

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2603 of 2005 (O&M)
Date of decision : March 15, 2021

Mahant Ram and others

....Appellants

versus

Karnail Singh and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Vijay Lath, Advocate for the appellants

Mr. Suvir Dewan, Advocate, for respondent no. 4-
Insurance Company

None for the other respondents

Fateh Deep Singh, J. (Oral)

This is an appeal by the claimants Mahant Ram, Dharam Singh and Ram Pal whereby they have laid challenge to an award dated 11.2.2005 passed by the court of learned Motor Accident Claims Tribunal, Rupnagar thereby granting compensation of Rs 90,000/- in favour of the claimants and against the respondents jointly and severally.

Heard Mr. Vijay Lath, Advocate for the appellants; Mr. Suvir Dewan, Advocate, for respondent no. 3-Insurance Company and

perused records.

The claimants in their invocation have claimed that wife of claimant Mahant Ram, mother of claimants Dharam Singh and Ram Pal was aged around 55 years, a house wife carrying on agricultural pursuits on fateful day of 28.9.2002 was going along with the son from Nangal Township to Panchkula to attend Satsang of Bapu Asa Ram in a Mini Bus and which halted in the area of village Solkhian. It is there when offending bus bearing No. PB-23B-4999 came from the side of Ropar in a rash and negligent manner by its driver Jasbir Singh respondent no. 2 and hit Lalo Devi and her sister who both sustained injuries resulting in death of Lalo Devi. FIR No. 217 dated 28.9.2002 pertaining to this accident was registered with Police Station Sadar Ropar. Before the Tribunal Karnail Singh appeared and filed written reply denying the accident taking the plea that he has been falsely implicated. Jasbir Singh respondent in his individual reply also denied the accident terming the criminal case FIR to be false implication. Respondent Insurance Company namely M/s Oriental Insurance Company Limited though accepted that the bus in question was insured with it but claimed that the driver of the bus was not holding valid driving licence at the time of the accident. The Tribunal framed the following issues:-

“1. Whether Lalo Devi died in the accident caused by Jasbir Singh while driving the Bus No. PB-23B-4999

rashly and negligently ? OPP

2. Whether the claimants are entitled for compensation if so to which extent and from whom ? OPP

3. Whether the claim petition is maintainable?OPP

4. Whether the driver of bus in question was not holding valid and effective DL at the time of accident? OPR

5. Relief.”

The claimants examined claimant Mahant Ram as PW1 and got corroboration from PW2 Amar Singh. On behalf of respondents, they tendered Insurance Policy Ex. R1, copy of RC Ex. R2 and closed evidence. Consequent thereupon the impugned findings were arrived at.

The contentions of counsel for the appellant Mr. Vijay Lath that PW1 Mahant Ram through his affidavit Ex. PW1/A had given eye witness account of the accident attributing acts of rash and negligent driving to the driver of the bus and has proved on record copy of the FIR Ex. P1. The testimony of PW1 has been duly corroborated by eye witness PW2 Amar Singh, the author of the FIR Ex. P1 and who through his affidavit Ex. PW2/A has lent material corroboration to the case of the claimants. The death in this case is well established from the post mortem report Ex. P3. Thus, in the light of the submissions of

counsel for the claimants Mr. Vijay Lath, the counsel for Insurance Company Mr. Suvir Dewan could not refute the fact that there is no resistance put up by the respondents pertaining to the manner of this accident. The driver of the bus was the most natural witness to this accident who has not bothered to step into witness box to state his side of the story and therefore, adverse presumption needs to be drawn against him. More-so there is no comprehensive cross-examination of the witnesses of the claimants to displace their claim as to the manner of the accident. The post mortem Ex. P3 underlines the fact that it was because of accidental injuries Lalo Devi had died. The learned court below has rightly held that since the respondents have not brought any evidence to controvert the case of the claimants and has rightly drawn the conclusion of issue No. 1 in favour of the claimants.

Though much vehemence has sought to be laid by Mr. Suvir Dewan, learned counsel for the Insurer as to the validity and legality of the driving licence of the driver of the offending bus but did not led any evidence in support of the same. The Tribunal has drawn the conclusion that initially the driver appeared and filed the written statement and thereafter did not put in appearance and was proceeded ex-parte and there was nothing suggestive that his driving licence was not legal and valid. Since as has been argued by the counsel for the appellants that the onus lay upon the Insurance

Company to establish that the driving licence was fake and which has not brought on record the driving licence or any evidence including the report of the issuing authority to that effect. The court below has rightly drawn the presumption against the insurer for that reason.

There has been claim and counter-claim over the quantum of compensation by the two sides. No doubt as per the own stand of the claimants, the deceased was aged around 55 years and a house wife, though some sort of plea has been raised that she was carrying on her agricultural pursuits but nothing tangible has been brought on the record. It cannot be lightly brushed aside that even if the deceased was carrying on household work and there is no positive evidence that she was earning Rs 8000/- by selling milk but that does not deter the court from considering her contribution to the running of the household. The deceased has left behind husband Mahant Ram who is aged around 57 years, two sons namely claimants Dharam Singh and Ram Pal are of ages varying from 24 to 29 years and are married and there is nothing brought on the record to show that they were dependents on the deceased. However, keeping in view that the deceased was running and looking after the family which was joint, some latitude has to be given as to the loss suffered by the sons and so the husband. Counsel for the insurer has rightly argued that no doubt jamabandi Ex. P2 bears out that Mahant Ram owned land on which claimants claim that deceased used to work but there is nothing

established to that effect and the submissions need to be accepted. The court below has rightly stressed the fact that the entire Indian household revolves around the house wife and whose contribution to the running of the household cannot be put to doubt by any means. Keeping in view the age of the deceased her being house wife and surrounding circumstances, one can easily assess that the deceased must be contributing at the time of her death which could be assessed to be of monetary value of Rs 9000/- per month and deducting her service in terms of money for herself, her contribution towards family comes to Rs 7000/- per month. The court below had applied multiplier of 7. However, in view of the age of the deceased and the relative ages of the claimants, to the mind of this Court, as per the law laid down in **Sarla Verma and others vs Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77**, multiplier of 11 appears to be most appropriate. The annual dependency comes to Rs 84,000/- and applying the multiplier of 11, the total compensation comes to Rs 9,24,000/-. Besides this the family must have spent money on her last rites and ceremonies besides funeral expenses. The family has lost their family member, a source of love and affection and in terms of loss occasioned by the same, approximately a sum of Rs 50,000/- is awarded and therefore, total compensation comes to Rs 9,74,000/-. Besides this, the claimants are also entitled to interest on this amount at the rate of 9% per annum from the date of filing of the petition till

realization. The interim compensation paid, if any, would be adjusted.

Keeping in view that it is the own case of the respondents that the bus is owned by respondent no. 1 and at the relevant time was being driven by respondent no. 2 and insured by respondent no. 3 and therefore, all the respondents are jointly and severally liable to pay the compensation amount which will be apportioned at 60% for husband and 20% each for two sons-claimants.

The appeal stands disposed off in the aforesaid terms.

March 15, 2021	(Fateh Deep Singh)
'tiwana'	Judge
<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>