

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

FAO-4709-2009

Date of decision: 02.05.2022

Jagdish Chander and others

.....Appellants

versus

Jagir Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. S.K. Sharma, Advocate
for the appellants.

Mr. Ravinder Arora, Advocate
for respondent No.4.

Mr. Gopal Mittal, Advocate
for respondent No.7.

FATEH DEEP SINGH, J.

This appeal by the husband and three minor children is directed against an award dated 08.12.2008 passed by the Court of Motor Accidents Claims Tribunal, Ambala, whereby, four claim petitions bearing MACT No.19 of 2007 titled as 'Jagdish Chander versus Jagir Singh', MACT No.20 of 2007 titled as 'Aashdeep @ Hunny versus Jagir Singh and others', MACT No.49 of 2006 titled

as 'Jagdish Chander and others versus Jagir Singh and others' and MACT No.52 of 2006 titled as 'Meera Devi versus Jagir Singh' were disposed off together by a common award as the original records stood destroyed in the fire that engulfed in the record room of this Court and the present findings are based on the remnants that have been put in the reconstructed records.

Heard counsel for the parties and perused the records.

The brief facts are that on 13.08.2006, Jagdish Chander along with his wife, Asha Rani now deceased and children were going on vehicle bearing No.CH03-3924 from Ambala Cantt. to Shahbad which was being driven by respondent No.5-Sanjeev Kumar. It is in the area of Nanhera Chowk Ambala Cantt. when offending truck bearing No. HR26GA-1519 came in a rash and negligent manner at a high speed driven by respondent No.1-Jagir Singh and stuck against the ill-fated vehicle resulting in injuries to the occupants of the vehicle as a consequence of these accidental injuries, Asha Rani died while being referred to PGI, Chandigarh. Only respondents No.4, 6 and 7 contested the claim petition. The reply of respondent No.6, owner of the ill-fated vehicle is that the vehicle at the time of the accident had been sold to Satpal Singh (owner) way back on 26.04.2002 and therefore, denied his concern with the vehicle while respondent No.7 insurer

of the ill-fated vehicle, United India Insurance Company, in their stand denied the maintainability of the claim petition and took the stand that it was the fault of the truck involved and as such they are not entitled to pay compensation. Besides, taking up plea of the driver being not having valid and enforceable driving licenses the documents of the vehicle comprising of registration certificate, fitness certificate being not in conformity with the rules sought to take the plea is not entitled to pay the compensation. The consolidated issues based on orders dated 03.10.2007 of the Tribunal is as follows:-

1. Whether the accident in question took place due to rash and negligent driving of his vehicle by respondent No.1, as alleged? OPP.
2. If issue No.1 is proved, whether the claimant Jagdish Chander suffered injuries in the accident in question, if so, what amount of compensation he is entitled to? OPP.
3. If issue No.1 is proved, whether the claimant Aashdeep @ Hunny suffered injuries in the accident in question, if so, what amount of compensation he is entitled to? OPP.
4. If issue No.1 is proved, whether Asha Rani died due to the injuries suffered by her in the accident in question, if so, what amount of compensation the claimants are entitled to? OPP.
5. If issue No.1 is proved, whether Balkar Singh died due to injuries suffered by him in the accident in question? If so, what amount of compensation the claimants are entitled to? OPP.
6. Whether there was a violation of the terms and conditions of the Insurance Policy and respondent No.3-Insurance Company is not liable to pay any compensation? OPR.

8. Relief.

The claimants, Smt. Meena Devi-PW-1, Jagdish Chander, Injured-PW-2, Dr. C.K. Mittal-PW-3, Dr. Parvish Aggarwal-PW-4, Dr. KG Gupta- PW-5 and Hans Raj Verma- PW-6. Besides oral testimonies tendered documents Ex.P-1, Ex.P-5, Ex.P-6/A to G, Ex.P-7 to Ex.P-13. On the other hand, insurance of the ill-fated vehicle was proved as Ex.RW-1 by the respondents and insurance policy of truck as Ex.RX and the respondents closed the evidence.

Appreciating the arguments of the two sides it is fairly conceded by the counsel for the two sides that the only moot point involved is over the quantum of compensation as neither the drivers nor owners of the two vehicles have put forth their stand or stepped into the witness box to testify their claim or counter-claim whatsoever. In light of the same the findings of the Tribunal on issue No.1 need not be gone into and stands are totally un rebutted from the documentary and the ocular evidence that has been proved on the record. Since, the present appeal is by Jagdish Chander over the inadequacy of the compensation having been awarded on account of untimely death of deceased (Asha Rani) and who, irrefutably, as is established on the records, was aged around 38 years, a house wife, having a minor son, a minor daughter and a major daughter out of her wedlock with Jagdish

Chander. Though, with much fanfare on behalf of the appellant, it is sought to be reiterated that the wife was earning her livelihood by ironing clothes and, therefore, used to earn Rs.4,000/- per month, however, to the question of the Court, the counsel for the appellant was squarely at loss of words as to evidence to that effect and which is based purely upon oral testimony of the husband. No doubt, a young housewife, mother of three children has died in this Motor Vehicle Accident at the prime of her age of 38 years and, therefore, must have put the entire family in jeopardy, the minor children must have been left lonesome in the absence of their mother who was certainly a source of inspiration, love affection and protection for the kids, besides the irreparable loss that has come across along with the shock to the husband of the loss of a life partner are matter which certainly needs to be taken care of.

The Act is a welfare Statute for the betterment of the claimants and at the same time the Courts are supposed to ensure that the same are not misused to make undue monetary gains by the claimants. The claim of the appellant/claimant that the deceased was earning Rs.4,000/- per month cannot be considered inappropriate at the time in the year 2006, this Court by some amount of guesswork and hypothetical calculations, the per month earning of the deceased must be around Rs.4,000/-, therefore, this Court is

assessing the annual income of Rs.48,000/- ($4,000 \times 12$).

Keeping in view the age of the deceased and the nature of her avocation future prospects is assessed as 40% and the same comes to Rs.19,200/- and, therefore, the income of the deceased for the purpose of assessing the compensation comes to Rs.67,200/- ($48,000 + 19,200$).

Keeping in view the age of the deceased, multiplier of 16 has been rightly applied and, therefore, compensation comes to Rs.10,75,200/- ($67,200 \times 16$). Besides this, the family must have spent money on last rites and ceremonies and needs to be compensated for the loss of love and affection including loss of consortium to the husband and under all these heads, a sum of Rs.1,25,000/- is assessed and, therefore, total award amount comes to Rs.12,00,200/- ($10,75,200 + 1,25,000$). All the claimants are entitled to equal shares in this compensation and are also entitled to get interest @ 9% per annum on the said amount from the date of the award till the realization of the said amount. By now, the children must have attained the age of majority, therefore, their share need not to be kept in FDRs. All the respondents are jointly and severally held liable to pay the amount of compensation. Amount awarded by the Tribunal shall be deducted from the total compensation.

With the aforesaid modification, the present appeal stands allowed.

02.05.2022
Neha

(FATEH DEEP SINGH)
JUDGE

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