

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

FAO No. 3885 of 2008 (O&M)

Date of decision: 30.07.2021

Smt. Pushpa and others

... Appellants

Versus

Ramesh Kumar and others

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Ms. Ekta Thakur, Advocate, for the appellants.

Mr. Sehaj Mahajan, Advocate for

Mr. Ashwani Talwar, Advocate, for respondent no. 3.

(Presence marked through video conferencing).

Arun Monga, J. (Oral)

Aggrieved by the dismissal of their claim petition vide award dated 12.05.2008 rendered by the Motor Accidents Claims Tribunal, Chandigarh, the claimants (widow, daughter and mother of deceased victim) are in appeal before this court.

1. Succinct facts, as per the claim petition, are that on 12.09.2004, Rajinder Kumar (since deceased) was pillion riding on scooter No. CH-01-2542 driven by his younger brother Rakesh Kumar (respondent no.1) from Chandigarh side towards Rajpura. When at about 9-50 pm, they reached near Rajpura Octroi, a truck came from the opposite side. Respondent No. 1 was driving the scooter at high, rash speed in negligent manner. Suddenly, its brakes failed and the scooter went out of control. It went astray and struck against the truck coming from opposite side, which was at normal speed. Resultantly, Rajinder

Kumar received grievous injuries, which proved fatal and he died at the spot. The accident took place due to sudden mechanical defect developed in the offending scooter, which was driven at rash, high speed and in negligent manner by respondent No. 1. The deceased, a scooter mechanic, working under name and style of Rajindra Auto, was 29-year old at the time of death and earning Rs. 5,000/- per month. The accident took place as a cumulative result of sudden mechanical defect developed in the offending scooter and rash and negligent manner of its driving by respondent no.1. An FIR No. 260 dated 13.09.2004 was registered at Police Station Dera Bassi on the statement of Rakesh Kumar – respondent no.1.

2. Respondent no.1 (driver), respondent no.2 (owner of offending scooter) and respondent no.3 (insurance company) contested the claim petition before the MACT by filing separate written statements. While respondent 1 and 2 admitted the accident but they pleaded that it was not due to the negligence of the driver of the scooter. The accident resulted by sheer failure of brakes and certain mechanical defects. While the insurance company took an objection that the offending scooter was not insured with it and even the driver of the offending scooter was not holding valid and effective driving license at the time of accident. Further objection was taken that legal representatives/ claimants had no *locus standi* to file the petition. The claim petition had been filed in collusion with the driver of the offending scooter in order to claim compensation.

3. Learned Tribunal framed following issues:

- i) *Whether the deceased Rajinder Kumar died in motor vehicle accident on 12.09.2004 at about 9.50 pm near Rajpura Octroi with truck ? OPP*
- ii) *Whether the claimants are entitled to compensation being LRs of deceased Rajinder Kumar, if so, from whom ? OPP*
- iii) *Whether respondent No. 1 was not holding a valid and effective driving licence at the time of accident? OPR-3*
- iv) *Relief.*

4. On appraisal of record, the learned Tribunal decided issues No. (i) and (ii) against the claimants, observed that issue No.(iii) was redundant and thus dismissed the claim petition.

5. Heard learned counsel for the parties and with their able assistance perused the paper book.

6. Learned counsel for the appellants argues that the Tribunal has misread the pleadings and evidence led by the claimants while dismissing the claim petition. She contends that as per separate written statements filed by respondent nos.1 and 2 the factum of accident has been admitted. Though they have denied the negligence on the part of respondent no.1 and have attributed the accident to sudden mechanical defect developed in the scooter. Counsel argues that testimony of eye-witness PW Mandeep Kumar reveals that the accident had, in fact, occurred due to the rash manner of driving of scooter by respondent no.1. The scooter was duly insured with respondent no.3, who is liable to indemnify the owner/ respondent no.2, particularly in

view of the fact that sufficient material has been produced on record by the claimants to prove the negligence on the part of respondent no.1.

7. Learned counsel for the appellants further argues that it is proved by testimony of Pushpa Devi, PW1, mother of deceased that he was working as a scooter mechanic and earning Rs.5,000 per month. The deceased is survived by his widow, then a minor daughter and mother. Claimants are thus entitled to compensation for the loss of dependency, loss of estate, consortium, love and affection along with interest @ 12% per annum from the date of filing of the claim petition. Reliance is placed on National Insurance Company vs Pranay Sethi and others 2017 (4) RCR (Civil) 1009 read with New India Assurance Company vs Somwati 2020 ACJ 2321 (SC).
8. Per contra, learned counsel for the Insurance Company – Respondent no. 3 argues that no fault can be found with the well reasoned award recorded by learned Tribunal. Not only the appellants failed to examine the author of the FIR, Rakesh Kumar (Respondent no.1), who is the real brother of the deceased and was also driving the scooter at the time of accident, they did not even implead the owner/ driver/ insurer of the truck as party. The appellants twisted the facts and shifted the entire blame on respondent no.1 only to claim compensation from the insurance company.
9. Learned counsel for the insurance company further submits that the claimants are though not entitled to claim any

compensation, but he even otherwise disputes the income of the deceased at the time of death as Rs. 5,000/- per month. He states that where there is no specified income. The income of the deceased is thus liable to be taken equivalent to an unskilled worker as per the notification of minimum wages issued by the State Government. As per the applicable notification of the Punjab Government, the minimum wages as notified were Rs. 2,740/- per month for the unskilled labour and Rs. 2,840/- per month for the skilled labour at the time of accident.

10. Admitted facts that emerge thus are, accident took place and the deceased was 29 years of age at the time of death and is survived by his widow, minor daughter and mother.
11. For its finding under issue No. 1, the learned Tribunal gave following reasons:

“The stand taken by the claimants in their petition and the statement of PW Mandip Kumar were totally contradictory to the FIR Ex P/1, which was recorded by none else but Rakesh Kumar- respondent No. 1, the real brother of the deceased. It appears that the claimants have not filed the claim petition against the truck driver and its owner intentionally due to the reason that they would not have been able to prove the case against them. It also deserves to be observed here that Rakesh Kumar respondent No. 1 has not stepped into the witness box to substantiate his version, but in para 24 of his written statement, he has categorically stated that this accident did not occur due to his negligence. It also appears that the claimants have intentionally filed claim petition against the driver and owner of scooter No. CH01-2542 to get compensation conveniently. It thus emerges that the real defaulters have not been made party and non-defaulters and his insurer have been wrongly made party. Consequently, the respondents cannot be held liable to pay compensation to the claimants. Accordingly, this issue is decided against the claimants and in favour of respondent”.

12. Under issue No. 2, the learned Tribunal observed that since the claimants had failed to prove that the accident occurred due to rash and negligent driving of scooter No. CH01-2542, they were not entitled to any compensation.
13. In my opinion, the findings under issues No. 1-2 returned by the learned Tribunal are not sustainable. Reasons thereof are discussed hereinafter.
- 13.1 PW2 Mandeep Kumar, eye-witness to the occurrence deposed that on 12.09.2004 deceased was the pillion rider on offending scooter no.CH-01-2542 being driven by Rakesh Kumar towards Rajpura. He(PW2 Mandeep Kumar) was following them on his own scooter. When at about 9.50 p.m., they reached near Rajpura Octroi, a truck came from the opposite side; the scooter was being driven at rash, high speed and in negligent manner by Rakesh Kumar; due to sudden failure of brakes, it got out of control, went astray and struck against the truck. As a result, Rajinder Kumar received grievous injuries which proved fatal for him. He was cross-examined thoroughly but withstood the litmus test. What seems to be intriguing is that without any substantive legal evidence to the contrary and on mere conjectures and surmises, the learned Tribunal disbelieved the unshaken testimony of PW2 Mandeep Kumar, who gave a vivid picturesque of the accident in question.
- 13.2 In normal course of human nature and for obvious reasons and consequences, respondent No. 1 was unlikely to take the blame for the accident on his own head, even though the deceased

was his own brother. It seems that in the natural anxiety to save his own skin, he mentioned in the FIR that the unknown truck was being driven rashly and negligently, owing to which it had struck against his scooter. In his written statement he pleaded that he was driving the scooter at normal speed and denied any negligence.

13.3 FIR Ex P/1 and the written statement of respondent No. 1 by themselves do not constitute substantive legal evidence, so as to displace or disbelieve the unshaken sworn testimony of PW Mandeep Kumar.

13.4 None of the parties pleaded that the accident was caused by the rash and negligent driving of the truck. The only contest in the pleadings was, whether or not the scooter was driven negligently and rashly by respondent No. 1; and whether its brakes had suddenly failed ? The case was required to be decided either way with reference to the pleadings and on preponderance of probabilities based on evidence adduced on record. Instead, the learned Tribunal *suo motu* imagined and carved out an entirely new case to the effect that the accident was caused due to the truck driver's rash and negligent driving, wholly without any such pleadings or substantive evidence on record. On that premise, it dismissed the claim petition. To my mind, such an approach to the case by the learned Tribunal was unwarranted and unjustified and it erred in taking that course and dismissing the claim petition.

- 13.5 In the aforesaid premise, I am of the opinion that the findings returned by the learned Tribunal on issues No. 1-2 against the claimant/appellants are liable to be reversed and the respondents are held jointly and severally liable to pay compensation to the appellant/claimants. Ordered accordingly.
14. The learned Tribunal did not return any finding on issue No. 3, observing that it had become redundant. The onus to prove this issue was on respondent No. 3/Insurance Company. It has not led any evidence to discharge that onus. This being the position, issue No. 3 is decided against respondent No. 3.
15. On to the quantum of compensation. The deceased, as per the testimony of his widow Pushpa Devi and mother Bimla Devi, was working as scooter mechanic. He was earning Rs. 5,000/- per month.
16. No documentary evidence has been indeed been produced in evidence by the appellants to prove the income of the deceased to be Rs. 5,000/- per month. Learned counsel for the Insurance company submits that at the most income of the deceased can be treated as Rs. 2,740/- per month, being unskilled worker.
17. Deceased Rajinder Kumar was 29 years of age, when he died in accident on 12.09.2004. Before that he was hale and hearty. His widow PW Pushpa Devi swore affidavit stating *inter alia* that he was an expert scooter mechanic, his business was flourishing day by day and he was in great demand in the area. On these aspects, her testimony was not challenged and has

gone un rebutted. Considering this evidence and the fact the deceased was 29 years of age at the relevant time, it seems that he would have acquired sufficiently good skill and expertise as scooter mechanic. It would, therefore, be fair and reasonable to assess his income at par with the wages of a highly skilled upper level workman prescribed under the Minimum Wages Act. For the period 01.09.2004 to 28.02.2005, prescribed rate of minimum monthly wages of highly skilled upper level workman in Punjab was Rs.3,014/-. Accordingly, the income of the deceased at the time of accident/death on 12.09.2004 is assessed at Rs. 3,014/- per month. To this, 40% addition is to be made for his future prospects.

18. Claimants are his widow, daughter (then minor) and mother. $\frac{1}{3}^{\text{rd}}$ of the income of the deceased may be deducted for his own personal expenses.
19. Multiplier of 17 would apply in the case.
20. In Pranay Sethi supra decided on 31.10.2017, a Constitution bench of the Apex Court took into consideration the then prevailing divergent position qua the quantum of compensation under conventional heads and laid down the formula for the same as under :

“61. In view of the aforesaid analysis, we proceed to record our conclusions:-

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(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.

15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years. 62. The reference is answered accordingly. Matters be placed before the appropriate Bench. ”

21. In **the New India Assurance Company Limited versus Smt. Somwati and others Civil Appeal No.3093 of 2020 decided on 07.09.2020**, the Apex Court, relying upon its three-Judge Bench judgment in **Civil Appeal No.2885 of 2020, *M.H.Uma Maheshwari and others versus United India Insurance Company Ltd.*** decided on 12.06.2020, held as under:

*“39.The Three-Judge Bench in **United India Insurance Company Ltd. (Supra)** has categorically laid down that apart from spousal consortium, parental and filial consortium is payable. We feel ourselves bound by the above judgment of Three Judge Bench. We, thus, cannot accept the submission of the learned counsel for the appellant that the amount of consortium awarded to each of the claimants is not sustainable.”*

22. The learned Tribunal has dismissed the claim petition but instant appeal is continuation of the original claim proceedings. In view of this and the Constitution bench judgment of the Apex Court in Pranay Sethi, read the judgments in **Civil Appeal No. 3093 of 2020** decided on 07.09.2020 and **Civil Appeal No. 2885 of 2020** decided on 12.06.2020, each of the three claimants individually - the widow, daughter and mother of Rajinder Kumar deceased- is held entitled to compensation @ Rs. 40,000/- for loss of spousal consortium, parental consortium and filial consortium respectively, while the claimants are held jointly entitled to compensation of Rs. 15,000/- for loss of estate and Rs. 15,000/- for funeral

expenses with enhancement of 10% for the time elapsed since 31.10.2017 i.e. the date of judgment in Pranay Sethi *ibid*.

23. As an upshot, the compensation is computed as below :-

Deceased	Rajinder Kumar
Date of accident	12.09.2004
Age	29 years
Occupation	Scooter mechanic
Monthly income as per minimum wages of highly skilled upper level workman	Rs.3,014/-
Annual income	Rs. 36,168/-
Future increase @ 40% (as per <i>Pranay Sethi's</i> case <i>ibid</i>)).	Rs.14,467/-
Total Annual income	Rs. 50,635/-
Claimants (three)	Widow, minor daughter and mother
Deduction (1/3 rd)	Rs. 16,878/-
Annual dependency	Rs. 33,757/-
Multiplier	17
Loss of dependency (Rs. 33,757 x17)	Rs. 5,73,869/-
Loss of spousal consortium to claimant No. 1, parental consortium to claimant No. 2 and of Filial consortium to claimant No. 3 @ Rs. 40,000/- each) plus 10% as per Pranay Sethi case <i>ibid</i>)	Rs.1,32,000/-
Funeral expenses	Rs. 16,500/-
Loss of estate	Rs. 16,500/-
Total compensation	Rs. 7,38,869- rounded off to Rs. 7,38,870/-

24. The aforesaid compensation of Rs.7,38,870/- shall be payable by the respondents jointly and severally to the appellant/claimants along with interest @ 7% per annum with effect from the date of claim petition.

25. The amount of compensation with interest for the death of Rajinder Kumar shall be apportioned inter se the claimants as under:

- i) 50% to Claimant No. 1 Pushpa Devi, widow,
- ii) 30% to Claimant No. 2 Nisha, daughter (age 11 years on 06.10.2005, now about 27 years, as per affidavit of her mother)
- iii) 20% to Claimant No. 3 Bimla Devi mother.

26 The appeal is allowed in the above terms.

30.07.2021
VS

(ARUN MONGA)
JUDGE

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