

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

**IOIN-FAO-1303-2001(O&M)
Date of Decision: December 01, 2022**

Harbans Lal and others

....Appellants

Versus

Rameshwar Singh and others

.....Respondents

CORAM: HON'BLE MRS JUSTICE ARCHANA PURI

Present:- Mr.Keshav Pratap Singh and Mr.Vishal Singh, Advocates
for the appellants.

Mr.R.K.Bashamboo, Advocate
for respondent No.3-Insurance Company.

ARCHANA PURI, J

The present appeal has been filed by the appellants-claimants, namely Harbans Lal, Mishri Lal, Sona Devi and Mona Devi, against the dismissal of the claim petition filed by them, thereby, seeking compensation qua death of Tiliya Devi, in a motor vehicular accident.

Initially, appellants-claimants, being husband and children of Tiliya Devi had filed claim petition, thereby, seeking compensation, on account of death of Tiliya Devi, in a motor vehicular accident, which took place on 09.02.1999. As per the version, coming forth in the claim petition, on the relevant day, Tiliya Devi was going on correct left side of the road, on katcha berm. Her husband Harbans Lal was also accompanying her and was going ahead of her by few steps. At about 10.00 am, when they reached

near the Googa Marri, on Ambala-Chandigarh road, a car bearing registration No.PAS-159, came from Chandigarh side. It was driven in rash and negligent manner and at a high speed by Rameshwar Singh. By going on the extreme wrong side of the road, it struck against Tiliya Devi. As the result of the accident, Tiliya Devi suffered multiple injuries. She was taken to PGIMER, Chandigarh, where she breathed her last on 10.02.1999.

In pursuance of the notice issued, respondents made appearance and contested the claim petition. Respondents No.1 and 2 i.e. driver and owner, in their separate reply had denied all the assertions of the claim petition. Even, insurance company filed a separate reply and therein, while denying all the assertions of the claim petition, also took preliminary objection that it was not liable, as the deceased herself was at fault and the accident had not been caused, due to rash and negligent driving of the car in question and the driver of the car was not having valid and effective driving licence, at the time of accident.

After framing of the issues, evidence was led. On appraisal of the evidence adduced, learned Tribunal reached the conclusion that the claimants have not been able to prove that the death of Tiliya Devi was caused in a motor vehicular accident, involving car bearing registration No.PAS-159. Resultantly, the compensation was denied and claim petition was dismissed.

Heard learned counsel for the appellant as well as learned counsel for the insurance company.

In view of the submissions made, the question arises is

whether the findings of the Tribunal are sustainable as has been argued by learned counsel for the appellants or from the evidence on record, it can be concluded that the accident was caused by the rash and negligent driving of car bearing registration No.PAS-159, which resulted into death of Tiliya Devi?

There is no doubt that there are certain glaring gaps in the statements of eye witness PW-1 Malook Singh as well as PW-2 Harbans Lal, who is an author of the FIR. But equally, it cannot be denied that there are certain other facts, spelt out from the evidence adduced, which point to the involvement of the car bearing registration No.PAS-159, driven by Rameshwar Singh, which caused the accident, resulting into causing of fatal injuries to Tiliya Devi.

PW-2 Harbans Lal, is the husband of the deceased. He had given a vivid description of the manner of his presence along with the wife, at the spot of accident, at the relevant time. He also deposed about the manner of accident, having caused by a car, coming from Chandigarh side, which struck his wife, which was driven in a rash and negligent manner.

No doubt, as pointed out by learned counsel for the insurance company, the said witness has stated that he does not know the number of the car as he is illiterate, but however, he has further stated about having taken his wife to PGIMER, Chandigarh, on account of the injuries, sustained in the accident and he also deposed about her death in the hospital. Also, as submitted by learned counsel for the insurance company, the said witness has not disclosed about the manner of having come to know the number of car and name of the driver. Also, it is disputed that in

the cross-examination, he had stated that he did not report the matter to the police and also stated that he does not know the particulars of the car. However, the testimony of this witness is not to be read singularly. One cannot lose sight of the fact that appellants-claimants have a rustic background. However, there are other material facts, coming on record, which have bearing on establishment of the accident and the manner of causing of the same as well as involvement of the vehicle in question.

Malook Singh, eye witness to the occurrence, has been examined as PW-1. Even, qua his testimony, it is pertinent to mention that he did not make the things crystal clear, but he deposed about the manner, in which the accident was caused and he further deposed about having chased the car, which caused the accident and also about the disclosure of the name by the driver, on his asking and only thereafter, the driver had escaped.

The accident took place on 09.02.1999. Tiliya Devi died on 10.02.1999. The FIR was got registered on 10.02.1999 itself. Challan has been duly proved as Ex.P1. Statement under Section 161 Cr.P.C. of Malook Singh, got recorded, during the investigation, has been proved as Ex.P2. Close perusal of the aforesaid documents, reveals that firstly, FIR was lodged against the unknown, but however, during the course of investigation, driver Rameshwar Singh was nominated as accused, in pursuance of recording of statement under Section 161 Cr.P.C. of Malook Singh PW-1. The investigation was conducted and thereupon, challan was presented. Learned Tribunal had doubted the genuineness of the challan, simply on the score of their being gaps/discrepancies in the testimony of

Harbans Lal, got recorded during the pendency of the claim petition. However, this is not fair. Learned Tribunal had stretched itself too far.

In a criminal case, in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided, on the basis of preponderance of evidence, but in a claim petition, before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and where the driver, after causing the accident, had fled away and more particularly, when he had filed reply in a claim petition, denying the accident but had remained away from the witness box, then the documents mentioned above, are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident, particularly when there was no defence available from his side, before the learned Tribunal.

In ***Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109***, observations about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, were made as under:-

*“There is no denial that Radhey Shyam respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case **State v. Radhey Shyam**. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries. XXX...XX..XXX”*

In case of ***Mallamma vs. Balaji and others, 2004 ACJ 368***,

the Karnataka High Court, while reversing the finding of the Tribunal, on the issue of negligence, held as under:-

“12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same.”

In the case in hand, from the material coming on record, it is evident that the charge was framed against Rameshwar Singh, driver and he was facing trial (during the pendency of the claim petition before Tribunal). It has to be seen that Rameshwar Singh, driver has not challenged the same, though, aware of factum of the prosecution of the offending vehicle. In fact, he was facing trial. It is an accepted fact that the investigation report, FIR and chargesheet laid down by the police before the prosecuting Court, are not conclusive evidence, but have a persuasive value. In the instant case, though both the respondents (driver and owner) have denied the occurrence of the accident and the involvement of the offending vehicle, neither of them stepped into the witness box nor have they tendered any documentary evidence, to question the authenticity of the prosecution version or the version of the claimants. The evidence tendered by the appellants-claimants had gone unchallenged. Rather nothing has been elicited, to contradict the claim of the appellants-claimants. Even, the insurance company, in its reply, had pleaded that death was caused, due to the fault of the deceased and that no accident took place as alleged. Also, it pleaded that the appellants-claimants want to get compensation for the

death caused, due to some other reason and as such, accident is denied. Such being the assertion, about death having caused due to fault of deceased, in an implied manner, the fact of accident is not disputed, more particularly, when no evidence, to substantiate this plea, has been led.

Such being the circumstances, learned Tribunal fell in manifest error, in holding that the car bearing registration No.PAS-159 was not involved in the accident and that it never caused fatal injuries to Tiliya Devi.

Rather, the material, as such, coming on record, establish about driver Rameshwar Singh, facing trial, in a criminal case, at the time, when the claim petition was pending before learned Tribunal. Considering the same, prima facie, it establish about the involvement of the car bearing registration No.PAS-159, in the accident in question and the same resulted into causing of serious injuries, on the person of Tiliya Devi, which proved fatal. Post-mortem report has also been proved as Ex.P3.

Once, it is so concluded, the appellants-claimants, being husband and children of deceased Tiliya Devi, alleged to be dependent upon her, are entitled to grant of compensation.

The accident took place on 09.02.1999. Though, the appellants-claimants have contended that deceased was working as labourer and earning Rs.3000/- per month, but however, it is pertinent to mention that not on all days of a month, a labourer is engaged for labour work. Thus, considering the labourer, being deprived of his labour work, on few days of the month, in modest estimate, the earnings of the deceased, in view of the testimony of PW-2 Harbans Lal, husband of the deceased, is

taken to be Rs.2,500/- per month. At the relevant time, the age of the deceased is established to be 37 years. Keeping in view the age of the deceased, as per ***National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009***, an addition of 40% is required to be made as future prospects. Making the said addition, the total earning of the deceased comes to be $\text{Rs.}2500 + \text{Rs.}1000(40\%) = \text{Rs.}3,500/-$.

Keeping in view the husband and number of children of the deceased, $1/4^{\text{th}}$ is to be deducted, on account of personal and living expenses of the deceased and after the said deduction, it comes to be Rs.2,625/-. Thus, the annual dependency is worked upon as $\text{Rs.}2625 \times 12 = \text{Rs.}31,500/-$.

Besides the aforesaid earnings from the avocation followed by the deceased as labourer, it is also pertinent to mention that the deceased being wife and mother, should be contributing a lot towards household affairs. In our Indian society, even if a woman goes out of house, to earn livelihood, even then, she looks after household affairs. She renders multifarious duties towards her husband and children. Considering the same, the value of services of the deceased, in modest estimate, is taken to be Rs.2000/- per month. Considering the same, the annual valuation is worked upon as Rs.24,000/-. As such, the total of the income, including the value of services, comes to be Rs.55,500/- per annum.

Keeping in view the age of the deceased, the appropriate multiplier to be applied is '15' as per ***Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*** and the compensation to be granted, on account of loss of dependency, as such, comes to be

Rs.8,32,500/-.

Further, as per *Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram, 2018(18) SCC 130*, each of the appellants-claimants are entitled to compensation under the head of '**loss of consortium**'. As per *Pranay Sethi's case (supra)*, the extent of consortium payable, is stated to be Rs.40,000/- and it was further held that the aforesaid amount should be enhanced by 10% after every three years. As the said judgment is dated 31.10.2017, so there has to be enhancement of 10%, which comes to be Rs.44,000/-. In the light of the same, appellants-claimants No.1 to 4, are entitled to compensation, on the count of '**loss of consortium**' to the extent of Rs.44,000/- each, which comes to be Rs.1,76,000/-.

Furthermore, as per *Pranay Sethi's case (supra)*, a sum of Rs.15,000/- was to be paid as 'funeral expenses' and 'loss of estate' each, which requires enhancement to the extent of 10% after every three years, which comes to be Rs.16,500/- under each head.

Thus, making total of the aforesaid computation of compensation, under various heads, the total comes to be as herein given:-

Loss of dependency	:	Rs.8,32,500/-
Loss of consortium	:	Rs.1,76,000/-
Funeral expenses	:	Rs.16,500/-
Loss of estate	:	Rs.16,500/-
Total	:	Rs.10,41,500/-

Even though, the insurance company had taken the plea that the driver of the offending vehicle, to be not having valid and effective

driving licence and there being breach of conditions of insurance policy, but however, these issues were not pressed before learned Tribunal, during the course of arguments. No evidence, as such, has been led, to so substantiate this plea.

In the light of the same, all the respondents, in the capacity of being driver, owner and insurer, are jointly and severally, liable to pay the aforesaid compensation, together with the interest @6% per annum, from the date of filing of the claim petition, till its realization.

Rs.2 lakh each, shall be disbursed to the appellants-claimants No.2 to 4-children of the deceased and residue amount of Rs.4,41,500/-, shall be disbursed to appellant-claimant No.1-husband of the deceased.

In view of the aforesaid terms, the appeal stands allowed.

December 01, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No