

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

FAO-8478-2014

Date of decision: 26.04.2022

Harinder Kaur and another

.....Appellants

versus

Mahender @ Mahinder Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Karinder Singh, Advocate
for the appellants.

Mr. Rajbir Singh, Advocate
for the respondent-Insurance Company.

FATEH DEEP SINGH, J.

The claimants-Harinder Kaur and her husband-Satish Kumar had earlier invoked the jurisdiction of the Motor Accidents Claims Tribunal, Chandigarh seeking compensation on account of untimely death of their son, Rahul Thind.

The brief background of this litigation is that on 03.09.2012 around 03:00 AM, Rahul Thind along with his friends were coming from Agra to Delhi in a Swift Cart bearing No. PB-29K-3232 (in short 'the ill-fated car') and on account of flat tyre had parked their vehicle on the side of the road when a Tata Truck bearing No. DLILG-5829 came and hit Rahul Thind and his friend Gaurav, as a consequence of which, Gaurav died at the spot

while Rahul Thind was taken to the hospital where he succumbed to his injuries. FIR No.448/12 under Sections 279/304-A/427 of the Indian Penal Code was got registered with Police Station Gautam Budh Nagar, Sector 39, Noida. The claimants claim that the offending truck was owned by respondent No.1-Mahender @ Mahinder Kumar and which was being driven in a rash and negligent manner by its driver, respondent No.2-Lallu Yadav and which vehicle was insured by respondent No.3-Shriram General Insurance Company and, thus, claimed compensation from the respondents on the ground that the deceased-Rahul Thind was aged around 26 years and was a Software Engineer who had left his job in Infosys as Senior System Engineer where he was getting salary of Rs.34,782/- per month and at the time of accident, was pursuing his Masters in Business Administration (MBA) from the School of Inspired Leadership, Gurgaon.

The respondents No.1 and 2 denied the maintainability of the petition and claimed that the accident was due to contributory negligence of both the deceased as they have parked their car on the area touching the edge of the road without using any safety precaution and that the claimants are not entitled for any compensation. Similarly, insurer took the user pleas that the vehicle was not properly documented and the driver did not have

legal, valid and effected driving license. The Tribunal framed the following issues:-

1. Whether deceased Rahul Thind died in an accident which took place on 03.09.2012 at about 3:00 PM at Noida on account of rash and negligent driving of vehicle No.DLILG-5829 by its driver? OPP
2. Whether claimants are entitled to any compensation on account of death of deceased caused in an accident as alleged, if so, how much and from whom? OPP.
3. Whether the driver of offending vehicle was not holding a valid and effective driving license on the date of accident and the vehicle was being driven in violation of terms and conditions of the Insurance Policy? OPR
4. Reilef.

The claimants examined Dr. D.R. Aggarwal as PW1, Satish Kumar as PW2, Shailender Kumar as PW3, Ajay Kumar as PW4, Akshay Chawla as PW5 and Harjeet Singh as PW6. On the other hand, respondents No.1 and 2 tendered insurance cover note as Ex.R-1, Permit as Ex.R-2, RC as Ex.R-3, driving license as Ex.R-4, and fitness certificate as Ex.R-5 while insurer tendered copy of the insurance policy as Ex.R-6 and closed the evidence.

The Court of the learned Motor Accidents Claims Tribunal, Chandigarh, vide award dated 09.07.2014 allowed the claim petition and awarded a sum of Rs.19,69,000/- in favour of

the claimants along with interest at the rate of 7.50% per annum from the date of filing of the petition till its realization.

Heard counsel for both the sides and perused the records.

The factum of accident being on account of contributory negligence has not been established by the Driver and Owner of the offending vehicle. It is well settled law that the person who has taken up a plea of defence is supposed to prove the same in terms of Section 101 to Section 106 of the Evidence Act. Neither the driver nor the owner, much less anyone else, has stepped into the witness box from their side to establish their defence that it was the fault of the deceased which has led to this accident, so the findings of the Tribunal on Issue No.1 needs to be upheld, whereby, the accident resulting in death of Rahul Thind due to rash and negligent driving of the vehicle. Counsel for the two sides do not press on to the Issue No.3 and more so, the driver and owner have already placed on record the documents of the vehicle and since, the onus was upon the insurer, who has taken up this plea but they did not lead any evidence, therefore, findings on Issue No.3 needs to be upheld. The finding on Issue No.2 is the most hotly debated one. The parents are aged between 57 to 61

years of age. The deceased at the time of his death, was aged around 26 years. He has passed B.Tech and was earlier employed in Infosys as Senior Engineer and was pursuing his MBA when he met his nemesis and which is duly supported by the institution record as Ex.C-10 and Ex.C-11 and his salary certificate with the Infosys as Ex.C-7, Ex.C-8, Ex.C-17 to Ex.C-20 leaves no support that being an Engineer, holding a respectable job and earning at that time approximately Rs.35,000/-, was trying to improve upon his achievement so as to get a push in his career, though, the claimants claim that he would be getting Rs.1 lakh per month upon completion of the same, however, the same is more of surmises and conjectures and a rational has to be struck on that score. Keeping in view the age of the deceased and the fact that he had a long way to go and with the improvement in his academics, would certainly rise in life, the Tribunal had held that the deceased must be earning Rs.24,000/- per month, is certainly too meager amount, keeping in view the proven salary which he was already getting from the reputed Software Company and the quantum jump he would come across upon attainment of further qualifications, this Court with some amount of guess work and hypothetical calculations holds that the deceased with all likelihood must be earning Rs.40,000/- per month and, therefore, this Court is assessing the annual income

of Rs.4,80,000/- ($40,000 \times 12$). In view of his age, it will be proper to allow the increase towards future prospects by 50% and the same comes to Rs.2,40,000/- and, therefore, the income of the deceased for the purpose of assessing the compensation comes to Rs.7,20,000/- ($4,80,000 + 2,40,000$).

Further, considering that the deceased would be spending $\frac{1}{4}^{\text{th}}$ of his earnings towards the living and personal expenses of the deceased, the annual income comes to Rs.5,40,000/- ($7,20,000 - 1,80,000$).

Keeping in view the age of the deceased, multiplier has been wrongly applied of 9 when it ought to be 17 and, therefore, compensation comes to Rs.91,80,000/- ($5,40,000 \times 17$). Besides this, the parents must have spent money on the last rites and ceremonies and are entitled to compensation on account of loss of their young son who was a source of love, affection and care and funeral expenses etc which is assessed to Rs.5,00,000/-. Thus, the total award amount comes to Rs.96,80,000/- ($91,80,000 + 5,00,000$).

The claimants are the parents and shall be entitled to equal share in the said amount. The claimants are also entitled to get interest @ 12% per annum on the said amount from the date of the award till the realization of the said amount. All the

respondents are jointly and severally held liable to pay the amount of compensation. Amount awarded by the Tribunal if paid any shall be deducted from the total compensation.

With the aforesaid modification, the present appeal stands allowed.

(FATEH DEEP SINGH)
JUDGE

26.04.2022

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No