

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

(i)

FAO-6999-2015 (O&M)

Mohinder Singh

...Appellant

VERSUS

Neetu and others

...Respondents

(ii)

FAO-7480-2015 (O&M)

Shriram General Insurance Company

...Appellant

VERSUS

Neetu and others

...Respondents

(iii)

FAO-8072-2015 (O&M)

Ajit Pal Singh

...Appellant

VERSUS

Neetu and others

...Respondents

Date of Decision: September 29, 2022

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sham Lal Bhalla, Advocate for the appellant
(in FAO-6999-2015), for respondent No.3 (In FAO-7480-2015)
and for respondent No.2 (in FAO-8072-2015).

Mr.Punit Jain, Advocate for the appellant
(In FAO-7480-2015) for respondent No.4 (In FAO-6999-2015)
and (in FAO-8072-2015).

Mr.Ranjit Singh, Advocate for the appellant
(In FAO-8072-2015), for respondent No.2 (In FAO-6999-2015)
and (in FAO-7480-2015).

Mr.Ashwani Arora, Advocate
for respondent No.1 in all appeals.

ARCHANA PURI, J.

These three appeals have been filed to assail the Award dated 08.07.2015 passed by the Motor Accidents Claim Tribunal.

FAO-6999-2015 has been filed by Mohinder Singh, registered owner of car bearing registration No.CH-03H-5095. FAO-7480-2015 has been filed by the Shriram General Insurance Company, insurer of Mahindra Maximo bearing registration No.CH-01-TA-5604 and FAO-8072-2015 has been filed by Ajit Pal Singh, driver of car bearing No.CH-03H-5095.

There is involvement of two vehicles i.e. car bearing No.CH-03H-5095 and Mahindra Maximo No.CH-01-TA-5604, in the accident in question.

As per the version of the claimant-respondent No.1, on 19.12.2012, at about 10.15 p.m., Sunil Kumar @ Sonu, while being occupant of car bearing No.CH-03H-5095, driven by Ajit Pal Singh, had reached the spot of accident, where the aforesaid car, driven in a rash and negligent manner by its driver, went on the wrong side of the road and when it reached very close to Mahindra Maximo No.CH-01-TA-5604, the driver of the said car gave left turn and struck against the said Mahindra Maximo. The driver of Mahindra Maximo Ram Balak, was at fault, as he could not control his vehicle, due to fast speed. As a result of this accident, they all received injuries. Sunil Kumar @ Sonu, received serious injuries, which proved fatal. Further, it is the specific claim of the claimant that the

accident had taken place due to composite negligence of the driver of car bearing No.CH-03H-5095, driven by Ajit Pal Singh (who was impleaded as respondent No.1 before the Tribunal) and driver of Mahindra Maximo No.CH-01-TA-5604, namely Ram Balak (who was impleaded as respondent No.4 before the Tribunal). As such, the claimant-respondent No.1, who is unmarried sister of deceased Sunil Kumar @ Sonu, is entitled for compensation from the respondents, jointly and severally.

Appellants Ajit Pal Singh and Ram Balak, who were impleaded as respondents before the Tribunal have, more or less, not disputed the fact of accident, but they assiduously disputed the manner of taking place of the accident.

Undisputedly, FIR bearing No.349 dated 20.12.2012, under Sections 279, 337 and 304-A IPC, Police Station, Industrial Area, Chandigarh, was got registered by Ram Balak, owner and driver of Mahindra Maximo No.CH-01-TA-5604, whereby, rashness and negligence, had been imputed upon Ajit Pal Singh, driver of car bearing No.CH-03H-5095. Also, it is not disputed that Ajit Pal Singh was facing trial in the aforesaid criminal case, when the case was pending before the Tribunal.

Ajit Pal Singh, alleged driver of car bearing No.CH-03H-5095, has categorically denied about himself to be driving the car in question, at the relevant time of accident. In fact, he had stated that he has been roped in the aforesaid FIR. Likewise, Ram Balak, owner and driver of Mahindra Maximo No.CH-01-TA-5604 and who has been impleaded as respondent No.4, has taken the plea that in fact, the accident had taken place, due to rash and negligent driving of the car bearing No.CH-03H-5095, which

struck in Mahindra Maximo, driven by him. In fact, much emphasis, has been laid upon the registration of the FIR against Ajit Pal Singh, who also faced trial in the criminal case.

Such being the rival claims, the evidence brought on record, assumes importance.

The claimant-respondent No.1, to establish the manner of accident, as asserted, has examined Swaran Singh, an eye witness as PW-2, whose affidavit is Ex.PW2/A. Therein, he has categorically stated about the accident to have taken place, due to rash and negligent driving of car bearing No.CH-03H-5095, driven by Ajit Pal Singh and Mahindra Maximo No.CH-01-TA-5604, driven by Ram Balak. While facing cross-examination, said witness has categorically stated that the accident was caused due to negligence of driver of both the vehicles. A suggestion was made to the said witness about the accident to have taken place due to rash and negligent driving of car bearing No.CH-03H-5095 separately and of Mahindra Maximo No.CH-01-TA-5604 separately, but however, the same had been denied. This witness has stated in the cross-examination that car bearing No.CH-03H-5095 was going in the middle of the road. Even, said witness has further stated that Mahindra Maximo No.CH-01-TA-5604 was coming from the opposite direction in the middle of the road.

Now, coming to the testimony of RW-1 Ajit Pal Singh, driver of car bearing No.CH-03H-5095. In his affidavit, Ex.RW1/A, the said witness had stated that no such accident had taken place, due to his rash and negligent driving. He was not driving the car bearing No.CH-03H-5095. Further, he had also stated in the affidavit that the car bearing No.CH-03H-

5095, was driven by the deceased (Sunil Kumar @ Sonu), at the time of the accident, but however, nowhere, it was his case, so pleaded, in the reply to the claim petition. In the cross-examination, the said witness has admitted about registration of the FIR against him and also about his facing trial in the Court, qua the said FIR. Furthermore, he had also stated in the cross-examination that the accident had taken place in the middle of the road. Suggestions were also given to him about the Mahindra Maximo No.CH-01-TA-5604 being driven at slow speed, which were denied.

Even, Ram Balak, who undisputedly was driving the Mahindra Maximo No.CH-01-TA-5604, at the relevant time, in his affidavit Ex.RW4/A, has deposed in consonance with his pleaded case. However, while facing cross-examination, he had admitted a suggestion to be correct that accident had taken place from its front side and he had seen the offending vehicle coming from the opposite side, at a distance of about half kilometer. Furthermore, he has stated that he was moving at the speed of 40-45 kms. Besides the same, also he admitted to be correct that the accident had taken place in the middle of the road. In the cross-examination by the counsel for the claimant, he has deposed about the accident to be head-on collision, in the middle of the road.

Men may tell lies but the circumstances do not and this is the cardinal principle of evaluation of evidence. The method and manner, in which the accident had taken place, as deposed by the aforesaid material witnesses, leaves no place for doubt that it was a case of composite negligence of drivers of both the vehicles i.e. driver of car bearing No.CH-03H-5095 and driver of Mahindra Maximo No.CH-01-

TA-5604.

Throughout the arguments, learned counsel for the owner & driver of Mahindra Maximo No.CH-01-TA-5604 namely Ram Balak, has laid emphasis upon the FIR, having been so registered against Ajit Pal Singh, but however, this in itself, cannot be said to be conclusive about the role assigned to Ajit Pal Singh. Even, emphasis has been laid upon Mahindra Maximo No.CH-01-TA-5604 to be driven at a slow speed, as compared to the other car, but however, this fact also has to be taken into consideration, in the backdrop of other circumstances, coming forth. Speed of the vehicle, is a relative factor, which has to be appraised, while taking into consideration, the other circumstances, spelt out, at the spot of accident.

It is pertinent to mention that it is coming in the testimonies of eye witness Swaran Singh PW-2 as well as RW-1 Ajit Pal Singh, RW/2 Mohinder Singh that the accident had taken place in the middle of the road and even, Mohinder Singh had stated that it was head-on collision. This manner of accident, so spelt out, from the testimonies of the aforesaid witnesses, do amply establish about the drivers of both the vehicles, to be negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers, as such, were joint '**tortfeasors**'; thus, liable to make payment of compensation.

Even though, at the behest of Ajit Pal Singh, it is submitted that he was not driving the car in question, at the relevant time, but however, qua the same, no satisfactory evidence, as such, has come on record. The fact remains that FIR was registered against him and he had faced trial.

Nowhere, he had made representation to the investigating authority about himself to be not driving the vehicle in question and his false implication. Thus, in view of the same, the submission, so made, about him to have been roped in later on, does not hold any ground.

Considering the manner of accident having taken place, as narrated aforesaid, the apportionment of liability @ 50:50, concluded by the Tribunal, thus calls for no interference.

Learned counsel for appellant-Mohinder Singh, who is registered owner of car bearing No.CH-03H-5095 has submitted that much prior to the accident in question, he had sold the aforesaid car to Sourabh Srivastava, who had been impleaded as respondent No.6 and who had been proceeded ex-parte, before the Tribunal. It is submitted that the said vehicle was sold by way of execution of an affidavit by the purchaser on 30.04.2012, whereas, the accident had taken place on 19.12.2012. In this affidavit, the purchaser Sourabh had stated about his responsibility for accidents/challans/police or court cases, with respect to the sold vehicle w.e.f 30.04.2012. In the light of the same, it is submitted that if any liability is to be fastened, vis-a-vis, the accident in question, the same has to be with regard to Sourabh, who was owner and therefore, Mohinder Singh be absolved of the liability, so fastened upon him, by the Tribunal.

However, the aforesaid submission is not tenable. Undisputedly, Mohinder Singh is the registered owner of the car bearing No.CH-03H-5095. Even though, two witnesses have been examined with regard to the execution of an affidavit, about the purchase of the said car on 30.04.2012 by Sourabh Srivastava, but however, the fact remains that

certificate of registration of car bearing No.CH-03H-5095, which has been proved as Ex.P4, still remains in the name of Mohinder Singh and registration particulars have not been changed. Learned Tribunal had rightly appraised the testimony of Mohinder Singh, when he appeared in the witness box, vis-a-vis, the said sale and purchase of the car. It has been rightly observed that Mohinder Singh has failed to prove on record the evidence, with regard to getting the vehicle released by its owner, at the time of accident. No such evidence has been brought about the release of said vehicle on sapurdari to subsequent purchaser.

In this regard, suffice to make mention to the decision rendered by the Hon'ble Supreme Court in *Surendra Kumar Bhilawe vs. The New India Assurance Company Limited*, 2020 AIR (Supreme Court) 3149, wherein, it has been held that in view of the definition of the expression 'owner' in Section 2(30) of the Motor Vehicle Act, it is the person in whose name the motor vehicle stands registered, who, for the purposes of the Act, would be treated as the 'owner'.

In *Naveen Kumar vs. Vijay Kumar and others, in Civil Appeal No.1427 of 2018, decided on 06.02.2018*, it was held that where registered owner purported to transfer vehicle but continues to be reflected in records of registering authority as owner, he would not stand absolved of liability. Therein, it was observed that principle underlying provisions is that victim of motor accident not to be left in state of uncertainty. The claimant for compensation ought not to be burdened with following trail of successive transfers, which are not registered with registering authority.

Thus, as in the certificate of registration Ex.P4, Mohinder

Singh is shown to be registered owner of the car bearing No.CH-03H-5095, therefore, for the purposes of grant of compensation, in a motor vehicular accident, the liability has to be fastened upon him, as he still continues to be the registered owner, despite the alleged sale of the car. On this count also, the submission, so made, is rejected.

Also, it has been submitted by learned counsel for the insurance company that the Tribunal fell in error, while awarding compensation to the sole claimant-Neetu, who is sister of the deceased and thus, was not dependent upon him. However, the aforesaid submission, is not tenable. It is categoric claim of the claimant-respondent No.1-Neetu that she was residing with Sunil Kumar @ Sonu, her unmarried brother, who died in the accident. She has asserted about being dependent upon him. In the affidavit Ex.PW1/A, again she has reiterated her assertion about being dependent upon the deceased.

The term 'legal representative' cannot be interpreted in a *stricto sensu*. Having regard to the condition of Indian society, where, brothers and sisters, even though, may be major, are dependent upon elder sibling, who is the bread winner of the family, then there is no justification to deny them compensation. Any legal representative, who suffers on account of death of a person, due to motor vehicle accident, should have a remedy for realization of compensation. It is specific claim of the claimant that her parents had pre-deceased Sunil Kumar @ Sonu and both unmarried brother and sister, were living together. There is nothing coming in evidence about the claimant-respondent No.1 to be having independent source of earnings. In these circumstances, she ought to be treated as dependent upon deceased

Sunil Kumar @ Sonu. Even though, the claimant was unmarried, at the time of death of Sunil Kumar @ Sonu and as now submitted, may get married in near future, but on account of her marriage, she cannot be denied compensation. In Indian society, brothers and sisters, all unmarried, living under the same roof, not only have emotional attachment but there is emotional dependence also. Even after the marriage, the sisters look upon the brothers, as and when need arises. The contribution is made by the brothers, not only in happy times but also during the adverse times, faced by the sisters. They are ready to render their assistance, as and when required. In this way, unmarried sister, who may get married in future, is definitely dependent upon the deceased, more particularly, when her parents had pre-deceased the brother and therefore, she is entitled to compensation.

In view of the date of birth of Sunil Kumar @ Sonu recorded as 20.06.1985 in voter Identity Card, learned Tribunal had rightly assessed his age to be 27 years, at the time of his death. The monthly earnings has also been taken as unskilled worker, at the time of his death. Learned Tribunal, on account of future prospects, has made enhancement of 50%, but however, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, where the deceased was self-employed, addition of 40% of the established income, should be the warrant, where the deceased was below the age of 40 years. Thus, in view of the age of the deceased and taking his earnings as unskilled worker, addition of **40%** was required to be made, instead of 50%. Thus, the earnings of the deceased, shall now be taken as Rs.6400+Rs.2560 = Rs.8960/- per month. Since, deceased Sunil Kumar @ Sonu was unmarried,

at the time of his death, therefore, deduction of 50% has to be made, on account of personal living expenses. Taking it to be so, for working upon the compensation, the dependence has to be taken to the extent of 50% i.e. Rs.4480/-. The suitable multiplier to be applied as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*. Thus, so working upon, the compensation comes to be **Rs.9,13,920/-**.

However, as per *Pranay Sethi's case (supra)*, on account of funeral expenses, a sum of Rs.15,000/- is to be granted, which is required to be enhanced @ 10% in every three years and so after revising, on account of funeral expenses, amount of compensation to be granted is **Rs.16,500/-**. Thus, total compensation payable to the claimant-respondent No.1 is **Rs.9,30,420/-**.

With this modification of the compensation, so calculated aforesaid, the appeals in hand, are partly allowed. However, the remaining terms of the Award, shall remain the same as granted by learned Tribunal.

September 29, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes