

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4728-2008 (O&M)
Reserved on: 01.08.2022
Pronounced on: 16.08.2022

Ram Kali and another

..... Appellants

versus

Ved Prakash and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Durgesh Aggarwal, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for respondent No.3-Insurance Company.

PANKAJ JAIN, J.

Claimants are in appeal seeking modification of the award dated 07.01.2008 passed by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'Tribunal').

2. Claim petition under Section 166 of the Motor Vehicle Act, 1988 was filed by the claimants/appellants seeking compensation on account of death of their son Sanjeev Kumar, who lost his life at the age of 20 years in a motor vehicular accident on 12.09.2006.

3. As per the claim petition, on 12.09.2006, the deceased was going on his motorcycle. A Tata-07 bearing registration No.HR-37A-3486 being driven rashly and negligently came from the opposite direction struck the motorcycle of the deceased. Resultantly, the deceased alongwith his motorcycle fell down and suffered grievous injuries, which proved fatal.

4. While returning issue No.1, Tribunal held that the deceased and respondent No.1 were equally negligent and contributed to the accident. Under issues No.2 and 3, the Tribunal assessed the deceased as a labour taking his income @ Rs.3,000/- per month. Deduction of 1/3rd was made to calculate dependency. Multiplier of 10 was applied. The claimants were also awarded Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses.

5. The appellants have assailed the finding on issue No.1 relying upon the statement of eye witness. Finding on issues No.2 and 3 have also been assailed by placing reliance on salary slip Ex.PC and the statement of the employer of the deceased Jarnail Singh, who appeared as PW-5.

6. Counsel for the respondent-insurance company has emphatically argued that there is ample evidence on record to show contributory negligence of the deceased. He relies upon site plan prepared by the police authorities which is part of report filed before the criminal trial under Section 173 Cr.P.C. He thus asserts that Tribunal after appreciating and analyzing whole evidence on record has rightly returned finding on issue No.1, which does not warrant any interference. He further argues that deduction of 1/3rd also needs to be altered to 1/2 as the deceased was unmarried. However, he is not in a position to deny that as per the dictum of law laid down in **National Insurance Company Limited vs. Pranay Sethi and others (2017) 16 SCC 680**, the claimants are entitled for future prospects, enhanced compensation under the conventional heads.

7. Before analyzing the finding recorded by Tribunal on issue No.1, it needs to be noticed that mere fact of there being head on collision between the parties *per se* shall not lead to inference that it is a case of contributory negligence.

It is trite that the finding w.r.t. contributory negligence depends upon the evidence

led in each case. Once the involvement of vehicle is proved, the plea of collusion is not available to the insurer. The other basic principle that needs to be noticed is that the burden to prove inevitable accident rests on the opposite party i.e. insurer/insured. Apex Court in '**Pushpabai Parshottam Udeshi and others vs. Ranjit Ginning and Pressing Co. Pvt. Ltd. and another**', reported as 1977(2) SCC 745 approved the following principle:-

“xx xx xx

To establish a defence of inevitable accident the defendant must either show what caused the accident and that the result was inevitable, or he must show all possible causes, one or more of which produced the effect, and with regard to each of such possible causes he must show that the result could not have been avoided. (Halsbury's Laws of England, Third Ed., Vol. 28, p.81).”

8. Coming on to the present case, no such attempt was made before the Tribunal to plead that the accident was inevitable owing to an act of deceased.

9. In order to prove negligence of respondent No.1, claimants produced FIR Ex.P-2. As discernible from the records of the case, accident is stated to have taken place on 12.09.2006 at about 10.30 a.m. FIR was lodged at 11.40 a.m. on the same day. FIR was lodged on the statement of Manoj Kumar, who appeared as PW-4. Additional Ahlmad from the Court concerned appeared alongwith the record pertaining to the trial arising out of FIR Ex.P-2. Respondent No.1 was charge sheeted for offences punishable under Sections 279/336/427/304-A IPC. Tribunal while recording finding on issue No.1 held that since PW-4 admitted that the width of the road was 25 to 30 feet where two vehicles could pass simultaneously and there was head on collision between the vehicles. It relied upon the statements suffered by PW-4 and the site plan prepared by police during

investigation to hold that the drivers of both the vehicles are responsible to have contributed equally to the accident.

10. In the considered opinion of this Court, the Tribunal erred in misreading the statement of PW-4 Manoj Kumar. Reliance upon the site plan prepared by the police during investigation is totally misplaced. It will be apposite to read statement of eye witness Manoj Kumar, who is also the author of the FIR pertaining to the accident in question. Manoj Kumar when appeared as witness stated as under:-

“On 12.9.2006 I was going from my house to market at Naraingarh alongwith wife of my brother on my motor cycle bearing registration No.HR-04-A-3206. At about 10.00/10.30 A.M when I reached near new Subzi Mandi, Naraingarh, a boy named Sanjiv Kumar son of Jagir Singh resident of our village was going ahead of us on his motor cycle being driven by him on correct left hand side of the road. In the meantime, a Tata 407 bearing registration No. HR-37-A-3486 came from opposite side being driven by respondent no.1 in a rash and negligent manner and hit against the motor cycle of Sanjiv Kumar due to which he fell down and received multiple and grievous injuries on his persons. Many persons collected at the spot. I with the help of other persons removed Sanjiv Kumar to Civil Hospital, Naraingarh in a cart. Hospital is just near the place of accident i.e at a distance of 250-300 yards. After seeing the serious condition of Sanjiv Kumar, doctors of Civil Hospital, Naraingarh referred him to PGI, Chandigarh. Police had arrived in Civil Hospital, Naraingarh and my statement was recorded by the police. On the basis of my statement FIR was recorded by the police. Attested copy of the FIR is Ex.PB. Respondent No.1 fled away from the spot after leaving his vehicle at the spot. The accident had taken place due to rash and

negligent driving of the vehicle in question by respondent No. 1. Xxx by Shri Rajesh Sharma, counsel for respondents No.1 and 2.

I had started from my house at about 9.30/9.45 A.M. The distance between my house and place of accident is about eight kms. I reached the place of accident from my house within fifteen minutes. I had seen Sanjiv Kumar on that day just two minutes prior to the accident. It is incorrect to suggest that Sanjiv Kumar was driving his motor cycle in a high speed and in a rash and negligent manner without observing traffic rules. The width of the road at the place of accident is wide enough that two heavy vehicles can pass simultaneously. It is incorrect to suggest that accident did not take place in my presence or that the accident, if any, was caused due to the own negligence of the deceased himself. I cannot identify the driver of the vehicle in question.

Xxx by Shri R.K.Moudgil, counsel for respondent No.3.

I did not know the driver of the vehicle in question prior to the accident. I had not seen the driver of the vehicle in question on the date of accident. Some other driver told me about the driver of the vehicle in question after one month of the accident. There is no divider between the road where the accident took place. The width of the road at the place of accident is about 25 to 30 feet and two vehicles can pass from there simultaneously. At the time of accident I had seen one bus, tongas and carts plying on the road. The deceased was at a distance of about fifty yards ahead of me when the accident took place. The vehicle in question was having two colours i.e white and some other colour which I do not remember. The vehicle in question was loaded with drums of milk at the time of accident. It was head-on-collision between the vehicles. It is incorrect to suggest that no such accident had taken place or that Tata 407 in question has been falsely implicated in the case in order to help

the claimants to get compensation. It is further incorrect to suggest that the deceased was driving his motor cycle rashly and negligently or that accident if any was caused due to his own negligence. It is incorrect to suggest that I did not witness the accident. It is incorrect to suggest that I am deposing falsely.”

11. From the perusal of the aforesaid statement of PW-4, it is evident that he was unambiguous in stating that the cause of accident was rash and negligent act on part of respondent No.1. His version corroborates the FIR lodged qua accident in question. The fact that respondent No.1 is facing trial for negligent and rash driving also cannot be ignored. The best person who could have controverted the aforesaid allegations of rashness and negligence is respondent No.1. Admittedly, respondent No.1 opted not to appear in the witness box. It needs to be noticed that it is not a case where there is any collusion between the claimants and owner/driver of the vehicle. The accident stands proved and finding is not under challenge. Once accident is proved, it is incumbent upon the driver/owner of the offending vehicle to rebut the allegations of rashness and negligence. In case, the driver opts not to appear, adverse inference has to be drawn against the said driver. The claimants have led best evidence to prove their case. FIR has been proved on record, eye witness has appeared and supported the case of the claimants and has corroborated the allegations of rashness and negligence against respondent No.1. It has also been proved on record that respondent No.1 has been challaned by the investigating authorities and has been charge sheeted in the criminal trial. As held by Apex Court in '**Sunita and others vs. Rajasthan State Road Transport Corporation and another**', reported as **(2020) 13 SCC 486**, the site plan prepared by the police authorities cannot be read in isolation. It needs to be

examined in light of and in addition to the other evidence. Thus, there being overwhelming evidence on record to prove rashness and negligence of respondent No.1. Tribunal erred in making out a case in favour of respondent No.1 which respondent No.1 failed to prove. The finding recorded by the Tribunal on issue No.1 deserves to be set aside. It is held that the accident occurred owing to rash and negligent driving by respondent No.1 while driving offending vehicle i.e. HR-37A-3486.

12. Deceased was 20 years of age and is stated to have been employed as Foreman-cum-JCB Operator. One Jarnail Singh appeared as PW-5 and stated that he was running a screening plant wherein the deceased was employed as Foreman-cum-JCB Operator. He proved Ex.PC which is a salary certificate showing that the deceased was getting Rs.6,000/- per month. He however, also stated that the deceased started his employment only on 02.08.2006 and worked till the day of accident i.e. 11/12.09.2006. He failed to produce any record to substantiate the contents of Ex.PC. No licence held by the deceased could be produced on record to show that he was eligible to operate JCB machine.

13. In view of these circumstances, the Tribunal rightly discarded salary certificate Ex.PC and the statement of PW-5. Income of the deceased has been rightly assessed @ Rs.3,000/- per month which is equivalent to minimum wages of a casual labour for the relevant period of time. As per law laid down in Pranay Sethi's case (supra), 40% future prospects need to be factored in. Keeping in view the law laid down in '**Sarla Verma and others vs. Delhi Transport Corporation and another**', reported as **(2009) 6 SCC 121**, the appropriate multiplier will be 18. Since the deceased was unmarried, deduction of $\frac{1}{2}$ needs to be applied to calculate the dependency. Under the conventional heads also, keeping in view of

the dictum of Pranay Sethi's case (supra), the appellant No.1 shall be entitled for Rs.44,000/- for loss of consortium. Rs.15,000/- for loss of estate and Rs.15,000/- as funeral expenses are also awarded. The compensation so calculated shall be awarded to appellant No.1. She shall also be entitled for interest @ 7.5 % per annum on the amount awarded from the date of filing of claim petition till actual realization. Needless to say any amount already paid shall be set off and adjusted.

14. Appeal stands allowed.

15. Since the main appeal has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

16.08.2022

Dinesh

Whether speaking/reasoned Yes

Whether Reportable : Yes