

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.6210 of 2014 (O&M)

Date of Decision: 28.03.2019

Minakshi and others

.....Appellants

Vs.

Hans Raj and Others

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Ram Pal Verma, Advocate, for the appellants.

Mr.Amit Kumar Goyal, Advocate, for respondents No.1 and 2.

Mr.Punit Jain, Advocate, for respondent No.4.

DR. RAVI RANJAN, J. (Oral Judgment)

CM No.16922-CII of 2014

This application has been filed for condoning the delay of 209 days in re-filing the appeal.

Heard parties.

In view of the averments made in the application, delay of 209 days in re-filing the appeal is condoned.

The application stands disposed of.

FAO No.6210 of 2014

This appal is directed against the decision dated 29.08.2013 passed by Motor Accident Claims Tribunal, Sonapat in MACT Petition No.17 of 2011/2012 by which the claim application filed by the appellants for grant of compensation of Rs.30,00,000/-, on account of the death of the husband of the applicant/appellants namely Suresh in motor vehicular

The case of the claimant/appellant in brief stands narrated as under:-

The deceased, Suresh, his father Munshi Ram and other family members were returning from Rishikesh (Uttanchal), after finishing their work, to their village Kanonda, Tehsil Bahadurgarh District Jhajjar. At about 5:00 AM, they took a halt at Mamu Da Dhaba at Thana Kalan Chowk, Kharkhoda. When Suresh was returning after answering the call of nature, a truck bearing registration No.HR-69A-2642 being driven by the respondent No.1 in a rash and negligent manner, came at a very high speed and struck against him from conductor side of the vehicle, due to which, he sustained multiple serious injuries and succumbed to those injuries at the spot. The applicants claim that the accident took place due to rash and negligent driving of truck for which FIR No.211 of 2011 was also lodged on the statement of appellant No.4-Munshi Ram i.e. the father of the deceased. According to the claimants/appellants, the deceased Suresh was aged 25 years at the time of his death and he was a driver and truck engine mechanic. He used to draw a salary of Rs.15,000/- per month besides commission of Rs.8,000/- per month. Thus, his total earning was Rs.23,000/- per month. It is claimed that the applicants have been deprived of love, affection, guidance and services and future income of the deceased and have suffered a great shock and mental agony. Accordingly, they claimed Rs.30 Lacs by way of compensation by filing a petition under Section 166 of the Motor Vehicle Act, 1988.

The respondents No.1 and 2, i.e., the driver and the owner, responded by filing joint written statement controverting the case of the applicants/appellants that death had occurred due to rash and negligence

driving of respondent No.1 rather they claimed that the deceased was a person of unsound mind and laid himself under the vehicle of respondent No.1, without his knowledge, which was parked near the Dhaba. When the respondent No.1 started his vehicle, the accident took place. However, a false case has been registered by the police against the respondent No.1 and 2. It is stated that respondent No.2 had already sold away his truck to one Ayub Khan son of Julffi on 20.07.2011 vide an affidavit and handed over the Truck in question on receipt of sale consideration, therefore, he does not have any concern with the Truck. However, it is admitted fact that truck was insured with the respondent No.3. Respondent No.2A, i.e., the subsequent owner, has also filed written statement raising objection that he has unnecessarily been dragged into the litigation, however, on merits, he has also disputed the version in claim application.

The respondent No.3 i.e. Insurance Company also filed separate written statement taking a stand that no accident had taken place due to rash and negligent driving of the truck by respondent No.1 rather, a false case has been registered against respondent No.1 in collusion with the respondents and the claimants, just to grab compensation from the answering respondent. The insurance Company also raised an issue that respondent No.1 was not having a valid and effective driving licence at the time of accident.

On consideration of rival pleadings, the Tribunal framed following issues :

- (1) Whether the accident in question resulting into death of Suresh took place due to rash and negligent driving of Truck No.HR-69A-2642 by the respondent No.1?OPP.
- (2) If issue no.1 is proved in the affirmative, to what amount

of compensation the petitioners are entitled to and from whom?OPP.

- (3) Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident and the insured violated the terms and conditions of the insurance policy, if so to what effect? OPR-3.

- (4) Relief.

In order to substantiate the claim, the claimant/appellant No.1 has examined herself a PW-1. The personnel from police who has brought on record before the tribunal has been examined as PW-2 whereas the father of the deceased Munish Ram has been examined as PW-3 and ASI Sanjay Kumar is PW-4 and Ex.P-1 to P-8 has been brought on record by them.

None of the respondents have produced any oral evidence and they have only tendered Ex.R-1 to R-4 and Mark-A.

While dealing with issued No.1, the Tribunal has come to the conclusion that from the cross-examination of PW-3 Munshi Ram, it appears that the alleged offending truck had halted at the Dhaba along with them and when it started from the Dhaba, his deceased son had come behind the middle tyre on the conductor side of the truck. The deceased did not run away from that place when the truck was coming. It has further been held that though from the copy of police report filed after investigation under Section 173 Cr.P.C. (Ex.P-5), it stands established that respondent no.1 was sent up for facing trial regarding the accident in question but as per cross-examination of PW-3, it is proved that the respondent No.1 has been implicated in the case owing to collusion with the police. In the background of such finding, the claimants have been non-suited and it has been held that it is not proved that the deceased died due to rash and negligent driving by

In the aforesaid background of factual matrix, I have heard learned counsel for the appellant and the respondents and have perused the records of this case.

Learned counsel appearing for the appellants has submitted that without any cogent evidence, the Tribunal has jumped to the conclusion that FIR and police report was a result of collusion between the claimant/applicants and police and this is the sole ground on which his claim application has been dismissed.

Per contra, learned counsel appearing for the respondent has submitted that the mark variation and contradiction in the statement of PW-3 Munshi Ram before the Tribunal when compared with the statement made by him as available in First Information Report, clearly goes to show such collusion and demolishes the case of the claimants.

However, on appreciation of rival contentions, this Court finds force in the submission raised on behalf of appellants. This is a cardinal principle of law that if fraud is being alleged then there should be specific pleading regarding that and such person who is alleging as such, would be put to strict proof of that by leading cogent evidence. Now let us test as to whether there is such a mark variation which would demolish the case of the claimants as stated and alleged by respondent No.4 and accepted by the Tribunal in question. In the first information report, the PW-3 Munshi Ram has said that he went to Rishikesh with family members and was returning on 14.10.2011 from Rishikesh to his village Kanunda. When they reached at “Mamu Da Dhaba” at about 5 AM in the morning they took a break.

When his son Suresh (since deceased) was returning after answering the natural call, the driver of the offending truck drove the same at very high

speed and in negligent manner and hit his son from conductor side of the vehicle resulting his immediate death. He has said that he does not know the name of driver but he has given the number of the Truck HR-69A-2642. He said that driver escaped from the place after of the accident.

Now let us compare it with his examination-in-chief by way of affidavit filed before the Tribunal. The said Munshi Ram, while being examining as PW-3, has stated as under:

1. XXX XXX XXX XXX XXX XXX XXX
2. That on 14.10.2011 I along with my family members including Suresh were coming from Rishikesh (Uttanchal) to our village Knonda Distt. Jhajjar.

In the early morning at about 5:00 A.M. we had to take a halt at Mamu Da Dhaba at Thana Kalan Chowk, Kharkhoda District Sonapat for taking tea etc. Said Suresh (now deceased) had gone for natural cause in open plot in front of said Dhaba across the Road. When he was coming back at the said Dhaba in the mean time, the offending vehicle Truck No.HR-69A-2642 being driven by the respondent No.1 at high speed, rashly and negligently in a zig zag manner came there and struck against said Suresh from conductor side due to which said Suresh sustained serious and grievous multiple injuries on his person and died at the spot. After causing the accident the respondent No.1 stopped his vehicle and fled away himself from the spot after leaving the vehicle at the site.

Said accident took place due to the sole rash and negligent driving on part of the respondent No.1.

3. That the Police recorded my statement on which a case FIR No.211/2011 dated 15.10.2011 was lodged with P.S.Kharkhoda.

4. XXX XXX XXX XXX XXX XXX XXX XXX

In the cross-examination, he has stated that, on the alleged date he was alongwith Smt.Meenakshi, widow of his deceased-son and had gone to Rishikesh. Suresh had gone to Rishikesh about two month prior to the alleged date. On question having been put to him, he has stated that deceased was not coming to his village home for the last two months. However, on the suggestion having been made, he has answered that it is incorrect that his deceased son was addicted to intoxication and due to that he had ran away to Rishikesh. He has stated that he started from Rishikesh at about 9 P.M on the truck bearing registration number HR-69A-2642 being driven by some driver. The Truck halted at the Dhaba and when the truck started again from the Dhaba, his son came under the middle tyre conductor side of the truck. On suggestion being made, he has answered by saying that his son had not run away from them.

Learned counsel for the respondents has pointed out that he has said that widow of the deceased was along with him on the fateful day whereas Meeakshi Dev, i.e. Widow who has examined as PW1, has stated that she was at home and she got information from her father-in-law regarding the accident on 15.10.2011 and the Police did not recorded her statement. On such variation and contradiction having been there, now the

entirety? In my considered opinion, answer has to be in negative. Definitely that part of cross-examination in which the deponent has stated Meenakshi Devi had gone to Rishikesh with him has to be discarded but his statement that PW-3 himself had gone to Rishikesh and was accompanying his son in return journey, cannot be discarded in view of the evidence and statements recorded by the police.

Second point raised by the learned counsel from the cross-examination is it is apparent that they were boarding the same truck but this was not been disclosed by Munshi Ram in the First Information Report. It is true that in the first information report he has merely stated that he was coming from Rishikesh on the Truck but he has not spelt out the number of the truck but only the number of the truck was disclosed at that part of the FIR where he was describing the offending truck in the question raised by the respondent insurance Company. However, this also, in my considered opinion, would not be of much value as it does not make a difference as to by which vehicle he had come from Rishikesh up to the Dhaba. The issue in question is whether the offending truck were being driven negligently after starting from Dhaba and hit the deceased or not? The deceased died due to accident by the offending truck is an admitted fact. Even in the written statement filed by the respondents No.1 and 2 it stands admitted. Only thing is that story has been propounded in the written statement filed on behalf of respondents No.1 and 2 that the deceased was of unsound mind and he himself came under the wheels of the truck. However, this would not be of much value for the reason that, after making this statement in the pleading, the respondents No.1 and 2 did not have any courage to get them

cross-examine them on this point. Merely making statement in the pleading would not be sufficient unless until it is proved by leading cogent evidence. Now coming to the point of collusion in between the police and the claimants, as has been recorded by the Tribunal, it does not appear from the material available on records that any pleading or evidence has been laid by the respondent on that point. The IO has been examined as PW-4 but no suggestion has been made by the respondent regarding the issue of collusion between the claimant and the police. In my considered view, the Tribunal has completely misdirected itself not only by recording such type of finding without any foundation but has also recorded that the PW-3 has stated that his son did not run away from Dhaba rather the fact that has come from the cross-examination is that a question was put to him as to whether his son ran away from his house or not which was answered by saying that it is incorrect to say. In my considered opinion, gross error has been committed by the Tribunal in coming to such conclusion. Accordingly, the findings recorded with respect to issue No.1 is quashed and set aside and in view of the fact that PW-3 himself was an eye-witness coupled with the fact that after completion of investigation, the police has also submitted its final report under section 173 Cr.P.C. (Ex.P-5) holding the driver responsible for the accident as he was driving the vehicle in a rash and negligent manner. Accordingly, it is held that the accident was result of rash and negligent driving of the driver of the offending vehicle. The finding recorded by the Tribunal on issue no.1 thus, stands reversed as above.

This now takes me to the issue No.2 and 3 which have been taken up together for consideration by the Tribunal. The Tribunal, on the basis of

being 01.01.1986, has come to the conclusion that on the date of the accident, the deceased was 25 years, 10 months and 14 days old, however, he has taken up the age to be 26 years. In my opinion, his age was to be taken up as 25 years as he was yet to complete 26 years. Accordingly, finding on the issue No.2 is modified to the extent that the deceased was 25 years old at the time of accident.

Though the claimants have stated that the deceased was earning Rs.23,000/- per month being a driver and mechanic, however, in view of lack of any evidence regarding that, the Tribunal has considered him to be a driver and assessed his monthly income to be Rs.4,000/-. It is not stated anywhere in the judgment as to under what circumstances the amount of Rs.4,000/- has been assessed. Learned counsel for the respondent took me to one decision of the State of Haryana contained in letter dated 05.09.2011 written by the Labour Commissioner, Haryana and addressed to all concerned disclosing the minimum wages for the workers in the State of Haryana, which is taken in record. Now, if the driver is taken to be even in the semi skilled B category, his income has to be, according to the aforesaid decision of the Government, Rs.4938.9/- per month.

Learned counsel for the respondent-Insurance Company has submitted that his income should be taken to unskilled labourer which would be Rs.4643.89/- per month. However, this Court is unable to understand as to under what circumstances, a driver can be considered to be a unskilled labourer. The Tribunal has accepted him as a driver and his licence is also on record being Ex.P-1. It reveals that he has been authorized to drive motorcycle, light motor vehicle and transport vehicle but it was only valid

situation, his income, sans any positive evidence, has to be taken as per the minimum wages fixed by the State of Haryana, for the relevant period. Accordingly, as per the policy disclosed in the aforesaid letter dated 05.09.2011 the semi skilled B category worker has to be given Rs.4938.9 per month. Making it a round figure, this Court is of the opinion that the income of the deceased has to be taken up Rs.5,000/- per month.

So far the dependency part is concerned, in my considered opinion that learned counsel for the respondent is correct in saying that the father of the deceased being an agriculturist cannot be held to be dependent upon his son and in such case, 1/3rd of the total income has to be deducted towards personal expenses.

It does not appear from the impugned judgment that any thing has been granted under the head of loss of consortium. The Hon'ble Supreme Court in **National Insurance Co Ltd., Vs. Pranay Sethi and others, 2013 ACJ 1423** has held in paragraph No.61 that under the conventional heads, v.i.z., loss of estate, loss of consortium and funeral expenses, Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively are to be paid. However, Hon'ble Supreme Court in **Magma General Insurance Company Vs. Nanu Ram alias Chuhru Ram and ors. 2018 (4) R.C.R. (Civil) 333**, after considering the decision rendered in **Pranay Sethi (Supra)**, has opined that the head of consortium can be categorized under the heads of parental consortium which is to be granted to the child, filial consortium, which is the right of the parents to compensation in the case of an accidental death of a child and Spousal consortium which is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving

other in every conjugal relation.

Taking the similar line, it has to be held that the spouse i.e. widow would be entitled for spousal consortium of Rs.40,000/-. The minor children would entitled for parental consortium of Rs.40,000/- each and father of the deceased i.e. claimant No.4 would be entitled for filial consortium of Rs.40,000/-.

Accordingly, in view of the law laid down by the Hon'ble Apex Court in **Sarla Verma Vs. Delhi Transport Corporation, 2009 ACJ 1298, Pranay Sethi (Supra) and Magma General Insurance Company Ltd. (Supra)**, the multiplier is taken as 18 as the deceased was only 25 years old. Accordingly, compensation amount is calculated as under:

Sr.No.	Heads	Compensation Awarded
1	Income	5,000/-
2.	Future prospect 40%	Rs.5,000/- + Rs.2,000/-= Rs.7000/-
3.	Deduction on personal expenses 1/3 rd (Rs.2333/- rounded off to Rs.2300/-)	Rs.7,000/- --- Rs.2300/-= Rs.4700/-
4.	Total loss of future income applying multiplier 18.	Rs.4700/- X 12 X 18= Rs.10,15,200/-
5.	Funeral expenses	Rs.15,000/-
6.	Loss of estate	Rs.15,000/-
7.	Loss of spousal consortium (only to appellant No.1)	Rs.40,000/-
8.	Loss of Parental Consortium 40,000/- each to the claimants No.2 and 3	Rs.80,000/-
9.	Filial consortium (for respondent No.4).	Rs.40,000/-
	Total	Rs.12,05,200/-

paid to the claimants along with interest @ 9% from the date of filing of the claim petition till the date of its realization. Out of the total compensation, appellant No.4 i.e. Munshi Ram shall be given only Rs.40,000/- as loss of Filial consortium. Rest of the amount i.e. 11,65,200/- shall be equally shared by appellants No.1 to 3. Appellants No.2 and 3 are minors, as such, their compensation amount shall be kept in the shape of FDR in any nationalized bank and that will be made available to them after attaining their age of majority.

In the result, the judgment and decision of the Tribunal is set aside with respect to findings recorded on issue No.1 and 2. So far as issue No.3 is concerned, nothing can be shown from the materials present on record by the learned counsel for the respondent/Insurance Company that respondent No.1 was not holding valid and effective licence at the time of accident. Accordingly, this issue is decided against the respondent.

Since, the vehicle has been insured with respondent No.3, the respondent No.3 (Insurance Company) would have liability to pay the compensation amount within a period of four months.

In the result this appeal stands allowed to the extent as indicated above. However, there would be no order as to costs.

(DR. RAVI RANJAN)
JUDGE

28.03.2019

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No