IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(1) **FAO-3915-2016 (O&M)**
Reserved on : 14.09.2022
Pronounced on: 29.09.2022

Mamta Devi and others .....Appellants

Versus

Commandant 683 and others .....Respondents

(2) **FAO-2437-2016 (O&M)**

Commandant, 683 .....Appellant

Versus

Mamta Devi and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. J.P. Sharma, Advocate
for the appellants in FAO-3915-2016 and
for respondents No.1 to 4 in FAO-2437-2016.

Mr. Gaurav Jindal, Advocate
for the respondent No.1 in FAO-3915-2016 and
for the appellant in FAO-2437-2016.

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MANJARI NEHRU KAUL, J.

CM-13297-CII-2016 in FAO-3915-2016

For the reasons mentioned in the application, the same is allowed and delay of 25 days respectively in filing appeal is condoned.

Main Cases

The above referred appeals are being disposed of by this common order as they arise out of the same accident and impugned award dated 30.11.2015 passed by learned Motor Accidents Claims Tribunal, Narnaul (for short, 'the Tribunal'). FAO-3915-2016 has been preferred by the claimants for enhancement of the compensation while FAO-2437-2016 has been preferred by the owner for setting aside the impugned award.

For the sake of convenience, the facts are being taken from FAO-3915-2016.

Brief facts of the case are that the claimants, are widow, minor daughter, minor son and mother of Suresh Kumar (hereinafter referred to as 'the deceased'), who died in a Motor Vehicular Accident while he was driving vehicle No.08E-71237 AL TIPPER (vehicle in question) for Govt. work and going from Nand Prayag to Pipal Kothi along with second driver Mahesh Kumar on 05.06.2014. As per the pleaded case of the claimants, when the deceased along with second driver Mahesh Kumar reached highway No.58 Rishikesh Joshi Math Mana Road, k.m. 426.30, he tried to apply brakes of his vehicle for giving way to another vehicle, however, the brakes failed as a result of which the vehicle in question fell down into the valley. Both the deceased as well as co-driver Mahesh Kumar sustained serious injuries. The deceased was shifted to the hospital, however, he succumbed to his injuries on 12.06.2014. It was alleged by the claimants that the accident in question had occurred on account of the poor maintenance of the vehicle in question. It was averred that the deceased was 35 years of age and enjoying good physique and health. He was working as OEM, EXGS-191113H, 75RCC (GREF) in Road Construction Company (GREF) and drawing a salary of Rs.26,000/- per month apart from other facilities as per his entitlement.

On the basis of evidence led, the Tribunal awarded the following compensation to the claimants:-

Sr. No.	**Head**	**Amount**

1.	Monthly Income	Rs.18,315/-
2.	Income after adding future prospects (30%)	Rs.23,809/-
3.	Deductions towards personal expenses (1/4th)	Rs.5,952/-
4.	Loss of annual dependency to the claimants	Rs.2,14,284/-
5.	Compensation after applying the multiplier of '15'	Rs.32,14,280/-
6.	Loss of consortium to claimant No.1	Rs.1,00,000/-
7.	Funeral expenses	Rs.25,000/-
8.	Loss of love and affection	Rs.1,00,000/-
	Total compensation	Rs.34,39,280/-

Claimant No.4 was held entitled to an amount of Rs.5,00,000/- and claimants No.1 to 3 were held entitled to the amount in equal shares out of the total compensation amount along with interest @ 7.5 % per annum from the date of filing of the petition till realization. The respondents No.1 to 3 in FAO-2437-2016 were held liable to pay the amount of compensation jointly and severally.

Learned counsel appearing for the appellants/claimants submits that the compensation awarded is grossly inadequate and not in consonance with the settled law in ***National Insurance Co. Vs. Pranay Sethi : 2017 SCC 270; Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. : (2009) 6 SCC 121*** and ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, 2018(4) RCR (Civil) 333***. He submits that the date of birth of the deceased was 01.12.1980 and on the date of his death i.e. 12.06.2014, he was less than 35 yeas of age, hence, the multiplier of '16' should have been applied and not '15' which had been erroneously applied by the Tribunal by taking the age of the deceased as 40 years on the basis of the age mentioned in the MLR of the deceased. Learned counsel submits that it was a matter of record that the deceased was a Government employee hence, there could be no dispute qua his age and the Tribunal should have assessed the same as per his service record. It was also submitted that the deceased being a Government employee, was a permanent salaried person coupled with his age being 34 years, thus the claimants were also entitled to future prospects to the extent of 50% and not 30% as had been erroneously assessed by the Tribunal. It was also argued that deductions from the income of the deceased had been erroneously made by the Tribunal while assessing the monthly income of the deceased and thus the same also deserved to be corrected. Still further, learned counsel argued that even under the conventional heads, the compensation awarded was not as per the settled ratio of law.

Per contra, learned counsel appearing for respondent No.1-owner while vehemently opposing and disputing the submissions made by the counsel opposite, at the outset challenged the maintainability of the instant petition and submitted that the claimants' entilement to compensation, if any, would only be under the Workmen Compensation Act and not under the Motor Vehicles Act, 1988 (for short, 'the Act'). He thus, submitted that on this ground itself the impugned award deserved to be set aside. He argued that the Tribunal failed to appreciate that the petition was not maintainable under Section 166 of the Act as admittedly no third party was involved in the accident and hence, the claimants had failed to prove negligence on the part of any third party. Rather, it was evident that it was the deceased, who alone was responsible for the accident in question due to his rash and negligent driving. He further submitted that the contention of the claimants that the vehicle in question had not been satisfactorily maintained, was devoid of any merit as enough evidence was led before the Tribunal in the form of Ex.RW2/D wherein at Sr. No.5 it had been specifically mentioned that the mechanical condition of the vehicle was satisfactory on 05.06.2014 i.e. the date on which the accident in question occurred.

I have heard learned counsel for the parties and with their able assistance gone through the material on record.

Before proceeding further, it would be apposite to deal with the question of maintainability of the claim petition before the Tribunal. In this regard it would be relevant to reproduce Section 165 of the Act, which reads as under:-

> *"**165. Claims Tribunals.** – (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons **arising out of the use of motor vehicles**, or damages to any property of a third party so arising, or both.*
>
> *Explanation. – For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 164.*
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> *(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.*
>
> *(3) A person shall not be qualified for appointment as a member of a Claims Tribunal unless he –*

(a) is, or has been, a Judge of a High Court, or

(b) is, or has been, a District Judge, or

(c) is qualified for appointment as a High Court Judge or as a District Judge.

(4) Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.”

A perusal of the above provisions leave no manner of doubt that the Motor Accidents Claims Tribunal has the jurisdiction to entertain a claim petition for compensation in respect of any accident arising out of the use of a motor vehicle. The primary question of jurisdiction which arises in the instant case is whether a claim petition filed by the claimants on account of death of the driver of vehicle in question would be maintainable under the Act against the owner of the vehicle in question i.e. employer of the deceased or not?

This Court without any hesitation is of the considered opinion that the answer to this question has to be replied in the affirmative. Section 165 of the Act only postulates one condition in order to attract the jurisdiction of the Tribunal i.e. the accident in question must have taken place due to the use of a motor vehicle. The expression employed in Section 166 of the Act does not restrict the jurisdiction of the Tribunal to entertain a petition for compensation only to cases where two or more than two vehicles are involved in an accident. However, a distinction has to be made between the powers of the Tribunal to entertain and adjudicate on the question of compensation, and the grant of relief by ordering payment of compensation. Section 165 of the Act only gives the Tribunal the power to entertain claim petitions filed under Section 166 of the Act whereas the actual order for payment of compensation on petition filed under Section 166 of the Act involves fixation of liability on a party who is bound to satisfy the claim.

The latter question i.e. fixation of liability requires establishment of a tortious act i.e. negligence on the part of person on whom liability is sought to be fixed. Negligence contemplates failure of discharge in duty cast upon a person due to which another person suffers an injury.

The right to claim compensation under Section 166 of the Act would arise when a person fails to discharge the duty or obligation cast upon him by the act and, as a result of which injury is suffered by another person. In this light, a legal duty is cast upon the owner of the vehicle to maintain the road-worthiness of the vehicle and this duty which is cast upon him is not only towards the general public on the road, but also towards the driver to whom he has entrusted his vehicle. In case the owner of the vehicle fails to discharge this duty, it would amount to negligence and hence liability can be fixed on him under the Act.

However, proving such negligence on the part of the owner by adducing evidence is the *sine qua non* for fixing the liability on him.

Whether the owner has been negligent or not in maintaining the vehicle would have to be seen on an appreciation of the evidence led.

In the case in hand when the accident in question occurred co-driver Mahesh Kumar was sitting in the vehicle. He categorically deposed while stepping into the witness box as PW2 that while he and the deceased were going in the vehicle in question, on state highway No.58, the deceased tried to apply brakes so as to give side to another vehicle, but he failed to do so as the vehicle in question was not property maintained by respondents No.1 to 3 and it was due to the poor condition of the vehicle and failure of the brakes, it fell into the valley. This witness also deposed that the brakes of the vehicle in question were not being inspected on a routine basis. PW2 Mahesh Kumar thus was the best witness of the accident in question and it was for the respondents to rebut the claim of the said witness by leading cogent evidence. No doubt, the counsel for respondent No.1-owner vehemently argued that the vehicle had been properly maintained by relying upon an affidavit tendered as RW1/A by Dev Darshan, Administration Supervisor wherein it was categorically stated that the vehicle was in a good condition and was being regularly checked by an expert on daily basis however, this witness during his cross-examination admitted that he was not holding any diploma of a mechanic and was not even present when the vehicle was taken out from the unit and given to the deceased to drive on the fateful day. Not only this, no records were produced qua the regular and routine maintenance of the vehicle in question.

In the aforementioned facts and circumstances, this Court has no hesitation in rejecting the arguments raised by respondent No.1-owner that the accident in question had occurred on account of the negligence of the deceased and still further the vehicle in question had been satisfactorily maintained by respondent No.1-owner. Furthermore since the accident in question occurred due to use of motor vehicle and during the course of employment of the deceased, the claimants had the option to approach either the appropriate authority for award of compensation under the Workmen's Compensation Act or under the Act. The claimants in the instant case opted to take recourse to their remedy under the Act and hence this Court does not concur with the submissions made by learned counsel for respondent No.1-owner that the Tribunal exceeded its jurisdiction by entertaining the claim petition under Section 166 of the Act.

Coming to the next contention of the learned counsel for the claimants that the compensation awarded was not in consonance with the settled law, this Court finds merit in the same. Since the deceased was a permanent salaried Government employee, the claimants are entitled to future prospects to the extent of 50% instead of 30%. The correct multiplier in the case in hand would be '16' and not '15' as the deceased was 34 years of age on the date of accident. Further, the Tribunal, in the opinion of this Court, fell into error by deducting the amount of allowances from the salary of the deceased as no deductions, except towards income tax, if any, can be made from the gross salary. The Hon'ble Supreme Court in ***Pranay Sethi's case*** *(supra)* has quantified the amount in the sum of Rs.15,000/- each for loss of estate and funeral expenses in addition to Rs.40,000/- each for loss of consortium. Still further, it has been held by the Hon'ble

Supreme Court that the aforesaid amounts would be subject to 10% enhancement after every three years. Therefore, the claimants would be entitled to 10% enhancement *qua* the above-mentioned conventional heads as per the ratio laid down in ***Pranay Sethi's case*** *(supra)*. Hence, the amount of compensation under the conventional heads stands modified to Rs. 16,500/- each for loss of estate and funeral expenses. Besides this, the claimants are entitled to Rs.44,000/- each, for loss of consortium.

The compensation thus payable to the claimants would be as follows:-

Sr. No.	**Head**	**Amount**
1.	Monthly Income	Rs.21,687/-
2.	Annual Income	Rs.21,687/- x 12 = Rs.2,60,244/-
3.	Future prospects (50%)	Rs.2,60,244/- x 50% = Rs.1,30,122/-
4.	Total Annual Income after adding future prospects	Rs.2,60,244/- + Rs.1,30,122/- = Rs.3,390,366/-
5.	Deductions towards personal expenses (1/4th)	Rs.3,90,366/- (/) 4 = Rs.97,592/-
6.	Loss of annual future earnings	Rs.3,90,366/- (-) Rs.97,592/- = Rs.2,92,774/-
9.	Multiplier	16
10.	Loss of future earnings	Rs.2,92,774/- x 16 = Rs.46,84,384/-
11.	Loss of consortium	Rs.44,000/- x 4 = Rs.1,76,000/-
12.	Funeral expenses	Rs.16,500/-
13.	Loss of estate	Rs.16,500/
	Total compensation	Rs.48,93,384/- (rounded off to Rs.48,93,400/-)

The claimants are, therefore, held entitled to total compensation as referred to above, along with interest @ 7.5% per annum from the date of filing of claim petition till its actual realization, which shall be apportioned to the claimants in the same ratio as directed by learned Tribunal.

Accordingly, the appeal filed by the claimants is disposed of in the above terms and appeal filed by the owner is dismissed.

29.09.2022 (**MANJARI NEHRU KAUL**)
Vinay **JUDGE**

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