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

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Reserved on:- 21.08.2023

Pronounced on:- 03.10.2023

Baljit Kaur and another

...Appellants

Versus

Hans Raj and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. R.K. Shukla, Advocate
for the appellants/claimants.

Mr. Pardeep Goyal, Advocate
for respondent No. 3 – Insurance Company.

Mr. Ajay Pal Singh, Advocate
for respondent No. 4.

Mr. Amrik Singh, Advocate
for respondent No. 5.

AMARJOT BHATTI, J.

1. The appellants – Baljit Kaur and Lakhbir Singh have filed present appeal against impugned Award dated 18.05.2004 passed by learned Motor Accident Claims Tribunal (Adhoc), Patiala vide which the claim petition filed by the appellants seeking compensation on account of death of their son Jatinder Singh in a motor vehicular accident under Section 163-A of Motor Vehicles Act, 1988 was dismissed.

2. As per the facts of the case, the aforesaid appellants/claimants initially filed claim petition under Section 166 of Motor Vehicles Act,

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1988 but later on, it was amended and converted into a claim petition under Section 163-A of Motor Vehicles Act, 1988, as per order dated 01.02.2003. It is the case of claimants that at the time of accident, their son Jatinder Singh was 26 years old. He was working as a Teacher with Evergreen High School, Badshahpur Mandi, Patiala and was drawing salary of Rs. 2650/- per month and he was further earning Rs. 2,000/- per month by doing tuition work. Jatinder Singh was B.A., B.Ed and he was teaching in the aforesaid school and he was likely to be appointed as a Teacher in Government school. On the fateful day of 25.06.1998, Jatinder Singh alongwith some other persons were travelling in Tempo/Canter bearing Registration No. PB-11G-8875 and they were going from Samana to Dera Baba Badbhag Singh via Fatehgarh Sahib. At about 04:00 p.m., when they reached near I.T.I. Bassi Pathana on Sirhind-Morinda road, a Truck bearing Registration No. HR-46-2386 came from the opposite side i.e. from the side of Morinda at a very high speed and struck against the Tempo/Canter bearing No. PB-11G-8875. Due to this accident, Jatinder Singh alongwith others received serious injuries. The accident had taken place on account of negligence of Truck driver bearing No. HR-46-2386 who was driven at a high speed and could not control his vehicle. The driver of aforesaid Truck got registered F.I.R. against the driver of Tempo/Canter bearing No. PB-11G-8875 i.e. respondent No. 5. All the injured were taken to hospital. In this accident, Jatinder Singh and one Roshan Lal lost their life in Rajindra Hospital, Patiala. Jatinder Singh remained under treatment from 25.06.1998 to 26.06.1998 and ultimately succumbed to the injuries. They had spent Rs. 50,000/- on his treatment and last rites. Both the claimants have suffered great loss on account of his

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untimely death. They have claimed compensation to the tune of Rs.8,00,000/- alongwith interest, as detailed in the claim petition.

3. Notice of claim petition was given to the respondents. Later on, Randhir Singh was also impleaded as respondent No. 7. The claim petition was contested by respondents No. 1 to 5. The respondent No. 6 was proceeded against *exparte* vide order dated 26.10.2002 and Randhir Singh – respondent No. 7 was also proceeded against *exparte* vide order dated 21.05.2003.

The respondents No. 1 and 2 filed their joint written statement denying all the facts stated in the claim petition. It is mentioned that the Truck bearing No. HR-46-2386 was insured with The New India Assurance Company Limited for the period 14.02.1998 to 13.02.1999. The qualification and income of late Jatinder Singh was denied. The facts mentioned regarding the accident are also denied by the respondents No. 1 and 2. It was alleged that respondent No. 2 was driving his vehicle at a normal speed with due care. The driver of Tempo bearing No. PB-11-G-8875 was driving his vehicle at a high speed and could not control the same and caused the accident. Therefore, there was no rash or negligent driving on the part of respondent No. 2. The F.I.R. was lodged on the statement of respondent No. 2 at Police Station Bassi Pathana. The other facts are also denied by respondents No. 1 and 2 and it was prayed that the claim petition may kindly be dismissed.

The respondent No. 3 – The New India Assurance Company Limited had also filed written statement taking preliminary objections that driver of Truck bearing No. HR-46-2386 was not holding valid and effective Driving License at the time of accident. The Court had no

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territorial jurisdiction to try this case. On merits, all the facts were denied. It was admitted that as per the record, this vehicle was insured with their insurance company for the period 14.02.1998 to 13.02.1999 in the name of Randhir Singh. However, the answering respondent has no liability to pay any compensation or indemnify respondent No. 1. It is further alleged that the accident was caused due to rash and negligent driving of driver of vehicle bearing No. PB-11-G-8875 who was driving the vehicle overloaded with passengers and he could not control the same, as a result struck against the Truck by going on the wrong side of the road. The respondents No. 4 and 5 violated the traffic rules as the said Tempo could not be used for carrying passengers. Additional objection was also raised regarding registration certificate, insurance policy and driving license of the driver who was allegedly driving the Truck bearing No. HR-46-2386. It was prayed that the claim petition may kindly be dismissed with costs.

The respondent No. 4 also filed separate written statement taking preliminary objection that claim petition is not maintainable under Section 163-A of Motor Vehicles Act, 1988. It is bad for mis-joinder and non-joinder of necessary parties. The claimants were not dependent on deceased Jatinder Singh. It is claimed that the answering respondent was not owner of the vehicle bearing No. PB-11G-8875 at the time of accident. There was Higher Purchase Agreement and the vehicle was subject to hypothecation in favour of Ana Gram Finance Company who used to recover the installments. This finance company was overtaken by ICICI Personal Financial Services Limited alongwith all assets and liabilities alongwith the vehicle. Due to non-payment of installment by the answering respondent, the said company had taken the possession of the

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vehicle being owner of the same. It is prayed that claim petition qua replying respondent is liable to be dismissed. On merits of the case, all the facts are denied. It is alleged that the deceased was unemployed and fully dependent on his parents and brothers. The claim petition under Section 163-A of Motor Vehicles Act, 1988 is liable to be dismissed. It is alleged that the accident had taken place due to rash and negligent driving of respondent No. 2, the driver of Truck bearing No. HR-46-2386. A false F.I.R. No. 86 dated 25.06.1998 under Section 279, 304-A I.P.C. at Police Station Bassi Pathana was lodged against respondent No. 5. He was acquitted by the Court of Sh. S.S. Sahni, the then learned Judicial Magistrate First Class, Fatehgarh Sahib vide judgment dated 31.01.2002. The other facts narrated in the claim petition are also denied. It is prayed that the claim petition filed against the answering respondent may kindly be dismissed.

The respondent No. 5 filed separate written reply denying the facts for want of knowledge. It is further claimed that no accident took place due to his rash or negligent driving. Infact, there was rash and negligent driving on the part of respondent No.2. It is claimed that the deceased was sitting on the tool box of the Tempo when the Truck had hit against their Tempo, as a result, the deceased victim had fallen down. He was not driving the Tempo/Canter bearing No. PB-11G-8875 at a high speed or he lost his control over his vehicle. The entire negligence was on the part of respondent No. 2 who lodged false F.I.R. against him to save his own skin. It is prayed that the claim petition may kindly be dismissed.

4. From the pleadings of the parties, following issues were framed by the Tribunal on 21.05.2003:-

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(1) *Whether claimants are legal heirs and dependents of Jatinder Singh?* OPA

(2) *Whether death of Jatinder Singh was caused due to negligence on part of respondent No. 2 in driving vehicle No. HR-46-2386?* OPA

(3) *Whether claimants are entitled to compensation. If so to what amount and what will be the liability of respondents?* OPA

(4) *Whether respondents No. 1 and 2 committed breach of terms and conditions of insurance policy. If so to what effect?* OPR-3

(5) *Relief.*

5. In order to prove the claim petition, the petitioner/claimant No. 1 Baljit Kaur herself stepped into the witness box as PW-2. She also examined Sukhwinder Singh, Principal of Evergreen High School, Badshahpur as PW-1 and Kulwinder Singh as PW-3. Thereafter, learned counsel for the petitioners tendered documents i.e. attested copy of Matriculation Certificate of Jatinder Singh as Ex.A4, attested copy of Degree as Ex.A5 and B.Ed degree as Ex.A6 and closed the evidence.

6. In order to rebut the case of the claimants/petitioners, respondent No. 4 – Mohinder Singh himself stepped into the witness box as RW-1. Thereafter, learned counsel for respondent No. 1 closed the evidence.

In documentary evidence, learned counsel for respondent No.3 – Insurance Company tendered copy of Insurance Policy of Truck bearing No. HR-46-2386 and closed the evidence.

Lastly, learned counsel for respondent No. 4 tendered documents i.e. letter bearing Ref. No. AFL/losdata/99/723 dated 15.11.1999 written by respondent No. 6 to respondent No. 4 regarding

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vehicle No. PB-11G-8875 as Ex.R-1, copy of Judgment of acquittal passed by learned Judicial Magistrate First Class, Fatehgarh Sahib dated 31.01.2002 as Ex.R-2 and closed the evidence.

7. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the claimants was dismissed by passing impugned Award dated 18.05.2004, as referred above. Feeling aggrieved of this Award, the present appeal has been preferred by appellants/claimants – Baljit Kaur and Lakhbir Singh.

8. I have heard the arguments of learned counsel for the appellants as well as learned counsel representing the contesting respondents. The learned counsel for the appellants/claimants argued that the facts of the case and the evidence on record were not rightly appreciated by the learned Motor Accident Claims Tribunal (Adhoc), Patiala while deciding the claim application. The present claim application was filed under Section 163-A of Motor Vehicles Act, 1988. However, the learned Tribunal did not framed proper issue regarding the accident which has resulted into miscarriage of justice. It is pointed out that the appellants/claimants were required to establish the factum of accident between Truck bearing No. HR-46-2386 and Tempo/Canter bearing No. PB-11G-8875 in which Jatinder Singh lost his life. The copy of F.I.R. proved on file is Ex.A-3. Baljit Kaur one of the claimant has stepped into the witness box as PW-2 to prove the accident as well as the aforesaid F.I.R. The factum of accident cannot be disputed as there is copy of judgment in F.I.R. No. 86/25.06.1998 under Section 279/304-A I.P.C. registered at Police Station Bassi Pathana where Malkiat Singh was acquitted vide judgment dated 31.01.2002, which is Ex.R-2. It is pointed

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out that the accident and involvement of aforesaid vehicles was duly proved on record and their claim regarding accident and death of Jatinder Singh was wrongly ignored by the learned Motor Accident Claims Tribunal (Adhoc), Patiala.

The learned counsel for the appellants/claimants further pointed out that Baljit Kaur as PW-2 confirmed that her son Jatinder Singh was 26 years old who was working as a Teacher in a private school and he was also giving tuition to the children. Therefore, he was earning Rs. 4650/- per month from his salary and tuition work. The job of Jatinder Singh as well as salary is proved on record by Sukhwinder Singh PW-1, who was Principal of Evergreen High School, Badshahpur. The salary certificate dated 02.06.2001 is Ex.C-1 and it came on record that he was drawing salary of Rs. 2650/- per month. Kulwinder Singh PW-3 has confirmed that his children were getting tuition from late Jatinder Singh and he was paying tuition fee of Rs. 200/- per month. The Matriculation Certificate, the degree of B.A., B.Ed are proved on record as Ex.A4 to Ex.A6. The son of appellants/claimants died at a very young age, therefore, the income of the deceased may be considered by giving 50% increase in income. Considering his age, the multiplier of 18 should be applied. Both the parents are entitled to compensation of Rs.40,000/- each on account of loss of filial consortium as well as compensation for funeral expenditure and loss to estate. It is prayed that the claimants are entitled to receive the compensation alongwith interest which was wrongly declined by the learned Motor Accident Claims Tribunal (Adhoc), Patiala.

9. The appeal was contested by learned counsel for insurance

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company as well as by learned counsel for owner and driver of the Tempo/Canter bearing No. PB-11G-8875. The learned counsel for the insurance company pointed out that F.I.R. bearing No. 86 dated 25.06.1998 at Police Station Bassi Pathana was recorded on the statement of Harjinder Singh – respondent No. 2 against Malkiat Singh – respondent No. 5. Malkiat Singh was challaned in the aforesaid F.I.R. There was no negligence on the part of respondent No. 2. Therefore, the insurance company cannot be held responsible to pay any amount of compensation.

10. On the other hand, learned counsel for respondents No. 4 and 5 pointed out that the accident had taken place due to fast, rash and negligent driving of Truck bearing No. HR-46-2386. However, the F.I.R. was recorded on the statement of Harjinder Singh – respondent No. 2 who wrongly named Malkiat Singh – respondent No. 5. Later on, Malkiat Singh was acquitted of the charge framed against him in the said F.I.R. vide judgment dated 31.01.2002, which is Ex.P-2. Mohinder Singh – respondent No. 4 has stepped into the witness box as RW-1 and has placed on record one letter dated 15.11.1999 Ex.R-1 vide which the said Tempo/Canter bearing No. PB-11G-8875 was taken over by ICICI Personal Financial Services Limited – respondent No. 6. Therefore, regarding the aforesaid accident, no liability can be fastened on respondent No. 4 or respondent No. 5. It is argued that the claim petition filed by the appellants/claimants against them may kindly be dismissed.

11. I have considered the arguments and have gone through the trial Court record carefully. It is matter of record that initially the claim petition was filed under Section 166 of Motor Vehicles Act, 1988 but later on, it was amended to be a claim petition under Section 163-A of Motor

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Vehicles Act, 1988, as per order dated 01.02.2003. The present claim petition has been filed by Baljit Kaur – mother and Lakhbir Singh – father of late Jatinder Singh who lost his life in the accident. The claimants have arrayed Hans Raj – respondent No. 1, Randhir Singh as respondent No. 7 (being owners of Truck bearing Registration No. HR-46-2386), Harjinder Singh – Driver of said Truck as respondent No. 2 as well as the insurance company as respondent No. 3. They have also impleaded Mohinder Singh – owner, Malkiat Singh – driver of Tempo/Canter bearing No. PB-11G-8875 as respondents No. 4 and 5 as well as ICICI Personal Financial Services Limited as respondent No. 6 with whom the aforesaid Tempo/Canter was hypothecated. Regarding this accident, F.I.R. bearing No 86 dated 25.06.1998 was registered under Section 279, 304-A of I.P.C. at Police Station Bassi Pathana. Copy of FIR is Ex.A-3. It is also matter of record that in this F.I.R. Mohinder Singh – respondent No. 5 was challaned who was ultimately acquitted on account of lack of evidence vide judgment dated 31.01.2002, which is Ex.R-2. Since, the claim petition is filed under Section 163-A of Motor Vehicles Act, 1988, the appellants/claimants were not required to prove rash and negligent driving either on the part of respondent No. 2 or on the part of respondent No. 5. The learned counsel for appellants/claimants rightly pointed out that the learned Motor Accident Claims Tribunal (Adhoc), Patiala did not frame issue No. 2 correctly in the light of provisions under Section 163-A of Motor Vehicles Act, 1988. Since the case is old one and the entire evidence is already on record, therefore, no purpose will be achieved by re-framing of issue. The factum of accident involving Truck bearing No. HR-46-2386 as well as Tempo/Canter bearing No. PB-11G-8875 is duly

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established from the testimony of Baljit Kaur, one of the claimant examined as PW-2 as well as from the copy of F.I.R. bearing No. 86 dated 25.06.1998, under Section 279/304-A I.P.C., Police Station Bassi Pathana, which is Ex.A-3 and copy of judgment of acquittal dated 31.01.2002, which is Ex.R-2. Admittedly, at the time of accident, late Jatinder Singh was travelling in a Tempo/Canter bearing No. PB-11G-8875. Therefore, considering the aforesaid evidence on record, it is clear that the accident had taken place between Truck bearing No. HR-46-2386 owned by Hans Raj and Randhir Singh – respondents No. 1 and 7, driven by Harjinder Singh – respondent No. 2 and insured by The New India Assurance Company Limited – respondent No. 3 on the one hand as well as Tempo/Canter bearing No. PB-11G-8875 owned by Mohinder Singh – respondent No. 4 and driven by Malkiat Singh – respondent No. 5, on the other hand, in which Jatinder Singh, son of the appellants/claimants lost his life.

12. The other important aspect of the present case is quantum of compensation. The present claim application has been filed under Section 163-A of Motor Vehicles Act, 1988. In order to establish the profession and income of Jatinder Singh, Baljit Kaur – mother has stepped into the witness box as PW-2. It is alleged that he was working as a School Teacher in Evergreen High School, Badshahpur and was drawing salary of Rs. 2650/- per month. The salary certificate Ex. C-1 is also proved on file by examining Sukhwinder Singh, Principal of the said school as PW-1. It was further claimed that late Jatinder Singh used to give tuition to the children and was earning another sum of Rs. 600/- per month. To support this fact, the claimants examined Kulwinder Singh PW-3 who claimed that

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his daughter and son were getting tuition from late Jatinder Singh and he used to pay Rs. 200/- per month. However, during cross-examination, it has come on record that the daughter of Kulwinder Singh PW-3 was student of B.A. Final Year, whereas, the son of Kulwinder Singh PW-3 was student of 10+2 class. Therefore, the version put-forward by the claimants that late Jatinder Singh was giving tuition to these two children does not convince the mind of this Court. As per the Matriculation Certificate Ex.A-4, the date of birth of late Jatinder Singh is 23.03.1972, therefore, he was 26 years old at the time of accident. Copy of his B.A. Degree and B.Ed Degree are Ex.A-5 and Ex.A-6 respectively. Under these circumstances he is considered as a Teacher, teaching in Evergreen High School, Badshahpur, drawing salary of Rs. 2650/- per month and the annual salary comes out to be Rs. 31,800/-, which is less than Rs. 40,000/- as provided in Schedule II, provided under Section 163-A in the previous Motor Vehicles Act, 1988, prior to the amendment. Since the accident had taken place on 25.06.1998, therefore, the provisions of Section 163-A and the aforesaid Schedule can be considered. At the time of accident, the victim was 26 years old, therefore, he is granted 50% increase in income i.e. salary Rs. 2,650/- + 50% increase Rs. 1,325/- and the monthly income is taken as Rs. 3975/- and annual income is taken as Rs. 47,700/-. Since, Jatinder Singh was unmarried, therefore, 1/2 income is deducted towards personal expenditure and the annual dependency of the parents comes out to be Rs. 23,850/-. Considering his age as 26 years, multiplier of 17 is appropriate to be applied in this case and with this multiplier, the amount of compensation comes out to be Rs.4,05,450/-. Both the claimants/parents of late Jatinder Singh have lost their son who was well educated boy and

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was serving as a Teacher in a private school. He would have been great help to his parents during their old age. Therefore, both the parents i.e. appellants/claimants are granted compensation on account of loss of love and affection to the tune of Rs.40,000/- each. They are further granted compensation of Rs. 15,000/- towards funeral expenditure and Rs. 15,000/- towards loss to estate and the total amount of compensation comes out to be Rs. 5,15,450/-, which the claimants are entitled to receive on account of untimely death of their son in a motor vehicular accident in equal shares.

13. The third important aspect of the present case is the liability of respondents to pay the aforesaid amount of compensation. The Truck bearing No. HR-46-2386 involved in the accident was owned by respondents No. 1 and 7 and it was being driven by Harjinder Singh – respondent No. 2. At the time of accident, the vehicle was insured with The New India Assurance Company Limited – respondent No. 3 for the period 14.02.1998 to 13.02.1999. The copy of insurance policy placed on record is Ex.R-3. The learned counsel for insurance company – respondent No. 3 has failed to lead any evidence on record to show that the aforesaid Truck was being plied in contravention of the terms and conditions of insurance policy. Therefore, the respondent No. 3 cannot escape its liability to pay the compensation.

14. The other vehicle involved in this case was Tempo/Canter bearing No. PB-11G-8875 which was owned by Mohinder Singh – respondent No. 4 and at the time of accident, it was being driven by Malkiat Singh – respondent No. 5. Mohinder Singh – respondent No. 4 has taken the stand in the written reply that this Tempo/Canter was purchased

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and it was hypothecated in favour of Ana Gram Finance Limited. He was paying its installments and it was subject to Higher Purchase Agreement. Later on, this finance company was taken over by respondent No. 6. Mohinder Singh has stepped into the witness box as RW-1 and has relied upon one letter dated 15.11.1999 Ex.R-1 vide which the said vehicle was taken over by the finance company. The respondent No. 4 Mohinder Singh cannot escape his liability on the basis of aforesaid letter as accident had taken place on 25.06.1998, whereas, the vehicle was taken over by the finance company subsequently. The cross-examination of Mohinder Singh RW-1 is also material where he confirmed that he had filed application in the Court for taking the vehicle on sapurdari. He further confirmed that the driver was got released on bail by him. He further confirmed that on the day of accident, the driver was driving the said vehicle at his instance. Therefore, Mohinder Singh, owner of aforesaid Tempo/Canter bearing No. PB-11G-8875 and its driver Malkiat Singh – respondent No. 5 are also liable to pay the aforesaid amount of compensation.

Under these circumstances, the liability of respondent No. 3 – insurance company of Truck bearing No. HR-46-2386 and of Mohinder Singh, owner – respondent No. 4, Malkiat Singh, driver – respondent No. 5 of Tempo/Canter bearing No. PB-11G-8875 is joint and several.

The appellants/claimants are entitled to receive the aforesaid amount of compensation of Rs. 5,15,450/- in equal share with interest at the rate of 6% per annum from the date of filing of claim petition till the decision by learned Motor Accident Claims Tribunal (Adhoc), Patiala and further interest at the rate of 6% per annum from the date of filing present appeal till realization of the amount.

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With this observation, the impugned Award dated 18.05.2004 passed by learned Motor Accident Claims Tribunal (Adhoc), Patiala is accordingly, set aside and the appeal preferred by the appellants/claimants – Baljit Kaur and Lakhbir Singh for grant of compensation is accepted, as referred above.

The photocopy of record received from the Tribunal be sent back to the concerned quarter.

03.10.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes