

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

1. FAO No.673 of 2011 (O&M)

Shanti Devi

... Appellant

Versus

Bakshish Singh & others

... Respondents

2. FAO No.1430 of 2011 (O&M)

Sudesh Devi & another

... Appellants

Versus

Bakshish Singh & others

... Respondents

3. FAO No.4611 of 2011 (O&M)

Sunita Devi & another

... Appellants

Versus

Bakshish Singh & others

... Respondents

Date of decision: 19th April, 2022

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. R.S. Budhwar, Advocate for the appellants
(in FAO No. 673 of 2011).

Mr. Vivek Goyal, Advocate for the appellants
(in FAOs No.1430 & 4611 of 2011).

None for respondents No.1 and 2.

Mr. Neeraj Khanna, Advocate
for respondent No.3/Insurance Co.

FATEH DEEP SINGH, J.

The above three first appeal against orders are against an

Award dated 30.07.2010 passed by the Court of learned Motor

Accident Claims Tribunal, Kurukshetra whereby six MACT cases bearing No.43/2009 titled 'Sudesh Devi & another vs. Bakshish Singh & others'; No.44/2009 titled 'Sunita Devi & another vs. Bakshish Singh & others'; No.52/2009 titled 'Shanti Devi vs. Bakshish Singh & others'; No.69/2009 titled 'Lallu vs. Bakshish Singh & others'; No.70/2009 titled 'Manesh vs. Bakshish Singh & others'; and No.104/2009 titled 'Satbir Singh @ Pintu vs. Bakshish Singh & others' stood disposed off together.

Since in all these matters, common questions of law and facts are involved wherein similar evidence has come about necessitates their joint disposal together.

The brief facts are that on 28.02.2009 Gurdeep Singh and Gurjant Singh both deceased along with others were travelling in a three-wheeler bearing registration No.HR37-9526 (in short, 'the ill-fated vehicle') which was being driven by one Satbir Singh. It was in the area of Ladwan Hinori Road (Haryana) a tractor trolley bearing No.UGX-7188 make Mahindra (in short, 'the tractor-trolley') being driven by Bakhshish Singh rashly and negligently came at a high speed and while going on wrong side of the road hit against the ill-fated vehicle as a consequence of which the occupants received injuries leading to death of Gurdeep Singh and Gurjant Singh, and injuries to others. FIR No.34 dated 28.02.2009 under Sections 279, 337 and 304-A IPC was registered at Police Station Ladwa (Haryana). The tractor-

trolley is owned by Gurmail Singh respondent No.2 before the Tribunal while it was being driven by Bakhshish Singh respondent No.1 before the Tribunal and which vehicle was insured with respondent No.3 IFFCO TOKIO General Insurance Co. Ltd. The dependents Sudesh Devi and her husband Rajbir Singh instituted MACT Case No.43 of 2009 seeking compensation for the death of their son Gurdeep Singh then aged around 16 years and happened to be a student. Sunita Devi and her husband Salinder Singh parents of deceased Gurjant Singh through MACT Case No.44 of 2009 have sought compensation for the death of their son then aged around 11 years. Claimant Shanti Devi had instituted claim petition No.52 of 2009 seeking compensation on account of accidental injuries and these are the appellants who have come up before this Court in these three appeals seeking enhancement of the compensation so awarded.

The claim of the claimants has been denied on account of maintainability, non-joinder and mis-joinder of parties, terming the case to be a false one as no such accident claims to have been taken place. The Insurance Company besides usual pleas of the vehicle being driven in contravention of the insurance policy as tried to disown their liability to pay the compensation though claimed that the vehicle at the time of accident was insured with them. The Tribunal had framed the following issues:-

1. Whether the accident in question, resulting into death of Gurdeep Singh, Gurjant Singh and injuries to claimants Shanti Devi, Lalu, Manesh and Satbir was caused due to rash and negliget driving of Tractor-Trolley bearing registration No.UGX-7166 (wrongly typed as 7266), on the part of its driver, respondent No.1, as alleged? OPP
2. If issue No.1 is proved to what amount of compensation, the claimants are entitled to and from whom? OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident? OPR
4. Whether the claimants have no locus standi and or cause of action to file and maintain the present claim petitions? OPR
5. Relief.

On behalf of the claimants, Sudesh Devi testified as PW1, Sunita Devi as PW2, Bulaki Ram as PW3, Satbir Singh @ Pintu as PW4, Shanti Devi as PW5 and Manesh as PW6 and after tendering documents closed their evidence. The respondents placed on record copy of the cove note, driving licence, RC of the offending vehicle,

insurance documents and examined Ankur Bhatnagar Assistant Manager of the insurer as RW1, leading to passing of the Award in question.

Heard learned counsel for both the sides and perused the records of the case.

The first issue pertains to the very factum of accident and whether the same was on account of rash and negligent driving of the offending tractor-trolley or not. The testimony of injured Shanti Devi PW5 (through affidavit Ex.PW5/A), Satbir Singh @ Pintu PW4 (through affidavit Ex.PW4/A) and thereafter PW6 Manesh, who tendered his affidavit Ex.PW6/A besides bringing on record copies of post-mortem reports of Gurdeep Singh Ex.P6 and that of Gurjant Singh Ex.P7, MLRs of Shanti Devi Ex.P8, Lalu Ex.P17, and that of Manesh Ex.P18. The testimony of PW3 Bulaki Ram Ahlmad of the Court of Judicial Magistrate 1st Class, Kurukshetra has also proved the copy of the challan under Section 173 Cr.P.C. Ex.P1, site plan Ex.P2, mechanic test report of the tractor Ex.P3, recovery memo Ex.P4, sapurdari Ex.P5 and irrefutably these witnesses have brought about factum of this accident resulting in injuries and death to the victims. Moreover, none of the respondents including owner, driver or anyone else have stepped into the witness box to rebut the claim of the claimants and therefore, findings of the Tribunal on issue No. 1 have correctly appreciated the

evidence which totally remained unrebutted and therefore, findings on issue No.1 needs to be upheld.

The onus as to the legality and validity of the driving licence of the driver of the offending tractor trolley was upon the insurer who have not led any evidence to the contrary. More so, on account of lack of evidence to rebut the driving licence have certainly impelled the Tribunal to hold this issue against the insurer and in favour of the driver cum owner and which findings are correct appreciation of the evidence.

No arguments were advanced before the Tribunal on issue No.4 and which findings needs to be upheld.

The most hotly debated and contentious issue is over the findings on issue No.2 which deals with the quantum of compensation. Admittedly as per the testimony of PW1 Sudesh Devi through her affidavit Ex.PW1/A details she and her husband Rajbir Singh were parents of Gurdeep Singh who was a student and certificate Ex.P23 issued by the CBSE Delhi shows it so. Since the deceased was a young boy aged around 16 years and therefore the Tribunal has rightly taken the notional income of the deceased in view of this peculiar circumstance that the deceased was a child. However, it was certainly not appropriate and correct for the Tribunal to have assessed his income as a daily wage earner taking ₹ 100/- per day to be a daily wage at that time. The deceased being a student and was likely to further his

academic performance and there was every likelihood of earning much more than was assessed by the Tribunal and taking the notional income in such an eventuality to be ₹ 5000/- per month, and taking into consideration that upon passage of time the deceased would have undergone marriage and therefore, dependency of the parents would have certainly deceased besides the fact that the deceased would be spending certain amount on his own upkeep and maintenance and therefore, 1/3rd deduction is appropriate. Thus, the annual dependency comes to ₹ 40,000/-. Keeping in view the age of the deceased, multiplier of 18 ought to have been applied when the Tribunal has applied a multiplier of only 15 and therefore, compensation comes to ₹ 7,20,000/-. Besides this, on account of last rites and ceremonies, loss of love and affection, protection in their old age and under various other heads this Court consolidates the compensation under all these heads to ₹ 2.50 lacs. Therefore, total compensation comes to ₹ 9,70,000/-. Besides this, the claimants are entitled to interest @ 9% p.a. from the date of filing the claim petition till realization of the amount. Interim compensation paid, if any, shall be adjusted and the total compensation shall be distributed equally to the claimants.

In the death case of Gurjant Singh, claimants are his parents, mother Sunita Devi PW2 who tendered affidavit Ex.PW2/A and his father Salinder Singh. Admittedly, the deceased at the time of his death was 11 years of age and is well elaborated the post-mortem

report Ex.P7 and certificate Ex.P24 issued by the Block Education Officer shows him to be a student and keeping in view this peculiar circumstance his notional income is to be adjudged as ₹ 4500/- per month. Taking into consideration that upon passage of time the deceased would have undergone marriage and therefore, dependency of the parents would have certainly deceased besides the fact that the deceased would be spending certain amount on his own upkeep and maintenance and therefore, 1/3rd deduction is appropriate. Thus, the annual dependency comes to ₹ 36,000/-. Keeping in view the age of the deceased, learned Tribunal has rightly applied multiplier of 15 and therefore, compensation comes to ₹ 5,40,000/-. Besides this, on account of last rites and ceremonies, loss of love and affection, protection in their old age and under various other heads this Court consolidates the compensation under all these heads to ₹ 2.50 lacs. Therefore, total amount of compensation comes to ₹ 7,90,000/-. Besides this, the claimants are entitled to interest @ 9% p.a. from the date of filing the claim petition till realization of the amount. Interim compensation paid, if any, shall be adjusted and the total compensation shall be distributed equally to the claimants.

In the case of injured claimant Shanti Devi, she has testified herself as PW5 through affidavit Ex.PW5/A. The medico-legal report Ex.P8 shows that she has suffered injuries on the left side of head, left hand and left side of collar bone leading to amputation of

little finger of left hand and remained hospitalized for almost 11 days as an indoor patient and must have spent money on her treatment comprising of medicines, doctor/hospital charges besides special diet and her discharge slip is proved as Ex.P9 and medical bills as Ex.P10 to Ex.P16. Thus the total of these bills comes to ₹ 3200/- as is sought to be awarded by the Tribunal however, the learned Tribunal had given a meager amount of ₹ 10,000/- for mental trauma and ₹ 4000/- for special diet and therefore, total compensation of ₹ 17,200/-. It needs to be kept in mind that there have been injuries on various parts of her body and it has come in her testimony that she was unable to do her household work nor could earn her living by carry on any labour activity. The Tribunal has lost sight of the fact that having received injuries for a certain period of time, the injured who is a lady certainly would not have been able to carry on with her household activities and has not considered her contribution towards household during this period besides that with the passage of time her efficiency and agility would have decreased drastically besides having to spend money on making herself fit to carry on with her activities for which she would have certainly taken specialized diet. The Tribunal has awarded only ₹17,200/- by way of special diet. Besides this, the injured is certainly entitled to loss of man-days during her hospitalization, inability to carry on her household domestic chores and under all these heads a further amount of ₹ 10,000/- is awarded to her and therefore, compensation

amount comes to ₹ 27,200/-. Besides this, the claimant is entitled to interest @ 9% p.a. from the date of filing of the claim petition till realization of the amount. Since it is established that respondent No.1 Bakhshish Singh was the driver, respondent No.2 Gurmail Singh was the owner of offending tractor trolley which was insured with respondent No.3 IFFCO TOKIO General Insurance Co. Ltd. and which insurance policy at the time of accident was legal, valid and enforceable and so was the validity of the driving licence and therefore, the driver, owner and insurer are jointly and severally liable to pay the compensation amount in all the three cases.

The amount of compensation of both deceased shall be equally distributed amongst their parents and the compensation awarded to the injured Shanti Devi shall be recovered by the claimant herself. The interim compensation already paid or the amount of award deposited, if any, shall be deducted from this amount accordingly.

All the present appeals stand disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

April 19, 2022

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No