

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

FAO-1155-2005 (O&M)
Date of Decision: 11.05.2023

Smt. Geeta Devi and anotherAppellants

Versus

Goverdhan Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Paramveer Singh, Advocate for
Mr. Rohit Goswami, Advocate
for the appellants.

Mr. R.S. Mamli, Advocate
for respondent No.1.

Mr. I.S. Pabla, Advocate
for respondent No.2.

Ms. Meenakshi Bali, Advocate
for Mr. G.C. Shahpuri, Advocate
for respondent No.3.

ARUN MONGA, J. (ORAL)

Suresh Kumar, all of a 26 years young man, unaware of the tragic fate that awaited him, believed that he had narrowly escaped death on September 18, 2000. Little did he know that his journey on the three-wheeler, which he took after finishing his days work to return home to his 23-year-old wife and two-month-old infant son, would end in a fatal accident with an offending tractor-trolley driven by respondent No.1. Despite struggling for his life, Suresh Kumar passed away on October 18, 2000, at P.G.I., Chandigarh. His widow and minor son are the appellants in

this case, seeking to overturn the impugned award dated November 19, 2004, rendered by the learned Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as "Tribunal"), dismissing their claim petition with costs.

2. Succinct facts first, as noted by learned Tribunal, are as below:

“The present claim petition has been filed by the petitioners against the respondents for a compensation of Rs 15 lacs for the death of Suresh Kumar alleging that petitioner No 1 Geeta Devi was widow, petitioner No. 2 Ajay Kumar aged two years was minor son of Suresh Kumar. Suresh Kumar was 20 years old. He was a shopkeeper and was earning Rs.7500/- pm. On 15.9.2000 Suresh Kumar (since deceased) was on his way from village Jagadhauli to village Thambar in a three-wheeler bearing Registration No. HYR-8694. The said three-wheeler was being rashly and negligently driven by Respondent No. 1 Goverdhan Singh. At about 3-50 pm the said three-wheeler was near petrol pump in the area of P.S. Chappar on Ambala Jagadhri road. The driver of the three-wheeler was trying to overtake a tractor trolley while driving his three wheeler in a rash and negligent manner and in that process, respondent No. 1 Goverdhan Singh hit his three wheeler with the right portion of the trolley as a result of which, multiple and grievous injuries were suffered by Suresh Kumar (since deceased). He was taken to dispensary. He was discharged from there after some time and was taken to Herbert Hospital, Yamuna Nagar and from there he was referred to PGI Chandigarh on 17.10.2000, where he had succumbed to his injuries on 18.10.2000. The petitioners had spent Rs.35000/- on the treatment etc. of Suresh Kumar. All the petitioners were dependent on the income of Suresh Kumar (since deceased). The accident had taken place because of the rash and negligent driving of three-wheeler by respondent No. 1 Goverdhan Singh. The said three wheeler was owned by respondent No. 2.”

2.1. As per testimony of Geeta Devi PW-1, on the date of accident, her husband was aged 26 years. It seems that by typographical error, in the impugned order, it has been mentioned as 20 years.

3. Upon notice, respondent No.1 herein (driver of the offending vehicle) appeared and filed written statement. It was averred that no such accident, as alleged by appellants, had taken place. Respondent No.1 was falsely implicated in criminal case under Section 279, 337 and 304A IPC by the police. It was also pleaded that three-wheeler No.HYR-8694 was owned and possessed by respondent No.3-Pawan Kumar. It was also pleaded that on the date of accident the three-wheeler was not insured.

3.1. By way of separate written statement on behalf of respondent No.2-Ashok Kumar, it was pleaded that he was neither owner nor in possession of the said three-wheeler bearing No HYR-8694. He had already sold the said three-wheeler to respondent No.3- Pawan Kumar vide agreement dated 29.09.1997 i.e., much prior to the date of alleged accident.

3.2. In his separate written statement, respondent No.3-Pawan Kumar pleaded that he was neither owner nor in possession of the three-wheeler No. HYR-8694 at the time of alleged accident. As a matter of fact, respondent No.3 had purchased the three-wheeler No. HYR-8694 from respondent No.2 on 29.09.1997 but he (respondent No.3-Pawan Kumar) had returned the said vehicle to its registered owner respondent No.2 after a few days of its alleged purchase. Respondent No.3-Pawan Kumar was not having any connection with the three-wheeler in question. It was respondent No. 2 - Ashok Kumar, who had got released three-wheeler No. HYR-8694 on *Superdari* from the court of JMIC at the relevant time when the alleged accident took place. The original RC of the three-wheeler was in the name of

respondent No. 2-Ashok Kumar. Other averments made in the petition were also denied.

4. Learned Tribunal framed the following issues:

- i) Whether deceased Suresh Kumar died in a road side accident allegedly caused due to rash and negligent driving of three-wheeler No.HYR-8694 by respondent No.1 as alleged? OPP
- ii) If issue No.1 is proved in affirmative, then to what amount of compensation is entitled to and from whom and in what ratio? OPP
- iii) Relief.

5. On appraisal of record/evidence, learned Tribunal decided only issue No.1 against the appellant/claimants while holding that in view of findings on issue No.1, no findings were required on issue No.2. Consequently, the claim petition was dismissed with costs.

6. The counsel representing the appellant/claimants would argue that there is a direct link between the injury resulting from the accident and the death of Suresh Kumar. This is supported by the fact that the deceased experienced intense abdominal pain three to four days after the accident, leading to his admission to Herbert Hospital in Jagadhri on September 25, 2000. He underwent an operation and was hospitalized for 20 to 25 days until October 17, 2000, when he was transferred to PGI, Chandigarh due to his worsening condition. Unfortunately, despite medical efforts, he ultimately passed away from his injuries on October 18, 2000.

6.1. Furthermore, the counsel urged that PW-2 Amar Nath, who witnessed the accident and was also traveling with the deceased, provided a detailed and vivid account of the incident. Said eyewitness's deposition of the accident in such a clear and concise manner provides unimpeachable evidence that the accident was indeed caused by the reckless and negligent driving of the offending vehicle by respondent No. 1.

6.2. Learned counsel for appellants also contended that the involvement of the offending vehicle is substantiated by the registration of an FIR against respondent No. 1, as well as the submission of a final report under Section 173 Cr.P.C. after a thorough investigation by the police. Moreover, respondent No. 1 was charged by the learned Ilaqa Magistrate. Additionally, the offending vehicle was released by the court under "Superdari" to respondent No. 2 after paying a sum of Rs. 60,000.

6.3. In support of the appeal, learned counsel for appellants relied upon judgment of the Apex Court in *Ravi vs. Badrinarayan and others*¹ to contend that delay in lodging FIR is not fatal to claimants' case. He further places reliance upon the Apex Court judgment passed in *Mangla Ram vs. Oriental Insurance Company Limited*² to submit that nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts or for that matter under the Motor Vehicles Act, 1988 to create liability. The FIR and charge-sheet coupled with other evidence on record in the present case establish with

¹ (2018) 5 SCC 656

² (2018) 5 SCC 656

preponderance of probabilities that the fatal accident was caused by negligence of respondent No.1-driver while driving the three-wheeler in question. He then draws the attention of this Court to another judgment of the Apex Court in *N.K.V. Bros (P) Ltd. v. M. Karumai Ammal and others*³ to contend that in a criminal case in relation to the accident which had ended in acquittal, even in such circumstances also, the claim under the Motor Vehicles Act ought not to be rejected on this ground alone as negligence is sufficient under the law of torts to prove liability.

7. *Per contra*, learned counsel representing respondents strongly opposed the appeal. They would argue that the claimants failed to provide any documentation regarding treatment at Civil Hospital, Mustaffabad or Herbert Hospital, Yamuna Nagar. And, only one sketchy letter from a private hospital regarding the deceased's treatment was presented. This further reinforces the respondents' position that, in fact, no accident occurred involving the vehicle in question and that the appellants had filed a false claim before the Tribunal including the appeal herein.

7.1. Learned counsel for respondent No.1 further canvassed that onus to prove issue No.1, was heavily placed on claimant/ appellants, who have miserably failed to discharge the same, given that there had been unexplained and inordinate delay of one month in reporting the matter to the police. The said period was used by claimant/appellants to concoct and fabricate a fictitious narrative of facts.

³ (1980) 3 SCC 457

8. Learned counsel for respondent No.2 also opposed the claim put forth by appellants on various grounds including that there was no nexus between the death and injury suffered by deceased in the accident.

8.1. The learned counsel would also contend that respondent No.2 had already sold the three-wheeler to respondent No.3 long before the alleged accident took place. Therefore, if any liability exists, it must be placed on respondent No.3, the subsequent buyer. No other arguments were presented by him before this Court regarding the rest of the case.

9. The learned counsel representing respondent No. 3 also endorsed the decision taken by the learned Tribunal and argued that the appellants failed to provide any evidence, whatsoever, to demonstrate that the deceased underwent a medico-legal examination at CHC Mustaffabad or Herbert Hospital, Yamuna Nagar on 22.09.2000.

9.1. She would further contend that respondent No.3 had in fact returned the vehicle in question to respondent No.2 who was its registered owner and it cannot be said that respondent No.3 was in any way concerned with the three-wheeler. Respondent No.2 is trying to shift his burden on respondent No.3 on the basis of agreement dated 29.09.1997, which is not permissible under law. It is settled position in law that unless ownership of motor vehicle is transferred, as per the Motor Vehicles Act, 1988, registered owner cannot escape liability under the garb of sale agreement.

10. I have heard learned counsels for parties and gone through the record.

11. The claimants examined PW-Geeta Devi (widow of Suresh Kumar), PW-Rajpal Singh, and PW- Amar Nath (an eyewitness of the incident), and submitted several documents as exhibits. I have perused their testimony and the remaining record. It appears that the learned Tribunal was overly influenced by the fact that the matter was reported to the police much later, after a month had passed, and concluded that the appellants and witnesses fabricated a false story regarding the deceased's injuries sustained in the alleged accident. After carefully examining all the evidence on record, particularly the post-mortem report of the deceased, I am of the view that Suresh Kumar's death resulted from the motor vehicle accident. The learned Tribunal made an error in not accurately assessing the material on record.

12. "Proximate cause" of death herein necessarily has to be deciphered from the connection between accident in question and the injury of the deceased. In the legal context, it is essential to establish a significant link between an event or action and the resulting damage to establish legal responsibility or liability. This connection is referred to as causation. The event or action that is most directly linked to the injury is considered the "proximate cause" of the damage/injury. However, this does not mean that the course or event must have occurred immediately before its ultimate result. No doubt, the concept of "proximate cause" limits the amount of responsibility that can be attributed to an erring party because a single action can have unforeseeable and far-reaching consequences.

13. In the present case arising out of motor accident, the Department of Forensic Medicine, P.G.I.M.E.R, Chandigarh has mentioned the cause of death in Port Mortem report as 'Septicemia'.

13.1. Septicemia, also known as blood poisoning, is a type of infection caused by a large number of bacteria entering the bloodstream. The records indicate that the deceased experienced severe abdominal pain three to four days after the accident and was referred to PGI, Chandigarh. He was admitted to Herbert Hospital in Jagadhri on 25.09.2000, where he underwent surgery and remained hospitalized for 20-25 days until 17.10.2000, when he was transferred to PGI, Chandigarh due to his deteriorating condition. Unfortunately, he ultimately succumbed to his injuries at P.G.I, Chandigarh on October 18, 2000.

14. *Per contra*, learned counsels for respondent(s) though argued that in such situation it is to be analyzed is as to what could be the cause of Septicemia.

15. Assuming, if the death is not caused by Septicemia resulting from injuries sustained in an accident, but then there is no other evidence to indicate any other cause of Septicemia. In my opinion, in the background of facts established as per the evidence on record, the death can be directly attributed to the injuries from the accident. The evidence on record demonstrates that the victim received continuous medical treatment for the injuries sustained in the accident until his death, and there is no other explanation available on record for the septicemia which caused death.

Therefore, the respondents cannot be absolved of their responsibility merely

because there was a time gap between the accident and the victim's death. In such circumstances, the arguments put forth by the learned counsel for the respondent(s) are not valid.

16. I may also hasten to add here that the learned Tribunal was rather over swayed by the fact that the FIR was filed later, leading to the conclusion that the claim petition was based on a fabricated story. However, PW-2 Amar Nath, an eyewitness to the accident who was also traveling with the deceased, provided a detailed and precise account of the incident. This goes a long way in proving that the accident occurred due to the respondent No.1's reckless and negligent driving of the three-wheeler in question. At the relevant time, the deceased's family and relatives were primarily concerned with saving his life and it is obvious that they could/did not rush to the police station to file a report earlier.

17. I also concur with the argument of the learned counsel for the appellants that the level of evidence required to establish criminal liability is much higher than the standard required in tort law. In this case, the evidence on record is sufficient to show, by preponderance of probabilities, that the deceased sustained fatal injuries in the accident, which was caused by the respondent No.1's reckless and negligent driving of the three-wheeler. The learned Tribunal made an error in not believing the credible and reliable testimony of PW-2 Amar Nath, along with the final report prepared by the police under Section 173 Cr.P.C. and the post-mortem report of the deceased.

18. As an upshot of the discussion above, the finding recorded by Ld. Tribunal on issue No.1 is reversed and the same is decided in favour of the appellants and claim petition is held to be maintainable.
19. On the question of quantum, in the absence of any cogent evidence to establish that deceased was earning Rs.7,500/- per month as alleged in claim petition, the same is assessed at Rs.2,500/- per month.
20. In the premise, applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another⁴, National Insurance Co. Ltd. v. Pranay Sethi⁵** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others⁶**, I am of the view that following compensation under various heads has to be awarded to appellants:

Deceased	Suresh Kumar
Date of accident/death	18.09.2000/18.10.2000
Age	26 years
Claimants	Widow, Minor son
Income of the deceased	Rs.2500/-
Future prospects	40% (Rs.2500/-+Rs.1000/-) = Rs.3500/-
Deduction in dependency for personal expenses	1/3 rd (Rs.3500-1167)=Rs.2333/-
Annual dependency	Rs.27,996/-/- (2333 x 12)
Total loss of dependency with Multiplier of 17	Rs.4,75,932/-
Money spent on treatment of deceased (by guesstimate)	Rs.20,000/-

⁴ 2009 (3) The Punjab Law Reporter 22

⁵ (2017) 16 SCC 680

⁶ 2019 (3) SCC (Cri) 153

Loss of Consortium	Rs.44,000/- x 2 = Rs.88,000/-
Loss of estate & funeral expenses	Rs.16,500/- + Rs.16,500/- = Rs.33,000/-
Total	Rs.6,16,932/- (4,75,932 + Rs.20,000/- + 88,000/- + Rs.33,000/-)
Compensation awarded by the Tribunal	Nil (Claim petition dismissed)
Amount of compensation to be paid	Rs.6,16,932/- Rounded off to Rs.6,17,000/-

21. There is force in the argument of learned counsel appearing on behalf of respondent No.3 that no liability can be fastened upon him in the absence of transfer of ownership of vehicle in question. In the premise, respondents No.1 and 2 are held jointly and severally liable to pay the above said amount of compensation and respondent No.3 is absolved from the liability.

22. Accordingly, the appeal is allowed and impugned award is set aside. Compensation of Rs.6,17,000/- shall be payable to claimants along with interest @ 7% per annum, from the date of filing of claim petition till actual date of payment. Same shall be paid to claimants within a period of 3 months from today and disbursed to claimants in equal shares. Appellant No.2 must have now attained majority as he was 2-year old at the time of filing of the claim petition in the year-2000. Compensation payable to him, therefore, be disbursed to him directly.

23. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 11, 2023
ashish

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