

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

FAO No.660 of 2021 (O&M)
Date of Decision: 04.08.2021

Aashu and another

.....Appellants

Versus

Joginder Kaur and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. DK Prajapati, Advocate
for the appellants.

ANIL KSHETARPAL, J.

This appeal has been filed by the appellants assailing the correctness of the award passed by the Motor Accidents Claims Tribunal, Jalandhar, (in short 'the Tribunal') on 23.02.2021, awarding a sum of Rs.6,02,312/- in favour of respondent No.1 to 3 on account of automobile accident caused by appellant No.1 (minor) snuffing out the life of late Sh. Daler Singh on 04.01.2019. Appellant No.1 was driving a sports utility vehicle Creta whereas late Sh. Daler Singh was travelling on a scooter/activa. As per the case of the claimants, Sh.Daler Singh came to Jalandhar from his Village Maksudpur where he met his son-Rajender Singh who was on his motorcycle. Thereafter, they started their journey back home when appellant No.1 driving Creta-SUV started overtaking a truck. In that process, he lost control over the car and came towards the wrong side of the road and struck

the deceased. The appellant tried to slip away, however, struck his vehicle against a tree. FIR No.2 dated 05.01.2019 was registered against the appellant No.1 by the police. After investigation, it was also found that the appellant No.1 was driving the vehicle in a rash and negligent manner. While contesting the petition, the appellants took a stand that the SUV-Creta was being driven by Naib Singh and appellant No.1 was occupying the vehicle as a passenger. Their vehicle first struck against a cow and thereafter, against a tree whereas the deceased who was coming on a scooter struck against the cow. Hence, it is claimed that the deceased did not die due to accident with their vehicle. The insurance company took a defence that the vehicle was driven by appellant No.1 who was a minor and consequently, did not possess a driving license. Hence, the insurer is not liable to reimburse appellant No.2.

In order to prove their case, the claimants examined PW-1 Rajinder Singh and PW-2 Mandeep Singh whereas respondent-Insurance Company examined Naresh Kumar, Manager Legal. The appellants examined Naib Singh as RW-2 and appellant No.2 himself as RW-3. Naib Singh took a stand that he was driving the vehicle but since huge damage was caused to the new vehicle due to the accident, therefore, he slipped away.

The Tribunal, after appreciating the evidence, found that Naib Singh was not driving the vehicle at the time of the accident and has been put forth by appellant No.2 in order to save his son who was a minor at the

relevant time.

The Tribunal also held that even if the claimants failed to prove the income of the deceased in absolute terms, however, late Sh. Daler Singh was hale and hearty therefore, the minimum wages notified by the Punjab Government @ Rs.8,077/- was taken as the monthly income. It may be noted here that Daler Singh retired from Army in the year 1995 and was getting pension. Thereafter, he worked in the Department of Health and retired therefrom in the year 2016. The claimants had claimed that late Sh. Daler Singh was working as a Manager in Harji Fabric Bag Industry on a monthly salary of Rs.15,000/- per month. The Tribunal disbelieved the aforesaid version and assessed the compensation on the basis of the minimum wages.

Heard learned counsel representing the appellants and with his able assistance perused the paper-book.

The learned counsel for the appellants contends that the Tribunal has erred in recording a finding that it was appellant No.1 who was driving the vehicle at the time of the accident. He submitted that once Naib Singh in his evidence has admitted that he was driving the vehicle at the time of accident, the Tribunal erred in refusing to accept his stand. It may be noted here that FIR was registered on 05.01.2019 i.e. the next day from the date the accident took place. The FIR was registered on the basis of the information given by Rajinder Singh. He had informed the police that it was appellant

No.1 who was driving the vehicle at the time of the accident. The police, after completing the investigation, found that appellant No.1 was driving the vehicle. On completion of the investigation, the challan has been presented against appellant No.1. The Tribunal has given cogent reasons to disbelieve the statement of Naib Singh. The Tribunal has recorded that Naib Singh has been put forward by appellant No.2 in order to save his minor son. It has further been found that if the accident had taken place on account of rash and negligent driving of Naib Singh, Rajinder Singh, the first informant would not have named appellant No.1 as the driver of the offending vehicle. The appellants have failed to prove any enmity with the claimants. The finding of fact is not shown to be suffering from any error. Hence, this Bench expresses its inability to accept the contention of the learned counsel representing the appellants.

The next arguments of the learned counsel is with regard to the amount of compensation of Rs.1,00,000/- awarded to claimant No.2 and 3. Claimant No.2 and 3 who were already major i.e. more than 18 years of age at the time of accident. He submits that major sons of the deceased were not dependant and therefore, not entitled to compensation.

It may be noted here that the Tribunal has assessed the compensation @ Rs.6,02,312/- which is to be distributed inter-se among the claimants. The appellants have no right to dispute the correctness of

apportionment of the compensation. Smt. Joginder Kaur has not filed an appeal assailing the correction of the apportionment. Hence, the appellants have no locus standi.

The learned counsel representing the appellants further submits that the Tribunal erred in awarding Rs.40,000/- each to claimant No.2 and 3 as parental consortium. He submits that they could not be awarded parental consortium. It may be noted here that the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. Vs. Nanu @ Churu Ram and others, 2018 (4) RCR (Civil) 333** held that each dependant of the deceased is entitled to consortium @ Rs.40,000/-, be it spousal or parental or filial consortium. Keeping in view the aforesaid judgment, there is no substance in the contention of the learned counsel.

Accordingly, finding no merit, the appeal is ordered to be dismissed in limine. However, the appellants have deposited a sum of Rs.25,000/- while filing the appeal which may be forwarded to the Tribunal for disbursement.

(ANIL KSHETARPAL)
JUDGE

04.08.2021
ashok

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