

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: July 1st, 2019

FAO No. 8717 of 2015(O&M)

Ranjit Kaur and others

---Appellants

vs.

Parminder Singh and others

---Respondents

FAO No. 884 of 2016(O&M)

The Oriental Insurance Company Limited

---Appellants

vs.

Ranjit Kaur and others

---Respondents

Coram: HON'BLE MRS. JUSTICE REKHA MITTAL

Present Mr. Ashwani Arora, Advocate
for the claimants

Mr. R.K. Bashamboo, Advocate
for the insurance company

Rekha Mittral, J.

This order will dispose of FAO Nos. 8717 of 2015 and 884 of 2016 as these have emerged out of the same award dated 25.9.2015 passed by the Motor Accidents Claims Tribunal, Ludhiana (in short “the Tribunal”) whereby compensation has been assessed on account of death of Rajinder Singh in a motor vehicular accident that took place on 17.11.2012.

FAO No. 8717 of 2015 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been preferred by the Oriental Insurance Company Limited (hereinafter referred to as “the insurance company”) to challenge the award.

FAO No. 8717 of 2015 and
FAO No. 884 of 2016

Counsel for the insurance company would argue that findings of the Tribunal on issue No. 1 pertaining to rash and negligent driving of Car No. PB 10BK-3451 driven by Parminder Singh are the result of misreading of evidence and can not be allowed to sustain. To bring home his contention, he has pointed out the averments raised in para 24 of the claim application, contents of FIR No. 267 dated 20.12.2012 lodged after more than one month of the occurrence on the statement of Ranjit Kaur widow of Rajinder Singh, one of the claimants and an eye witness to the occurrence and testimony of Ranjit Kaur examined to discharge onus of issue No. 1 as well as entitlement of the claimants to get compensation and compensation to be paid to them. It is further argued that in para 24 of the claim application, allegations with regard to rash and negligent driving have been attributed to an unknown vehicle that came at a fast speed from opposite direction and while coming on wrong side of the road struck against the car in which the deceased and his family members including Smt. Ranjit Kaur PW2 were travelling. Ranjit Kaur in her testimony on oath has reiterated the

averments raised in para 24 of the claim application and admitted correctness of the facts recorded in her first version made to the police on 20.12.2012, on the basis whereof FIR Ex. PW2/1 was registered in Police Station Dakha District Ludhiana Rural. In addition, it is argued that Ranjit Kaur neither attributed any negligence to Parminder Singh while recording her first version on 20.12.2012 nor she initiated any criminal proceedings against said Parminder Singh. Statement made by Ranjit Kaur before the Tribunal does not make reference as to how driver of alleged offending car was rash or/and negligent in his driving or had failed to take reasonable care to avoid accident. He would submit that plea of the claimants that present is a case of composite negligence of alleged offending car and unknown vehicle can not be allowed to sustain in view of first version recorded by Ranjit Kaur and even her testimony before the Tribunal, therefore, findings of the Tribunal on issue No. 1 are liable to be set aside and claim application is liable to be rejected on this score alone.

Another submission made by counsel is that Rajinder Singh died on 20.12.2012 after about one month of the occurrence. Post mortem was conducted on 21.12.2012 by a Medical Board comprising Dr. Harpreet Negi, Dr. Harpreet and Dr. Baldeep Singh. The Medical Board opined that cause of death is due to shock as a result of chronic liver disease and its complications, sufficient to cause death in ordinary course of nature. It is further argued that Dr. Baldeep Singh

one of the members of the Medical Board was examined by the claimants. In his statement by way of examination in chief, he has stated that patient was having underline chronic liver disease which got de-compensated due to the accident. It is argued that Dr. Baldeep Singh in the opening line of his cross examination has admitted, reads thus:-

“It is correct that the Board of Doctors have not given an opinion in Ex. PW2/2 that patient got de-compensated due to the accident.”

In the concluding line of his cross examination, he had stated “ it is correct that Rajinder Singh had not died due to the alleged injuries received by him in the alleged accident.” According to counsel, in view of opinion expressed by the Medical Board qua cause of death, findings of the Tribunal that Rajinder Singh died due to accidental injuries can not be affirmed and their claim for death of Rajinder Singh because of chronic liver disease and its complications can not be accepted.

Counsel representing the claimants, on the contrary, has supported the award with regard to accident being the result of rash and negligent driving of the offending car. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court **Pawan Kumar and another etc. vs. Harkishan Dass Mohan Lal and others 2014 ACJ 704, Kamlesh and others vs. Attar Singh and others 2016**

(1) RCR (Civil)24, and Ramamurthy now a mentally deranged person represented by his next friend, wife K. Kamatchi vs. National Insurance Company Limited and another Civil Appeal No. (s) 26255 of 2015 decided on 30.3.2017. Further reference has been made to judgment of this Court United India Insurance Company Limited vs. Sahil Garg and another FAO No. 6419 of 2016 decided on 4.11.2016.

With regard to nexus between the injuries sustained in the occurrence and death of Rajinder Singh, counsel has relied upon statements of Dr. Baldeep Singh CW3. Dr. Sanjeev Mahajan CW5 and Dr. Varun Mehta CW6. It is argued that Rajinder Singh remained under treatment of DMC & H Ludhiana from 18.11.2012 and he died on 20.12.2012 during his treatment in the aforesaid hospital. Counsel would pray for enhancement of compensation by extending benefit of addition in income for future prospects.

I have heard counsel for the parties, perused the paper books and the records.

The insurance company has raised a question mark with regard to findings of the Tribunal on issue No. 1 qua rash and negligent driving of Parminder Singh while driving the alleged offending car in which the deceased and his family were travelling on the fateful day on 17.11.2012.

A relevant extract from para 24 of the claim application,

reads as follows:-

“On 17.11.2012 at about 10.15 p.m. the deceased Sh. Rajinder Singh was going on the road leading from Jagraon to Mullanpur while sitting in a car bearing Registration No. PB 10 BK-3451 which was being driven by Sh. Parminder Singh respondent No. 1 at fast speed and in a rash and negligent manner. His wife Smt. Ranjit Kaur and daughter Ms. Rajdeep Kaur were the other occupants of the aforesaid Car. When they were little short from Pandori Nursing Home, Mullanpur at that time an unknown vehicle came fast speed from the opposite direction and while coming on the wrong side of the road, it struck against their Car. After causing the accident the aforesaid unknown vehicle sped away from the spot. As a result of this accident all the occupants of the Car received serious injuries. They all were taken to Pandori Nursing Home-Mullanpur immediately and from there the deceased was taken to New DMC, Ludhiana where he died on 20.12.2012 due to the injuries he sustained in this accident. The accident took place due to the composite negligence of driver of unknown vehicle and Sh. Parminder Singh respondent No. 1 the driver of Car No. PB-10 BK-3451.....”

Smt. Ranjit Kaur, one of the eye witnesses to the occurrence and author of FIR Ex. PW2/1 appeared in the witness box. She tendered into evidence her affidavit Ex. PA by way of examination in chief. Para 1 of the affidavit is verbatim reproduction of the averments raised in para 24 of the claim application stating as to how the accident in question took place.

In her cross examination, she admitted that FIR was recorded on her statement against unknown vehicle and she had not lodged FIR against car driven by Parminder Singh respondent No. 1. She further stated that she has not lodged any complaint to high ups of the police and judicial officers till date. She admitted that she had not stated in her statement before the police on the basis of which Ex. PW2/1 was lodged that accident had occurred due to composite negligence of Parminder Singh driver of car No. PB-10 BK-3451. She further admitted that in FIR Ex. PW2/1 she had stated that at about 10.15 p.m. unknown driver of unknown vehicle after coming on wrong side of road driving rashly and negligently struck against the car in which she was an occupant and driven by Parminder Singh and thereafter ran away from the spot and they could not note the number of unknown vehicle. Another admission made by the witness is that it was not mentioned in Ex. PW2/1 that the accident had occurred due to negligence of car No. PB-10 BK-3451 driven by Parminder Singh.

Counsel for the claimants has not disputed that in the FIR

lodged one month after the accident by Ranjit Kaur, there is not even a whisper that Parminder Singh driver of offending car can be attributed negligence or the present is a case of composite negligence of the car in question and an unknown vehicle.

The question for consideration is, whether in view of statement of Ranjit Kaur in her affidavit Ex. PA dated 22.7.2014 that car was driven by Parminder Singh at a fast speed and in a rash and negligent manner and accident took place due to composite negligence of driver of unknown vehicle and Parminder Singh driver of car No. PB-10 BK-3451, findings of the Tribunal attributing rash and negligent driving to Parminder Singh driver of the aforesaid car can be allowed to sustain when examined in the light of judgments cited by counsel for the appellants.

Ranjit Kaur had stated that the car was driven at a fast speed and in a rash and negligent manner. She has not stated what was the speed of the car to prove that it was driven at a fast speed. Counsel for the claimants has fairly conceded that fast speed ipso facto does not establish rash or/and negligent driving. Testimony of Ranjit Kaur is conspicuously silent with regard to factual foundation to form an opinion that Parminder Singh was rash or/and negligent in his driving, thus, liable to be attributed composite negligence for the unfortunate occurrence. Taking into consideration the first version recorded by Ranjit Kaur while lodging the FIR against unknown vehicle coupled

with failure to explain as to how Parminder Singh was rash or/and negligent in his driving, it is difficult to accept contention of the claimants that the present is a case of composite negligence of the two vehicles involved in the accident and claimants can maintain claim against either of the joint tort-feasors, in view of liberty given under law.

So far as the judgment in **Pawan Kumar and another etc.s' case(supra)**, there is no quarrel with settled position in law that in case of composite negligence of two or more vehicles, the claimants are at liberty to seek compensation from either of the joint tort-feasors even without impleading all the joint tort-feasors as a party in the claim proceedings.

Counsel for the claimants have mainly relied upon judgment in **Kamlesh and others' case (supra)** to bring home his contention that present is a case of composite negligence of both the vehicles. In the said case, an extract from para 8, relevant in the present context, reads as follows:-

“We have heard learned counsel for the parties and perused, inter alia, the evidence on record of Ram Parshad PW2 and Devender PW.3. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles, that is the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo Attar Singh and has filed a charge sheet but the same cannot be said to be

conclusive. Though, Attar Singh has stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may. It appears both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint ‘tort-feasors’, thus, liable to make payment of compensation.”

In the case at hand, no such facts have been elicited even in chief examination of Ranjit Kaur as to how any rashness or negligence can be attributed to Parminder Singh for the accident which was caused by driver of unknown vehicle who came on wrong side and hit the car driven by Parminder Singh. As has been discussed hereinbefore, Ranjit Kaur has not even stated what was the speed of car driven by Parminder Singh or car being at a high speed can constitute contributory rashness or negligence of Parminder Singh. It is not case

of the claimants here that accident took place in the middle of road or Parminder Singh diverted his car from correct side of the road. On the contrary, Ranjit Kaur has emphatically and clearly deposed that unknown vehicle came at a fast speed from opposite direction and while coming on wrong side of the road struck against their car. In the given facts and circumstances, claimants cannot derive any advantage to their contention from the judgment in **Kamlesh and others' case (supra)**, decided in the light of peculiar facts and circumstances, extracted hereinbefore.

No doubt, the statement of eye witness may vary from his first version recorded by the police with a valid explanation for change in his stance. In the instant case, Ranjit Kaur had stuck to her stand taken in the first version that unknown vehicle came at a fast speed from opposite direction and while coming on wrong side of road struck against their car though she made an addition that the alleged offending car was driven at a fast speed and in a rash and negligent manner but without any explanation as to why the said fact was not recorded in her first version much less bringing factual foundation on the basis whereof rashness or negligence can be attributed to Parminder Singh. Statement made by Ranjit Kaur, in the aforesaid regard, is only an opinion evidence and her opinion cannot form the foundation to discharge onus of issue No. 1 that accident is the result of rash and negligent driving of alleged offending car. It further

appears that as unknown vehicle could not be traced during investigation of the FIR lodged by Smt. Ranjit Kaur, the claimants cooked up a story, may be due to legal advice, to say that driver of aforesaid car was driving at a fast speed and in a rash and negligent manner. As has been held in the referred authority that man may lie but the circumstances do not. Though the claimants made an addition to say that driving of Parminder Singh was rash and negligent but they failed to substantiate their plea on the basis of facts constituting rashness and negligence. In this view of the matter, I find merit in contention of the insurance company that the claimants have miserably failed to discharge onus of issue No. 1 or to establish that accident is the result of composite negligence of Parminder Singh, driver of the car. I would hasten to add that this court is not oblivious of the fact that proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied.

The driver of aforesaid car did not appear in the witness box. Nevertheless, since the claimants failed to establish their plea that accident is the result of rash or negligent driving of Parminder Singh, they cannot derive any strength to their legs from weakness of defence. In view of the above, findings of the Tribunal on issue No. 1 are erroneous rather perverse, thus, untenable. Accordingly, findings of the Tribunal on issue No. 1 are set aside and claimants are not entitle to claim compensation on this count alone.

Indisputably, Rajinder Singh was suffering from various ailments prior to the accident. Dr. Sanjeev Mahajan, the then Associate professor DMC & H, Ludhiana had stated that patient expired on 20.12.2012 due to Type-2 Diabetes with ALD Cirrhosis, HCV positive, decompensated PHTN Ascites and fracture femur, Ventricular Arrhythmias with shock and cardio respiratory arrest. He further stated that normally in the treatment of normal human being whereby the isolated fracture of femur is treated with surgical intervention, there are minimal chances of mortality/death. In his cross examination, he would state that since the cause of death can be ascertained only by the doctors who conducted the post mortem, as such he cannot tell the reason of death.

Dr. Varun Mehta, in his cross examination has stated that cause of death as per death summary is cardio arrest respiratory due to the diseases mentioned in Ex. PW5/1 including decompensation. He denied suggestion that chronic liver disease along with infection suffered by Rajinder Singh is sufficient to cause death.

Both the aforesaid doctors were the doctors from DMC & H Ludhiana where Rajinder Singh remained admitted from 18.11.2012 till his death on 20.12.2012. Dr. Sanjeev Mahajan CW5 was working as Associate professor Orthopedics and Dr. Varun Mehta as Associate Professor Department of Gastroenterology DMC & H, Ludhiana. Dr. Sanjeev Mahajan has expressed his inability to give cause of death, to

be ascertained by the doctors who conducted the post mortem whereas Dr. Varun Mehta expressed his opinion with regard to cause of death. Counsel for the appellants(claimants) has not referred to any medical text much less authoritative that cause of death can be ascertained except on the basis of autopsy. In the given circumstances, primacy is to be given to the statement of Dr. Sajeew Mahajan viz-a-viz Dr. Varun Mehta. The medical board on the basis of post mortem examination held that death of Rajinder Singh is due to shock as a result of chronic liver disease and its complications. As has been rightly argued by counsel for the insurance company, statement of Dr. Baldeep Singh, one of the members of the Medical Board that underline chronic liver disease got decompensated due to the accident, is beyond opinion given by the Board of Doctors as per post mortem report Ex. PW2/2. Not only this, Dr. Baldeep Singh in the concluding part of his cross examination has unequivocally admitted that Rajinder Singh had not died due to alleged injuries received by him in the alleged accident.

A conjoint reading of statements of three doctors examined in the case and opinion given by the medical board with regard to cause of death of Rajinder Singh, it is difficult to accept contention of the claimants that fracture of right femur sustained by the deceased due to accident has a nexus with cause of his death and as such the claimants are not entitle to compensation on account of death of Sh. Rajinder Singh. In view of findings on the aforesaid issues raised by

the insurance company, this court need not to dilate on the question of additional compensation, prayed for by the claimants.

In view of what has been discussed hereinbefore, the appeal preferred by the insurance company is allowed. The award of the Tribunal is set aside. The application filed by the claimants seeking compensation is dismissed. As a natural corollary, the appeal filed by the claimants is dismissed having rendered infructuous.

(Rekha Mittal)
Judge

July Ist, 2019
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No