liability to pay this amount was found to be that of respondent Nos.1 to 3, whereas, claim petition qua respondent Nos.4 to 6 was dismissed, observing that there was no fault on the part of driver of the car in parking the vehicle at that place.

The claimants felt aggrieved by the said award and have approached this Court, by way of filing the present appeal, notice of which was given to the respondents, who put in appearance.

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

As regards one strong argument raised by learned counsel for

the appellants that respondent No.1 Dr. Jyoti Kaushal was author of the accident by her rash and negligent driving of Maruti Zen Car bearing registration No.No.HR-31-D-0077, resulting into accident in which Parveen Kumar had suffered injuries, to which, he succumbed and furthermore, wrong parking of Swift Car bearing registration No.CH-44-T-4299 on the road had also contributed to the accident, therefore, all the six respondents were liable to pay the compensation to the claimants and it was not a case of contributory negligence, as has been read out by the tribunal, whereas, learned counsel appearing for the respondents contended that the tribunal has given valid reasoning for arriving at the conclusion drawn.

After hearing the rival contentions, I find that the tribunal by analyzing the evidence adduced by the parties, in the light of facts and circumstances of the case and keeping in mind the legal position, has come to the conclusion and observed that it was a case of contributory negligence, though, the copy of FIR Ex. PW2/1, under Sections 279 and 304-A of IPC was registered against respondent No.1 on the same day at about 3 PM, whereas, FIR for offence under Section 283 IPC was registered against respondent No.4. Further, it has been noticed that it had come on record that the deceased was driving the motorcycle at a high speed and he did not take any precaution while taking a turn and was not wearing helmet. Respondent No.1 had submitted complaint Mark A to DCP, Panchkula in that regard, though, she had been booked for causing the accident. She was challaned and sent up to face the trial. Therefore, I

do not find any reason to upset the findings recorded by the tribunal with regard to it being a case of contributory negligence and the negligence was apportioned between the deceased and respondent No.1 Dr. Jyoti Kaushal equally.

Next coming to the quantum part, the tribunal had taken the income of deceased to be Rs.10,000/- which can certainly be not stated to be on lower side, however, the tribunal has not made any addition towards future prospects. In view of the observations made by the Apex Court in **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, 40% of the income is to be added towards future prospects, if the deceased was in the age group upto 40 years. Doing that, monthly income of deceased is worked out to Rs.14,000/-. Keeping in view the number of dependents upon him to be four, 1/4th of this amount is to be deducted towards personal expenses. Doing that, the dependency of claimants comes out to Rs.10,500/-, annual dependency is worked out to Rs.1,26,000/- (10,500 X 12).

Considering the age of the deceased, the tribunal has correctly used the multiplier of 15. Thus, the total compensation comes out to Rs.18,90,000/-.

Adding Rs.70,000/- under the conventional heads, i.e. Rs.15,000/- on account of loss of estate, Rs.15,000/- as funeral expenses and Rs.40,000/- to claimant/wife towards loss of consortium, the total compensation payable is arrived at Rs.19,60,000/-.

As a result of the observations recorded by the tribunal, with

which, I do not see any reason to disagree, in view of the finding that it was a case of contributory negligence, the claimants are entitled to get 50% of the compensation so arrived at Rs. 9,80,000/-. The tribunal has awarded a sum of Rs.6,95,000/-. Thus, they are entitled to get additional compensation of Rs. 2,85,000/-(Rs.9,80,000 – 6,95,000). The claimants shall be entitled to get interest @ 7.5% on the enhanced compensation from the date of filing of appeal till actual realization besides costs of the appeal. The direction for apportionment and other terms & conditions with regard to payment/deposit of the compensation amount shall remain the same as given in the original award.

The appeal is partly allowed with costs.

20.05.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No