

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

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FAO-673-1996(O&M)
(MACT No.17 of 1991)
Date of decision: 21.12.2023

Sunil Kumar

.....Claimant-Appellant

Versus

Joginder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Vishal Sharma, Advocate for the appellant.

None for respondent No.2, despite service.

Mr. R.K. Bashamboo, Advocate
for respondent No.3-Insurance Company.

AMAN CHAUDHARY, J.

1. By way of the present appeal, the claimant-appellant has challenged the award dated 16.08.1995 passed by the learned Motor Accident Claims Tribunal, Panipat (for short 'the Tribunal') vide which the claim petition filed on account of death of Sat Pal Sharma in a motor vehicular accident, was dismissed, however, a sum of Rs.25,000/- vide awarded on account of no-fault liability.
2. This is a reconstructed case, as the original file was burnt in the fire that broke out in the concerned branch in the year 2011. Since the case is pending for more than 27 years, the counsel for the parties have no objection, if the same is decided on the basis of the available record.
3. Learned counsel for the appellant contends that the Tribunal has erred in holding the driver of the stationary truck not liable for the accident, by wrongly discarding the statement of PW3 Prem Kumar, an independent witness, who had a kiosk in the premises of Sunil Dhaba for selling betel leaves, and on the other hand relying on the statement of Rajinder Singh RW2, a mechanic, who was stated to be repairing a vehicle, that too at 02:30 am, which was not probable since there was no proof as to who owned the said vehicle. No positive evidence was led to

substantiate the fact that parking lights of the truck were switched on at the time of incident. Reliance is placed on the judgments in **Jumani Begam vs. Ram Narayan and others** (2020) 5 SCC 807 as well as **Mohammed Mumtaz and others vs. S. Ravindranatha and others** 2005 ACJ 1951. Further, as per the claim petition as well as post mortem report Ex.PF, the deceased, 56 years old at the relevant time, was in the business of liaison work and commission agent earning Rs.10,000/- per month. However, only compensation under 'no fault liability' has been granted. Appellant is entitled to compensation for loss of dependency and under other conventional heads.

4. On the other hand, learned counsel for respondent No.3 submits that the owner of the vehicle had categorically stated that the truck was parked 15-20 feet away from the berm and back lights of the truck were working. Thus, the Tribunal after appreciating the evidence on record has rightly dismissed the claim by holding the driver of the car responsible for the accident.

5. Heard learned counsel on either side.

6. Evidently, the car was being driven by one Padam Kumar, whereas Satpal Sharma was a co-passenger. The vehicle in which they were travelling is stated to have dashed behind the stationary truck loaded with Daal parked in front of Sunil Dhaba GT Road at Murthal between 02.30-03:00 am on 09.09.1990. Both the above persons died in the accident.

7. The driver of the truck had been proceeded against ex-parte before the Tribunal, while respondent No.2 owner of the truck and Insurance company, respondent No.3 had filed their respective statements wherein the truck having been insured was not disputed, however, the claim petition was resisted on the ground that the accident had taken place due to rash and negligent driving of the Maruti car driven by Padam Kumar.

8. The Tribunal held the driver of the car at fault, on the basis of the

observations that, “In the case in hand, Daal had been loaded in the truck from Delhi and the truck was bound for Jammu. The truck has to pass through four States and it was a long route truck. Normally, the trucks operating on such interstate long routes keep the headlights, brake-lights and the parking lights of the vehicles in working order, so that the police may not harass them on the way. There is no cogent and reliable evidence that the parking lights of the truck were not on when the car being driven by Shri Padam Kumar dashed into the stationary truck from behind. The truck was parked on the left side verge of the road in the open country. The G.T. Road is sufficiently wide to accommodate several vehicles. Had Shri Padam Kumar been vigilant alert while driving his car, the accident would not have taken place and his car would have not dashed into the stationary truck. The accident took place in wee hours of the morning. Most of the road side accidents take place during wee hours because the drivers feel tired and sleepy during this period and the possibility that Shri Padam Kumar under the influence of sleep dashed his car against the stationary truck cannot be ruled out.”

9. Apropos the location of the truck, the finding recorded by the Tribunal is that, “...I have, therefore, no hesitation in accepting the version given in the FIR Ex.R1 as nearer to the truth. In the copy of FIR Ex.R-1 it has been shown by Shri Joginder singh that he had parked truck No.PJC-1567 on G.T.Road in front of Sunil Dhaba in such a manner that its two left side wheels were on the katcha berm. It follows that two right side wheels of the truck was in question must be on the matalled road when the truck was in a stationary position and when the car driven by Shri Padam Kumar dashed into the truck from behind. Shri Joginder Singh had left the truck unattended and gone to the Dhaba for taking meals when within a few minutes of his leaving the truck the accident took place...”

10. It would be worthwhile to refer to **Smt. Vinesh Kumari vs.**

Rajendra Kumar, 2010 (44) RCR (Civil) 627, wherein the findings of the Tribunal that there was no negligence on part of either the driver of the stationary truck or of the car, which crashed against the said truck, thus the claimants of the deceased co-passenger were only entitled to compensation under the head of ‘no-fault liability’ were set aside by the High Court and it was held to be a case of composite negligence. Relevant portion thereof reads thus:

“30. In the present case the owner/driver of truck parked the said truck on the middle of the road without any indicators or lights and it was dark night when the accident took place. Thus the owner of driver of the truck left the said truck on the middle of public road in such a position or in such a condition or in such circumstance as to cause or likely to cause danger, obstruction or undue inconvenience to the users of public road or to the passengers. Under these circumstances the owner/driver of the truck would also be responsible for the accident in question as they contributed negligence in causing the said accident.

31. A Division Bench of this Court in the case of Union of India, through General Manager, North Eastern Railway, Gorakhpur v. Virendra Bharti and another, 2009 (3) T.A.C. 67 (All), has observed that equity tilts sharply in favour of deceased and law values strong presumption. This Court has further held that cause of self-inflicted injury is not proved beyond doubt as alleged, judgment and order of tribunal awarding compensation of Rs. 4 lacs is liable to be upheld.

32. In view of the facts and circumstances of the case, the learned tribunal has committed mistake in deciding issues no. 1 and 4 to this effect that the claimants could not prove negligence either on the part of truck or car driver. As discussed above, the driver of truck has been found negligent in parking the said truck on middle of road without any indicators or lights, as a result of which the driver of car could not notice, the said truck parked therein and collided the said car with the same and Narendra Kumar sitting in car sustained fatal injuries and ultimately he died due to injuries sustained by him in the accident. Thus, both the drivers have been found negligent in causing accident and composite negligence has not been looked into by the learned tribunal. The percentage of negligence is liable to be assessed in deciding the amount of compensation and liability of the owners and drivers of truck and car. The learned tribunal has wrongly held that no driver has been found negligent in the accident. In case the driver of car would have taken due care and caution in driving the same, accident could have been avoided.

33. The driver of truck committed negligence in parking the said truck in dangerous position and violated provisions of Section 122 of Motor Vehicles Act. The learned tribunal

should have assessed the percentage of composite negligence of both drivers and calculated amount of compensation with regard to the same, on the basis of salary being drawn by deceased at the time of accident. Consequently the findings recorded by the learned tribunal on issues no. 1 and 4 suffers from factual inaccuracy, illegality and irregularity. As discussed above, the judgment and award passed by the learned tribunal is perverse and liable to be set aside and the case is liable to be remanded to the court below in order to decide the claim petition afresh in the light of above discussions and on the basis of the evidence on record as well as circumstances attending to the case.”

11. In **Mohd. Mumtaj** (supra), a case where a van driven at fast speed during the night had dashed against rear side of mini lorry parked partly on tarred and partly on mud road resulting in death of three persons travelling in the van and the Tribunal had held the accident having taken place due to the rash and negligent driving of the van by observing that the van had enough space to steer clear off the stationary lorry, however the above finding was reversed by the High Court on the ground that the stationing of lorry without parking lights amounts to leaving the vehicle in a dangerous position for other road users and it was held that accident occurred due to composite negligence of drivers of both vehicles as it was found that even the van was being driven on extreme left side just a few feet away from mud portion of the road. The relevant portion reads thus:

“5. ...In the absence of any lighting at the spot the background against which the tempo was parked must have been pitch dark. It is admitted position that the mini lorry was parked without the parking lights. In the pitch-darkness that must have enveloped the area in the absence of any sort of lighting. The mini lorry having an yellowish green body could have been easily obscured from the sight of a driver driving the van. Section 122 has been framed to ensure safety of the traffic. The stationing of the tempo without the parking lights in the pitch darkness amounts to leaving a vehicle in such a condition or in such a circumstance as to cause danger to the other users of the road. ...There could be no other probable reason why the van should go and dash against a stationed vehicle when there was so much space for veering away from its path. There could be no doubt that if the parking lights of the mini lorry were kept on, the driver of the van would have certainly noticed the tempo from a fairly good distance and avoided the impact. The Tribunal has completely lost sight of this important aspect of

the matter when it considered the question of negligence. It is clear that the driver of the mini lorry violated the statutory provision governing the parking of vehicles by parking the vehicle without keeping the parking lights on. But this aspect alone should not result in giving a clean chit to the driver of the offending van. The van was being driven on the extreme left side of the road and the van at the time of impact was just a few feet away from the mud portion of the road. The road as could be seen from Ex.P.5 is straight and if only the driver had taken the mid-lane or had driven away from the lane reserved for slow moving vehicles the accident would have never happened. Even if no fault could be found for driving so close to the left side of the road on a National Highway as the presence of slow moving vehicles is a remote possibility, still, the fact that the impact has resulted in three deaths unerringly points to the rash and negligent driving of the van in question. If the van was being driven carefully and at a moderate speed, certainly the impact would not have been so severe resulting in the death of three persons. It becomes clear that the van was being driven at a great speed on a lane meant for slow moving vehicles when the visibility was poor. Therefore, the driver of the van was also responsible for the accident along with the driver of the stationed mini lorry who had parked his vehicle in a dangerous manner. However, I need not go into the exercise of apportioning the negligence between the drivers of the two vehicles as there is no claim from the drivers of the vehicles involved in these cases. The deceased were all traveling as passengers in the van and as they had not contributed in anyway to the accident the doctrine of composite negligence applies to these claims by the legal representatives of the deceased, I therefore, hold that the accident occurred due to the composite negligence of both the vehicles involved in the accident. The claimants are entitled to recover the amount of compensation from the owners and insurers of both the vehicles.

6. ...In the present case from the evidence available on record it clear that the driver could not have seen the mini lorry at all till it was too late for him to avoid the accident because the mini lorry was totally obscured from the sight of the driver of the van...”

12. The award intrinsically reveals a few undeniable facts. The accident took place at around 03:15 am, the FIR was got lodged by the driver of the truck at 04:30 am, upon which the Tribunal has itself relied, wherein it was specifically mentioned by him that the truck was parked with two left tyres on the berm and unattended. However, he did not state that the parking lights of the truck were switched on. There were chinks in the statement of the owner regarding his

presence at the spot, since the same was not mentioned by the driver, who was not examined in these proceedings. The owner admitted to the fact that the police post was situated at a distance of 1½ kms., but he did not go there due to insufficient money; did not accompany the injured to the hospital, and was unaware who had taken them. He stated that he left for Delhi in some other truck, but could not even give the name of the driver of that truck or its registration number. His statement was also not recorded by the police, even when he himself, stated in cross-examination, that he went to the police station in the afternoon on the date of occurrence. Though, he stated that cleaner-Vidhi Singh was alongwith them, however, as is apparent from record, neither was the cleaner's statement recorded by the police nor was he produced as a witness in the present case. It may be accentuated that the owner simply stated that the parking lights of the truck were working but did not state that they were switched on. In light of the above, the finding returned as regards the parking lights are concerned, the same in absence of any positive evidence to that effect are based on mere conjectures and surmises.

13. RW6 HC Hema Chand, Investigating Officer of the FIR, in his cross-examination specifically deposed that "During my investigation, right wheels of the truck were found on the tard portion of the road and the left wheels on the katcha berm." The first informant, who was none other than the driver of the truck himself stated the vehicle to be parked in the manner as indicated in the FIR, which was found by the Tribunal itself to be nearer truth. In wake of the above, the version put forth by the mechanic Rajinder-RW-2 as also Constable Satyawar RW-4 regarding parking of the truck is not worthy of credence. There is no denial that the accident had taken place by the car having rammed in the rear side of the truck and the above evidence puts the controversy at rest that the truck driver too contributed to the accident. Therefore, the findings of the Tribunal solely holding the car driver negligent are presumptuous.

14. On the aforesaid premise and as a fall out of the above, this Court, arrives at the ineluctable conclusion that it indubitably is a case of ‘composite negligence’ at the hands of the drivers of both the vehicles.

15. The present appeal being pending before this Court for almost three decades, thus, the interest of justice demands it be not remanded to the Tribunal, solely for assessing the compensation payable to the appellant. From the statement of PW-2-claimant-Sunil Kumar, it transpires that the deceased was a commission agent of M/s Kidride Industries, Ludhiana and M/s International Cycle Gears, Ludhiana and did liaison work, earning Rs.10,000/- per month. He also produced the ITRs Ex.P1 to P6 of the deceased. However, in his cross-examination, he stated that “I worked with my father for about seven years. I was not working independent of my father. It is correct that income of Rs.10,000/- per month was the combined income which we used to earn out of our joint venture.” Thus, from the aforesaid, the income of the deceased can safely be taken as Rs.5,000/- per month. With regard to determination of compensation, a profitable reference can be made to the judgment in **Sarla Verma vs. DTC**, (2009) 6 SCC 121, wherein after considering a catena of judgments, it was observed by Hon’ble the Supreme Court that an objective approach should be adopted for arriving at just compensation and elaborating thereupon it was held that there should be a uniformity while calculating the same, relating to increase in future prospects, deduction towards personal expenses of the deceased, multiplier to be applied and also grant of lump sum amount under the heads of (a) loss of estate, (b) loss of consortium and (c) funeral expenses. Reiterating the above in **Janabai vs. ICICI Lambord Insurance Co. Ltd.**, (2022) 10 SCC 512 and **National Insurance Co. Ltd. vs. Pranay Sethi**, (2017) 16 SCC 680, it was additionally held that, “Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000

respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

16. Consequentially, the claimant-appellant is hereby held entitled to grant of filial consortium of Rs.40000/- and Rs.30,000/- for funeral expenses and loss of estate. Since, the deceased was 56 years of age, the multiplier of 9 should be applied and as there was one claimant-appellant, the deduction of 1/3rd ought to be made towards personal expenses of the deceased.

17. As such, the compensation comes to Rs.3,60,000/- (5000 (monthly income) - 1/3rd (deduction towards personal expenses) x 12 x 9 (multiplier). It being a case of composite negligence, the claimant-appellant is held entitled to Rs.2,50,000/- (Rs.1,80,000+70,000 (conventional heads). Thus, the enhanced amount of Rs.2,25,000/- over and above the amount of Rs.25,000/- already awarded by the Tribunal, shall be paid by the respondents, as ordered by the Tribunal, within a period of 2 months from the date of receipt of a certified copy of this judgment. However, the rate of interest awarded by the Tribunal i.e. 15% per annum is reduced to 7.5%, in view of the law laid down in **Dharampal vs. U.P. SRTC**, (2008) 12 SCC 208, which shall accrue from the date of filing of the present appeal, till its realization. Since, the claimant-appellant had died during pendency of the present appeal and his LRs, who are his wife and three children, were brought on record, the said amount shall be disbursed equally amongst them. In the event of failing to comply with the aforesaid, the amount shall carry the interest as awarded by the Tribunal.

18. The present appeal is disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

21.12.2023
Hemant

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