

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

FAO-427-2003 (O&M)

Date of Reserve: 16.11.2023

Date of pronouncement:05.12.2023.

Lakhwinder Kaur and others

....Appellants.

VERSUS

Dharinder Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Argued by: Mr. Baljinder Singh, Advocate
for the appellants-claimants.

Mr. Suvir Dewan, Advocate
respondent No.3-Insurance Company.

Sukhvinder Kaur, J.

Instant appeal has been filed by the appellants-claimants for modification of award dated 07.08.2002 passed by the Motor Accident Claims Tribunal, Patiala, (for short, 'the Tribunal'), in MACP No.277 of 1999 whereby the claim petition filed by the appellants-claimants was partly allowed and claimants-Lakhvinder Kaur and others were awarded a compensation of Rs.1,22,200/- along with interest @ 9% per annum from the date of filing of the claim petition till the date of realization on account of death of Sukhvinder Singh, in a motor vehicular accident that took place on 24.04.1999.

2. The relevant facts are that the appellants-claimants filed claim

petition invoking the provisions of Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) claiming compensation with the averments that on 24.04.1999, Joginder Singh alongwith his father Mohan Singh was coming on scooter bearing registration No.PBA-1338 from Rajpura city to their village Pehar Khurd and Sukhvinder Singh (since deceased) alongwith Ram Asra was coming on another scooter bearing registration No.CHT-6265, which was being driven by Sukhvinder Singh. At about 10 P.M., when they were at a distance of about half kilometer from their village and had reached near Gatta factory, a Tata 407 bearing registration No.CH-01M-2158, being driven by respondent No.1-Dharinder Singh alias Dhira in a rash and negligent manner, came from the side of Chandigarh and hit the scooter of Sukhvinder Singh. As a result thereof, Sukhvinder Singh and Ram Asra fell down and sustained injuries. The driver of offending vehicle fled away from the spot alongwith his vehicle. Joginder Singh and Mohan Singh shifted the injured persons to A.P. Jain Hospital, Rajpura, but both of them died on the way to the hospital. On the statement of Joginder Singh, FIR No.72 dated 25.04.1999 under Section 304-A IPC was registered at Police Station Sadar, Rajpura against the driver of the offending vehicle.

3. It has been averred in the claim petition filed by the claimants-appellants that Sukhvinder Singh (since deceased) was working in Victory Oil Company, Pehar Khurd and was drawing a salary of Rs.2500/- per month and was also earning Rs.2000/- per month from agriculture and the claimants were totally dependant upon the deceased. With the untimely

death of deceased Sukhvinder Singh, the claimants have suffered great mental pain and agony and they have been deprived of the love and affection of the deceased. It has been alleged that claimants were entitled to Rs.15,00,000/- as compensation due to death of deceased Sukhvinder Singh in the accident in question.

4. The driver-Dharinder Singh @ Dhira, owner-Kashav Chand as well as insurer-National Insurance Co. Ltd. were impleaded as respondents in the claim petition. Respondents No.1 and 2 filed their joint written statement and denied the alleged accident. They stated that a false FIR has been lodged. Respondent No.3-Insurance Company contested the petition by raising certain preliminary objections regarding the maintainability of the petition; the petition is bad for mis-joinder and non-joinder of necessary parties as the owner and insurer of the scooter have not been impleaded; respondent No.1-driver was not holding a valid and effective driving licence at the time of accident in question; the offending vehicle was not having a valid route permit and fitness certificate. On merits, factum of accident was denied and it was stated that if the claimants are able to prove the alleged accident, Sukhvinder Singh (since deceased) was the author of the said accident.

5. On the basis of the pleadings of the parties, issues were framed. Both the parties adduced their respective evidence to discharge the onus behind the issues upon them.

6. After considering the evidence on record and the submissions made on behalf of the counsel for the parties, learned Tribunal partly

allowed the claim petition and awarded a sum of Rs.1,22,200/- as compensation to the appellants/claimants alongwith interest at the rate of 9% per annum from the date of filing the petition till realization. Respondents No.1 to 3 were held jointly and severally liable to pay the compensation.

7. Feeling dissatisfied with the award dated 07.08.2002, the appellants-claimants have preferred the instant appeal.

8. I have heard learned counsel for the parties and have also perused the relevant record.

9. Learned counsel for the appellants has opened up his arguments by contending that the impugned award dated 07.08.2002 passed by the Tribunal is liable to be modified for reversing finding on issue No.1 regarding contributory negligence. The Tribunal has erroneously fixed the contributory negligence of deceased Sukhvinder Singh to the extent of 50% which is against the pleadings and evidence on record. The case of the respondents was of simple denial and even respondent No.1 who was driver of the offending vehicle did not appear as his own witness in order to explain that in which manner the accident in question had taken place. He has vehemently contended that the finding of the Tribunal on issue No.1 is not sustainable and the deceased was not negligent in any manner and the accident took place due to the sole rash and negligent driving of the offending truck by respondent No.1.

10. He has further contended that finding of the Tribunal on issue No.2 is also liable to be modified. The Tribunal has wrongly rejected the

plea of the claimants that deceased was an employee of Victory Oil Company. In this context sufficient evidence was led on the record in the form of testimony of PW2 Lakhwinder Kaur, widow of deceased and PW6-Anil Shahi, the employer of the deceased. This fact was also not considered by the Tribunal that deceased was also drawing income from agriculture work. He has further submitted that the Tribunal has wrongly drawn the inference that the deceased was earning only Rs.1500/- per month and even a daily wager who is an able bodied person earns more than Rs.100/- per day. The deceased was owning a scooter and it is difficult to believe that he was earning just Rs.50/- per day. So under these circumstances income of deceased is to be assessed as Rs.4500/- per month. He has also contended that the deceased was less than 30 years old so multiplier of '20' should have been applied. He has submitted that compensation awarded by the Tribunal is highly inadequate and on the lower side. So the award of the Tribunal be modified accordingly by accepting the present appeal.

11. On the other hand, it has been contended by learned counsel for respondent No.3 that the Tribunal has rightly assessed the just compensation qua death of deceased Sukhvinder Singh. As income of the deceased has not been proved so the Tribunal has rightly taken his notional income by presuming him to be a daily wager. It has also not been proved that deceased was drawing income of Rs.2,000/- per month from the agricultural work. He has contended that as fair and just compensation has been awarded by the Tribunal, so award passed by the Tribunal does not call for any interference.

12. While giving finding on issue No.1, it has been observed by the Tribunal that in the FIR and in the claim petition it has not been stated that as to in which manner the accident had occurred. The claimant has not stated in the FIR that scooter of deceased was going on the left side of the road and the offending vehicle which was coming from the opposite direction had struck it, after coming to the wrong side of the road. It has been held that in the FIR as well as in the claim petition, it has been stated that the offending vehicle was being driven rashly and negligently and only PW1-Mohan Singh has stated in his examination-in-chief that scooter of deceased was going on left side on the road, which can be termed to be an improvement made by this witness from the original version given in the FIR and the claim petition. It has been further held that “there is no evidence on the file which could show as to what was the width of the road at the place of the accident. However, it is clearly made out that both the vehicles involved in the accident were coming from the opposite directions. In this situation, it can be said that the deceased was also guilty of contributory negligence and its extent must be taken to be 50:50.

13. Admittedly, no evidence in rebuttal has been led by the respondents, but from the case of the claimants, the above said conclusion can be drawn. Therefore, this issue is accordingly decided in favour of the claimants and against the respondents.”

14. I do not feel inclined to go with the findings as recorded by the Tribunal. The perusal of the FIR and claim petition reveals that the facts regarding manner of occurrence of the accident had been disclosed therein.

I do not find any substance in this finding of the Tribunal that it had not been stated in the FIR that scooter of the deceased was going on the left side of the road and the offending vehicle which was coming from the opposite direction had struck it after coming to the wrong side of the road. FIR is not an encyclopedia in which each and every detail is to be mentioned. In the claim petition, it has been specifically alleged that they were coming from Rajpura City to Pehor Khurd on their left side. PW1-Mohan Singh while appearing as PW1 has also categorically stated in his examination-in-chief that the scooter of the deceased was going on the left side of the road.

15. Both PW1-Mohan Singh and PW4-Joginder Singh, who are eyewitnesses to the accident had stepped into the witness box and have deposed in detail regarding the manner of happening of the accident in question. Both of them have categorically stated that the accident had taken place due to rash and negligent driving of the offending truck by respondent No.1, the driver of the said truck. Both these witnesses have been cross-examined at length but even during their cross-examination their testimony has not been shattered.

16. No evidence to rebut the evidence led by the claimants has been produced by the respondents. Even respondent No.1, who was driver of the offending truck has not been stepped into the witness box in order to explain that he was not the author of the accident in question. Thus, evidence of the claimants has remained unrebutted.

17. From the testimony of PW3-Maharaj Singh Walia, Ahlmad to

the Court of JMIC, Rajpura, it has been proved that challan No.526-T of 07.08.1999 pertaining to FIR No.72 dated 25.04.1999, under Sections 279, 337 and 304-A IPC, registered at Police Station Sadar, Rajpura was pending against respondent No.1-Dharinder Singh for causing the accident in question. So in the absence of any cogent evidence the Tribunal has wrongly drawn the inference that it was a case of contributory negligence and deceased was guilty of contributory negligence to the extent of 50:50. Rather from the evidence on record it is clearly proved that the accident in question had taken place due to rash and negligent driving of the offending truck by respondent No.1. So finding of the Tribunal on issue No.1 regarding contributory negligence of deceased is reversed.

18. As per the pleadings in the claim petition deceased Sukhvinder Singh was working in Victory Oil Company, Rajpura at salary of Rs.2500/- per month and was also having income of Rs.2,000/- from the agricultural work.

19. In support of their pleadings claimants have examined claimant No.1-Lakhwinder Kaur, widow of deceased who has stepped into the witness box as PW2 and have also examined PW6-Anil Shahi. Pw6-Anil Shahi has deposed that deceased Sukhvinder Singh was working in their factory and he was paying him salary of Rs.2,500/- per month and produced on record the salary certificate Ex.P5. The Tribunal has rightly pointed out that this witness has admitted in his cross-examination that no receipt was ever issued by him qua the salary. He did not produce any record in order to prove that what salary was being shown in the account books which was

allegedly being paid to deceased. Rather PW6 has admitted that the said salary was not being shown in the accounts of Victory Oil Company. He has also stated that deceased Sukhvinder Singh was working as a cleaner only. The Tribunal has thus rightly held that from Ex.P5, it is not proved that deceased was drawing salary of Rs.2,500/- per month by working on truck of PW6-Anil Shahi. From the statement of PW6 even it was not proved that deceased was working in Victory Oil Company as alleged in the claim petition. Otherwise also the document Ex.P5 is undated. The Tribunal has rightly held that it has not been proved on record that deceased Sukhvinder Singh was working in Victory Oil Company and was drawing salary of Rs.2,500/- per month. There is no also no evidence on record worth the name that the deceased was having income of Rs.2,000 per month from the agricultural work. So keeping in view, the evidence on record, the Tribunal has rightly held that the deceased is to be considered as an unskilled labour. His monthly income has been taken as Rs.1,500 per month by the Tribunal. Even, if the deceased is to be considered as an unskilled labour, even than the income of Rs.1,500/- per month that has been taken by the Tribunal appears to be on the lower side. Keeping in view that the accident had taken place in the year 1999 and by considering the deceased as an unskilled labour the notional income of deceased is taken as Rs.2,000/- per month. Thus, the annual income of the deceased comes to Rs.24,000/- (Rs.2,000/- x 12).

20. As deceased had left behind his widow and two children so deduction of 1/3 of his income towards personal living expenses is to be

made. So after deducting 1/3 of total income of the deceased towards personal expenses, the annual dependency come to Rs.16,000/- (Rs.24,000/- Rs.8,000/-).

21. As per law laid down by the Hon'ble Apex Court in **National Insurance Company Limited Vs. Pranay Sethi, 2017(4) RCR (Civil) 1009,** 40% of addition on account of the future prospects is to be made in the income of deceased which has not been done by the Tribunal. So after adding of 40% towards the future prospects annual income of the deceased comes to Rs.22,400/- (Rs.16,000/- + Rs.6,400/-).

22. The age of the deceased has been rightly taken as 30 years at the time of his death in the accident. The age of the deceased being 30 years at the time of his death in the accident, as per the ratio of law laid down in **Smt. Sarla Verma and others VS. Delhi Transport Corporation and another, 2009 (3) R.C.R. (Civil) 77,** the Tribunal has wrongly applied multiplier of '16' and multiplier of '17' is to be applied. After applying the multiplier of '17' his total dependency is worked out as Rs.3,80,800/- (Rs.22,400 x 17).

23. The Tribunal has awarded Rs.2,000/- on account of funeral expenses and has given Rs.5,000/- on account of loss of consortium to the widow of deceased. But in view of the ratio of law laid down in **Pranay Sethi's case (supra)**, claimants are entitled to get compensation under the conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- towards funeral expenses. As such the claimants are held entitled to Rs.70,000/- under these conventional

heads. Thus the claimants are held entitled to total compensation of Rs.4,50,800 (Rs.3,80,800 + Rs.70,000).

24. The Tribunal has granted interest @ 9% per annum which appears to be on the higher side and same is reduced to 7.5% per annum. Thus the claimants are held entitled to compensation of Rs.4,50,800/- alongwith interest @ 7.5% per annum from the date of filing of the claim petition till its realization. Liability of the respondents to pay the said amount is joint and several.

25. Compensation in this case will be shared by the claimants in the same proportions as has been held in the award by the Tribunal. Accordingly, the appeal i.e. FAO-427-2003 is partly allowed.

Pending applications, if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

05.12.2023

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