

been filed by the claimants seeking enhancement of the compensation awarded to them vide impugned award dated 22.02.2018 passed by the learned Motor Accident Claims Tribunal, Palwal (hereinafter referred to as, the 'Tribunal').

Brief facts necessary for the adjudication of the case are that, the claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Prabhu Dayal. It is pleaded in the claim petition that Prabhu Dayal succumbed to the injuries on 26.07.2016 suffered by him in a motor vehicle accident which took place on 03.06.2016. FIR 327 dated 21.06.2016 under Sections 279/304A IPC was registered against driver of the offending vehicle at Police Station Hodal.

Learned Tribunal on consideration of the facts and evidence on record concluded that the accident in question took place due to the rash and negligent driving of the offending tractor Sonalika bearing registration No. HR-50C-5965 by its driver, respondent – Babu Ram.

Learned Tribunal while assessing income of Prabhu Dayal (deceased) as ₹7,600/- per month, awarded a total sum of ₹26,02,060/- to the claimants. He was held to be 35 years old at the time of the accident. Addition in income at the rate of 40% on account of future prospects was afforded. Deduction to the extent of 1/4th on account of personal expenses was effected. Multiplier of 16 was applied. ₹15,000/- each was awarded towards funeral expenses and loss of estate, besides, ₹40,000/- to the claimant-widow on account of loss of consortium. ₹9,99,900/- was awarded to the claimants on account of the medical expenses as proved on record.

Learned counsel for the appellant-Insurance company vehemently

argues that involvement of the offending vehicle (insured with the appellant-Insurance company) is not proved on record. Accident in question is pleaded to have taken place on 03.06.2016, whereas FIR in this respect was registered on 21.06.2016. As per the evidence of PW3 Rohtash, the driver was arrested on 19.07.2016. However, there is no evidence on record to point out as to who identified the driver in question, neither have details of the accident been set-forth, to prove that the accident was caused due to the rash and negligent driving of the offending tractor. While referring to the testimony of PW3 Rohtash, it is argued that his presence at the place of accident is doubtful. In any case his testimony, it is submitted, does not indicate any rash and negligent act on the part of the driver of the offending vehicle. Delay in lodging of the FIR, it is urged, thus proves fatal to the case of the claimants.

Learned counsel for the appellant-Insurance company further argues that even if involvement of the vehicle in the accident is proved, death of Prabhu Dayal cannot be connected with the accident in question. It is contended that despite the accident having occurred on 03.06.2016, the deceased was admitted to the hospital on 07.06.2016. There is no explanation as to why he was not admitted at an earlier stage. Moreover, he was discharged on 17.06.2016 as reflected in Ex.P5, thereafter again admitted on 18.06.2016 and discharged on 05.07.2016. It is vehemently argued that the deceased-Prabhu Dayal is proved to be a chronic alcoholic. Cause of death as mentioned in the post-mortem report (Ex.P17) is multiple organ failure as a result of sepsis, which is sufficient to cause death in the ordinary course of nature. Therefore, it cannot be said that Prabhu Dayal died due to the injuries which may have been caused at the time of

the accident on 03.06.2016. It is submitted that the learned Tribunal has not returned a categoric finding on Issue No.1 causing grave prejudice to appellant-Insurance company. No serious arguments have been addressed challenging quantum of compensation awarded. It is thus prayed that this appeal be allowed and the claim petition filed by the claimants be dismissed.

Learned counsel for the claimants while refuting the said averments, submits that as the injuries caused to Prabhu Dayal were not visible, he was taken to a Vaid (practitioner of Ayurveda) for treatment at the first instance. Prabhu Dayal had as many as eight (8) broken ribs. He was then taken to Kishan Singh Hospital, Hodal. Thereafter he was admitted in the Asian Hospital, Faridabad where he remained hospitalized from 07.06.2016 to 17.06.2016 and then from 18.06.2016 to 05.07.2016. Prabhu Dayal ultimately succumbed to his injuries on 26.07.2016. It is submitted that Prabhu Dayal being a chronic alcoholic, cannot be a ground to conclude that his death was not caused due to the injuries suffered by him in the accident in question. Learned counsel for the claimants however does not raise any serious objection to the income of the deceased to be ₹7,600/- per month as assessed by the learned Tribunal. It is thus prayed that the appeal filed by the Insurance company be dismissed and that of the claimants be allowed, while awarding enhanced compensation.

I have heard learned counsel for the parties and have gone through the record with their assistance.

A perusal of the record reveals that PW3 Rohtash son of Shyam stated that on 03.06.2016 he was going towards village Godota from his home and the deceased-Prabhu Dayal was coming to his house from the fields on a

tractor. In the meantime, an unknown driver came from village Bedha Patti Hodal, driving the offending vehicle in a rash and negligent manner, without blowing his horn and hit against the tractor of the deceased-Prabhu Dayal on its right side. Resultantly, Prabhu Dayal sustained multiple grievous injuries. The unknown driver of the offending tractor stopped his vehicle about 10-15 steps ahead and PW3 Rohtash was able to note down the number of the offending vehicle as HR-50C/5965 Sonalika, blue in colour. Driver of the offending vehicle inquired about the name and address of Prabhu Dayal. He himself disclosed his name as Babu Ram son of Birju and gave his address as well. PW3 Rohtash alongwith other family members of Prabhu Dayal came to the spot and got busy in taking care of Prabhu Dayal and during this period, driver of the offending vehicle alongwith his vehicle fled from the spot. PW3 Rohtash in his cross-examination has clearly explained that FIR in question could not be registered immediately, as he remained busy in securing treatment of Prabhu Dayal. PW3 Rohtash further specified that as Prabhu Dayal was not having visible injuries at that time, he was thus taken to a Vaid (ayurvedic practitioner), but as his condition did not improve, he was taken to Krishan Singh Hospital, Hodal and ultimately Asian Hospital, Faridabad where he remained hospitalized from 07.06.2016 to 17.06.2016 and again from 18.06.2016 to 05.07.2016. Prabhu Dayal ultimately succumbed to his injuries on 26.07.2016.

FIR No.327 dated 21.06.2016 (Ex.P4) was registered in this respect on a written complaint dated 21.06.2016 by PW3 Rohtash. PW1 Anil Kumar, Ahlmad has proved that final report under Section 173 Cr.P.C. and charge-sheet was presented against the accused-driver in the said FIR and the matter was fixed

for prosecution evidence. Photocopy of the driving license (Ex.P1) of the respondent-driver, registration certificate (Ex.P2) and insurance policy (Ex.P3) were also produced. A perusal of the record reveals that occurrence of the accident due to the rash and negligent driving of the offending tractor is clearly proved on record. PW3 Rohtash has clarified in his cross-examination that it was the tractor on which deceased-Prabhu Dayal was proceeding which was hit by the offending tractor on its right side. Mere delay in lodging of the FIR, in the factual matrix of the case, cannot lead to an inference that it was a case of hit and run. Involvement of the offending tractor or its driver are not susceptible to any doubt on the basis of evidence on record.

Hon'ble Supreme Court in **Mangla Ram v. Oriental Insurance Company Ltd. and others, 2018(5) SCC 656** and **Sunita v. RSTRC, CA No.1665 of 2019 (arising out of SLP (civil) No.33757 of 2018, decided on 14.02.2019**, reiterated that the claimants in proceedings under this Act are required to prove their case on the touchstone of preponderance of probabilities and court is not to be swayed by technicalities, niceties or mystic maybes. In **Sunita's case** (supra), it was held that where even one of the eye-witnesses was not examined, it cannot be a ground to reject the claimants version in the light of cogent evidence available on record. In the present case, the claimants have successfully proved their case on the touchstone of preponderance of probabilities.

Another argument vehemently urged by Learned counsel for the appellant-Insurance company is that death of Prabhu Dayal cannot be connected with the accident in question even if it is so proved on record. It is submitted that

as per the medical record Prabhu Dayal is recorded to be a chronic alcoholic, therefore, his death was due to this reason and not due to injuries received in the accident.

I have carefully perused the evidence on record and find this argument to be totally devoid of any merit. This is so for the reason, that as per 'LAMA Summary and Discharge Summary' of the Asian Institute of Medical Sciences, it is clearly mentioned that Prabhu Dayal was brought to the emergency in a grossly sick condition from a local hospital with alleged history of road traffic accident (RTA) on 03.06.2016 with blunt trauma of abdomen and chest. Prabhu Dayal was accordingly admitted in ICU after initial resuscitation with high risk consent. Thereafter, emergency laparotomy was performed. It is further mentioned in discharge summary that abdominal closure was not possible due to extensive bowel edema.

There is specific mention of the road side accident in the medical record of the Krishan Singh Hospital as well. The claimants have examined PW4 Dr. Sanjeev Kumar Gupta, Consultant Surgeon of the Asian Hospital, Faridabad as well as PW7 Dr. Javed, Medical Officer of Krishan Singh Hospital, Hodal. PW6 Nikhil Kumar is the Medical Record Assistant of the Asian Hospital, Faridabad who proved the medical bills and receipts etc. It is evident from the record that Prabhu Dayal developed sepsis due to the injuries in question which ultimately led to multiple organ failure resulting in his death. It is indeed incorrect to suggest that Prabhu Dayal met with his death as he was an alcoholic. As per the evidence on record it is sepsis due to the injuries which led to multiple organ failure. Reference to the statement of PW4 Dr. Sanjeev Gupta that

cause of death of the patient could be due to term of chronic alcohol intake and multi organ failure as a result of sepsis, is of no avail to learned counsel for the Insurance company. This is so for the reason that PW4 Dr. Sanjeev Gupta has clearly and categorically stated that 'sepsis is related to the injuries of the patient and means a serious medical condition when 'sepsis' which is organ injury or damage in response to infection, leads to low blood pressure and abnormalities in cellular metabolism. It can cause multiple organ dysfunction syndrome (formerly known as multiple organ failure) and death'. Thus, testimony of PW4 Dr. Sanjeev Gupta coupled with the medical evidence on record including the post-mortem report (Ex.17) proves that even if general condition of the victim was already poor due to his being a chronic alcoholic, cause of death was indeed multiple organ failure as a result of sepsis which is clearly relatable to the injuries sustained by him in the motor vehicle accident which took place on 03.06.2016.

In this view of the matter, learned Tribunal has correctly decided the issue and concluded that Prabhu Dayal died on account of the injuries received by him in a motor vehicle accident which took place on 03.06.2016 due to the rash and negligent driving of the offending vehicle in question by its driver, respondent No.1.

Keeping in view the discussion as above, there is no merit in the appeal filed by the Insurance company.

FAO No.4684 of 2018(O&M)

It is borne out from the evidence on record that the deceased was about 35 years old at the time of his death. His date of birth as mentioned in the

matriculation certificate and driving license on record was 05.01.1982. Claimants have successfully proved that deceased-Prabhu Dayal was employed as a driver with Agarsen Public School, Palwal, earning a salary of ₹7,600/- per month. PW5 Anil Kumar, Principal of the said school has proved the salary certificate (Ex.P7) in this respect. There is not an iota of evidence to discredit this evidence. Income of the deceased assessed by the learned Tribunal as ₹7,600/- per month is, thus, upheld. At the same time, there is no evidence to assess income of the deceased at any higher level.

Addition in income at the rate of 40% has been rightly afforded by the learned Tribunal on account of future prospects in tune with the judgment of the Hon'ble Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, 2017(16) SCC 680. Deduction to the extent of 1/4th has been rightly effected on account of personal expenses. Multiplier of 16 has been correctly applied as well. ₹15,000/- each awarded on account of loss of estate and funeral expenses as well as ₹40,000/- to claimant-widow towards loss of consortium are upheld. ₹9,99,900/- awarded by the learned Tribunal towards medical expenses are maintained.

Additionally, minor children are entitled to a sum of ₹40,000/- for loss of parental consortium and parents are entitled to ₹40,000/- on account of loss of filial consortium. Reference in this regard can gainfully be made to the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd. v. Nanu Ram Alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333, as well as decision dated 14.03.2019 of this Court in FAO No.2110 of 2016 (Shri Ram General Insurance Company Ltd. v. Beant Kaur and others).

Claimants are entitled to interest on the enhanced amount of ₹80,000/- at the rate of 7.5% per annum from the date of filing of the petition till realization. Manner of disbursement as determined by the learned Tribunal shall remain the same.

Accordingly, FAO No.2779 of 2018 filed by the Insurance company is dismissed with no order as to cost. FAO No. 4684 of 2018 filed by the claimants is disposed of with the modification in the amount of compensation as above.

March 11 , 2019.
'om'

(LISA GILL)
JUDGE

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