

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

FAO-4857-2015(O&M)

Date of decision:-18.1.2019

Kiran and others

...Appellants

Versus

Sh.Ashok Kumar and others

...Respondents

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

Present: Mr.Vinod K. Kanwal, Advocate for
Mr.Ashit Malik, Advocate
for the appellants.

Mr.Pradeep Kumar, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, facts of the case are that on 19.5.2013, one Shyam Lal along with his minor sons Naveen Kumar,Vikas and wife Smt.Kiran was proceeding to village Ramgarh Chaino near Indri on a motorcycle No.HR-05AF-3894; that the motorcycle was being driven by Shyam Lal at a moderate speed on correct left hand side of the road; that when the motorcycle reached near J.K. College, Churni Turn and the time was about 11:00 a.m., in the meanwhile, a dumper vehicle bearing registration No.PB-29F-5873 (hereinafter referred to as the offending vehicle) being driven by its driver Ashok Kumar in a rash, negligent and zig-zag manner came from behind and hit the motorcycle resulting in accident; that all the riders of the motorcycle fell down on the metalled

road along with motorcycle and received multiple injuries; that they were taken to General Hospital, Karnal for treatment, where Naveen Kumar died on the same day; that since condition of Shyam Lal was very critical, therefore, he was referred to PGI, Chandigarh, however, on the way to PGI, Shyam Lal succumbed to the injuries suffered by him; that the post mortem examination on the dead bodies of Naveen Kumar and Shyam Lal was got conducted in General Hospital, Karnal; formal FIR No.393 dated 19.5.2013 for the offences under Sections 279, 337, 304-A IPC was registered against respondent No.1 – Ashok Kumar.

Smt.Kiran – wife, Vikas minor son, Smt.Saroj Devi – mother and Mange Ram – father of Shyam Lal deceased had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 bearing No.MACT No.89/13 of 2014 against respondents i.e. Ashok Kumar – driver, M/s Mandhan JCB Company Ward No.1, VPO Dabkoli Kalan, Tehsil Indri, District Karnal – registered owner and HDFC Ergo General Insurance Company Ltd., Sector-12, Karnal – insurer of the offending vehicle claiming compensation to the tune of Rs.30 lacs on account of death of Shyam Lal in the motor vehicular accident.

Whereas all those claimants had filed a separate claim petition bearing MACT Case No.7 of 2014/2013 against those very respondents claiming compensation to the tune of Rs.30 lacs on account of death of Naveen Kumar in the motor vehicular accident.

According to the claimants, Shyam Lal was aged about 30 years; he was hale and hearty working as a Painter besides preparing paintings on contract basis and was earning Rs.20,000/- per month; that he

used to give his entire income to the claimants to meet the household expenses. According to the claimants, they had spent a sum of Rs.1,50,000/- on treatment, transportation and last rites of the deceased Shyam Lal.

In the claim petition with regard to death of Naveen Kumar, it was contended that Naveen Kumar was aged about 10 years; that he was a brilliant student and was having good health and physique and used to help the claimants in household work and homely affairs. According to the claimants, a sum of Rs.50,000/- was spent on treatment, transportation and last rites of deceased Naveen Kumar.

Both the claim petitions were contested by respondents. According to respondents No.1 and 2, no such accident took place with dumper in question and actually the deceased was struck down by a truck; that a false case was got registered against respondent No.1 involving the dumper in question.

In the written statement filed on behalf of respondent No.3 – Insurance company, it pleaded that the petitions are not maintainable and the same have been filed by claimants in collusion with respondents No.1 and 2 and the police; that respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident and he was not competent or qualified to hold the same; that respondent No.2 has failed to comply with the provisions of Section 134(c) of the Motor Vehicles Act; that the dumper in question was being plied in violation of the terms and conditions of the insurance policy; that the entire incident is doubtful. It was denied that the respondent No.1 was driving the vehicle in a rash

and negligent manner. The income of Shyam Lal deceased had been challenged.

In the end, all the respondents prayed for dismissal of the petition.

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

1. Whether the accident in question resulting into the death of Shyam Lal took place due to the rash and negligent driving of dumper bearing registration No.PB-29F-5873? OPP.
2. If issue No.1 is proved, whether the claimants are entitled to any compensation, if so, how much and from whom? OPP.
3. Whether the claim petition is not maintainable? OPR.
4. Whether the claimants have no cause of action and locus-standi to file the claim petition? OPR.
5. Whether respondent No.1 was not holding a valid and effective driving licence at the time of the accident, if so, its effect? OPR-3.
6. Whether the vehicle in question was being driven in contravention of the terms and conditions of the insurance policy, if so, its effect? OPR-3.
7. Relief.

Both the parties led evidence in support of their respective claims.

After hearing arguments, the Tribunal decided issue No.1 in favour of the petitioners, issue No.2 in favour of the petitioners and against the respondents, issues No.3 and 4 against the respondents, issues

No.5 and 6 against respondent No.3, resultantly the petitions were partly allowed. The petitioners were awarded the compensation as below:

1.	Petitioners Kiran etc. in claim petition bearing No.89 of 2014/2013 for the death of Shyam Lal	Rs.14,11,400/-
2.	Petitioners Kiran etc. in claim petition bearing No.7 of 2014/2013 for the death of child Naveen.	Rs.3,50,000/-

In each petition, an interest @ 9% per annum from the date of filing of the petitions till realization of the amount was awarded payable by all the respondents jointly and severally. It was further ordered that on realization of the amount of compensation in claim petition No.89 of 2014/2013, 50% would go to petitioner No.1 – Smt.Kiran (widow), 20% to petitioner No.2 Vikas (son) of the deceased whereas the remaining 30% go to petitioners No.3 and 4 in equal shares. Similarly, on realization of the amount of compensation in claim petition bearing No.7 of 2014/2013, the same would be shared by petitioners No.1 and 2 in equal shares; petitioner No.2 Vikas was a minor and the amount of share of compensation of petitioner No.2 would be deposited in fixed deposit in some nationalized bank till he attains majority.

Feeling dissatisfied with the award given by the Tribunal with regard to death of Naveen Kumar, the claimants have approached this Court by way of filing the present appeal seeking enhancement of the compensation awarded to the claimants.

Notice of the appeal was given to respondents. Respondent No.3- insurance company had put in appearance through counsel.

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

As per the own case of the claimants, the deceased Naveen Kumar was a child aged about 10 years. He was a student and not doing any work. The claimants just pleaded that he was helping his parents in household work. The Tribunal referring to the post-mortem report Ex.P5 has taken age of the deceased Naveen Kumar to be 9-10 years. While dealing with point of notional income of deceased, the Tribunal took his notional income as Rs.20,000/- per annum. Considering the age of the deceased, multiplier of 15 has been used, in that way, the compensation paid comes out to Rs.3,50,000/-, which include compensation under conventional heads for funeral expenses and last rites.

Learned counsel for respondent No.3 – insurance company referring to authority **Kishan Gopal and another Versus Lala and others, 2013(4) RCR(Civil)276** has submitted the Tribunal has rightly adopted the proper procedure as given in the authority for calculating the compensation payable.

Therefore, in my considered view, the compensation payable to the claimants on account of death of Naveen Kumar has been properly worked out and there is no scope for any enhancement.

Therefore, finding no merit in the present appeal, the same stands dismissed.

18.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No