

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

FAO-5074-2014(O&M)

Date of decision:-8.5.2019

Raj Bala and others

...Appellants

Versus

Balbir Singh and others

...Respondents

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

Present: Mr. Sagar Aggarwal, Advocate
for the appellants.

Mr.I.S. Pabla, Advocate
for respondent No.1.

Mr.Navin Kapur, Advocate
for respondent No.4.

H.S. MADAAN, J.

Briefly stated, facts of the case are that on 6.8.2011, Balram Sandilya was going from Kurukshetra to village Hathira on motorcycle bearing registration No.HR-07M-2360 make CD Delux; that Shiv Dutt son of Pawan Kumar, resident of village Patrehri, District Ambala was pillion riding on that motorcycle; that S/Sh.Shiv Kumar and Arman riding motorcycle bearing registration No.HR-07M-6515 were following the motorcycle being driven by Balram Sandilya; that Balram Sandilya was

driving the motorcycle at a moderate speed, on correct left side of the road observing traffic rules; that at about 7:15 a.m. when Balram Sandilya and Shiv Dutt riding motorcycle bearing registration No. HR-07M-2360 had reached near the bridge of Bhakhra Canal in the area of village Kirmach, then a bus bearing registration No.HR-65-1706 (hereinafter referred to as the offending bus) from Haryana Roadways, Kurukshetra being driven by respondent No.1 – Balbir Singh in a rash and negligent manner came from the opposite side; observing that the bus in question was coming, Balram Sandilya lowered down the speed of his motorcycle and took it to the katcha berm on extreme left hand side but the bus struck against the motorcycle of Balram Sandilya by going on wrong side of the road, as a result both the riders suffered injuries; the injured were shifted to LNJP Hospital, Kurukshetra where Balram Sandilya succumbed to the injuries after some time, whereas other injured Shiv Dutt was referred to PGI, Chandigarh but he died on the way to Chandigarh; that the accident had been witnessed by Sh.Shiv Kumar and Sh.Arman; that formal FIR No.167 dated 6.8.2011 for the offences under Sections 279, 338 and 304-A IPC was registered against respondent No.1 – Balbir Singh with Police Station K.U.K.

The legal representatives of Balram Sandilya namely Smt.Raj Bala, aged about 30 years – wife, Master Nidhanshu, aged about 9 years – minor son, Baby Devigya, aged about 5 years and Baby Komalanshu, aged about 4 years – minor daughters had filed a claim petition bearing MACT Case No.114 of 2011 under Section 166 of Motor Vehicles Act against respondents i.e. Balbir Singh – driver, General Manager, Haryana

Roadways, Kurukshetra Depot, Transport Secretary, Haryana Roadways, Chandigarh – owners and New India Assurance Company Ltd. - insurer of the offending bus, claiming compensation to the tune of Rs.40 lacs on account of death of Balram Sandilya in the motor vehicular accident.

The legal representatives of Shiv Dutt, who had lost his life in that very accident, namely, Smt.Usha Devi, aged about 42 years – mother and Sh.Pawan Kumar aged about 44 years – father had also brought a claim petition bearing MACT Case No.91 of 2011 under Section 166 of the Motor Vehicles Act against those very respondents, claiming compensation to the tune of Rs.20 lacs on account of death of Shiv Dutt in the motor vehicular accident.

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 9.7.2013, which left the claimants in MACT Case No.114 of 2011 aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents. Respondents No.1 and 4 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 issues No.1 and 2 are obviously erroneous based upon wrong interpretation of law and misappraisal of evidence. Learned Tribunal proceeded to decide the issues 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. Here the claimants had led enough oral as well as documentary evidence to show that Balbir Singh – respondent No.1 was author of the accident by rash and negligent driving of the offending bus. However, the Tribunal wrongly disbelieved such evidence. PW2 Shiv Kumar in his affidavit Ex.PW2/A has given eye-witness account of the accident deposing in consonance with the case of the claimants. He was cross-examined at length on behalf of the respondents but his credibility could not be shaken on any material point. PW5 Bhopal Singh, Sub Inspector (Retd.) had testified that on 6.8.2011 while he was posted as Sub Inspector being Duty Officer in Police Station K.U.K., he had received a telephonic message from Police Post IIIrd Gate, Kurukshetra regarding the accident

in question and admission of injured Balram and Shiv Dutt in LNJP Hospital, Kurukshetra, who had received injuries in a road side accident; that thereafter he had gone to said hospital, obtained opinion of attending doctor regarding fitness of injured to make statement; the doctor had informed that injured Shiv Dutt had been referred to PGI, Chandigarh, whereas ruqa regarding death of Balram Sandilya was produced before him; then Shiv Kumar met him in LNJP Hospital and got his statement recorded on the basis of which formal FIR was recorded; the matter was investigated; he went to the spot, prepared site plan showing the place where the accidental vehicles i.e. offending bus and ill-fated motorcycle were found standing and were taken into possession. He stated that the accidental vehicles were parked by the villagers at the place marked by letter A in order to avoid traffic jam. The claimants had also examined Sh.Mohinder Kumar, Mechanic Haryana Roadways, Kurukshetra Depot as PW6, who had mechanically examined the offending bus and ill-fated motorcycle submitting the reports that both the vehicles were damaged. The claimants had further proved in evidence copy of report under Section 173 Cr.P.C. Ex.P3, copy of FIR Ex.P5, copy of charge-sheet Ex.P6. Such documents showing that respondent No.1 had been arrested and challaned for causing the accident and he was charge-sheeted by the criminal Court also. When respondent No.1 had appeared before the Tribunal and got his statement recorded, he had admitted in his cross-examination that he was challaned by the police for causing the accident and no complaint was ever made by him to any authority regarding his false implication. He had not filed any revision petition against the charge-sheet framed against him

by the criminal Court. Thus the natural inference to be drawn is that such respondent by his rash and negligent driving of the offending bus had caused the accident resulting in death of Balram Sandilya and Shiv Dutt.

Thus, the findings on issues No.1 and 2 are reversed and these issues are decided against respondents in favour of claimants.

Now coming to issue No.3. No verdict was given by the Tribunal on the issue for the reason that issues No.1 and 2 had been decided against the claimants. However, since those issues have been adjudged in favour of the claimants, it is to be found out as to how much compensation, the claimants are entitled to.

As per the version of the claimants in MACT Case No.114 of 2011, Balram Sandilya was aged about 31 years and was working as Acharya in Kurukshetra Sanskrit Ved Vidhalaya Avam Chhatrawas, Uttri Tat, Brahamsarover, Kurukshetra. PW1 Rajbala widow of Balram Sandilya had tendered in evidence her affidavit Ex.PW1/A in which she has categorically stated that the deceased was working as Acharya in Kurukshetra Sanskrit Ved Vidhalaya Avam Chhatrawas, Uttri Tat, Brahamsarover, Kurukshetra performing spiritual and religious ceremonies at Brahamsarover, Kurukshetra and doing tuition work, therefore he was earning Rs.20,000/- per month; that the petitioners were fully dependent upon his earnings. The claimants had further examined Sh.Rati Ram, Senior Tax Assistant, Income Tax Office, Kurukshetra as PW4, who had brought the summoned record regarding income of Balram son of Harg Lal, resident of Parsu Ram Colony for the assessment year 2009-10 and 2010-2011, stating that as per assessment year 2009-2010,

the gross income of the deceased was Rs.1,47,510/- and the gross income for assessment year 2010-2011 was Rs.1,65,200/-. He proved photocopies of income tax returns as Ex.P1 and Ex.P2. In his cross-examination, he stated that both the returns were filed before death of Balram Sandilya. From such evidence, the annual income of the deceased Balram Sandilya can be taken to be Rs.1,50,000/-(Rs.12,500/- 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 $\text{Rs.12,500} + 5000 = \text{Rs.17,500/-}$.

Considering the claimants, who are dependent upon the earnings of the deceased, there number being 4, in terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** where the number of dependent family members 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.13,125/- per month, annual dependency comes out to $\text{Rs.13,125} \times 12 = \text{Rs.1,57,500/-}$.

In the post-mortem report, the age of deceased Balram Sandilya is mentioned to be 35-36 years. However, in the income tax return Ex.P1, his date of birth is mentioned to be 15.4.1980. The accident had taken place on 6.8.2011. In that way, the age of the deceased comes out to 31 years at the time of accident. In view of ratio of authority, **Smt.Sarla Verma and others Versus Delhi Transport Corporation and**

Anr.(supra), multiplier of 16 is required to be applied. Doing that, the compensation payable comes out to Rs. 1,57,500 x 16 = 25,20,000/-.

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. 25,20,000 + 70,000 = 25,90,000/-. Issue No.3 is decided accordingly.

As regards issue No.4, the Tribunal recorded that in view of the findings on issues No.1 and 2, the respondents No.4 – insurance company was not liable to pay any compensation. But in view of the observations made above, this issue is decided against the respondent No.4 – insurance company.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.25,90,000/- with interest @ 7.5% p.a. from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimants of MACT Case No.114 of 2011.

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

1. Petitioner No.1 – Rajbala - 40%
2. Petitioners No.2 to 4 – Nidhanshu, Devigya and Komalanshu (minors) – 20% each.

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 attain majority.

8.5.2019

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No