

FAO-1451-2005 (O&M)

205

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1451-2005 (O&M)

Date of decision: May 11, 2023

Shamsher Kaur and others

....Appellants

versus

Kashmira Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Sushil Bhardwaj, Advocate for appellants.

Mr. Joginder Sharma, Advocate for

Mr. Ashok Kumar Singla, Advocate for respondent No.2.

Ms. Vandana Malhotra, Advocate

for respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)**CM-28047-CII-2017**

For the reasons stated in application, same is allowed. Delay of 17 days in filing appeal is condoned, subject to all just exceptions.

Main case (O&M)

Before his untimely demise, Mangu Ram, a determined 16-year-old school student, aspired to lift his family out of poverty. To contribute towards this goal, he would assist his father in selling tea from a cart after his school hours. However, tragedy struck when he lost his life in a fatal accident. While riding his bicycle, he was struck by an oil tanker, instantly succumbing to his injuries.

Appellants before this Court are parents and younger brother of deceased Mangu Ram (claimants) assailing impugned award dated 04.11.2004 rendered by learned Motor Accidents Claims Tribunal, Patiala (for brevity, "Tribunal") whereby claim petition filed by claimants seeking compensation on account of death of Mangu Ram, was dismissed.

Succinct facts, as noted by learned Tribunal, are as below:

“On 5.9.2003 Mangu Ram deceased alongwith his father Rajinder Kumar and elder brother Dalvinder Singh was coming from village Bathonia to Ghaggar Sarai on their bicycle. At about 4 P.M. when they were proceeding towards Ghaggar Sarai, respondent no.1 came driving on Tanker No. PB-13-D-8213 in a rash and negligent manner, who struck the same against the Bicycle of Mangu Ram, who as a result of this collusion suffered multiple grievous and fatal injuries on his person and succumbed thereto, at the spot.

2. Deceased was young boy of 16 years of age, who after School hours used to help claimant no.2 in selling tea on cart. So in this manner deceased used to contribute Rs. 1500/- per month to the claimants, who were solely dependent upon the income of the deceased. Claimants had to spend Rs. 10,000/- transportation, funeral and last rites of on the deceased. Respondent No. 1, being driver, respondent No.2 being owner and respondent No. 3 being insurer of tanker No.PB-13-D-8213 are jointly and severally liable to pay compensation to the claimants.”

3. Upon notice, respondent No.1 filed written statement and denied the accident, age and income of the deceased. It was averred that a false case had been got registered just to get easy money. It was denied that tanker No.PB-13D-8213 caused death of Mangu Ram and prayed for dismissal of the claim petition.

3.1. Respondent No.2 filed separate written statement raising similar pleas as that of respondent No.1. It was denied that deceased was a student of 8th standard or that after studying in the school, he used to help his father in selling tea on cart. It was denied that on 5.9.2003, Mangu Ram deceased alongwith his father Rajinder Kumar and elder brother Dalvinder Singh was coming from his village on bicycle or that respondent No.1 by driving tanker No.PB-13D-8213 in a rash and negligent manner, struck the same against bicycle of the deceased and caused him injuries or that he succumbed to the injuries suffered in the accident. Respondent No.2 prayed for dismissal of claim.

3.2. Respondent No.3 filed written statement taking preliminary objections that driver of tanker No.PB-13D-8213 was not having a valid driving licence at the time of alleged accident and that tanker No.PB-13D-8213 was not having a valid registration and fitness certificate etc. It was also denied that tanker No.PB-13D-8213 was involved in the accident or its driver caused death of Mangu Ram. It was denied that deceased used to contribute Rs.1500/- per month to the claimants. Also denied

FAO-1451-2005 (O&M)

that Rs.10,000/- were spent on transportation, funeral or lost rites deceased. At last, prayer for dismissal of claim petition was made.

4. Learned Tribunal framed the following issues:

- “1. *Whether Mangu died in a motor vehicular accident which took place on 5.9.2003 due to rash and negligent driving of Tanker No.PB-13D-8213, driven by one Kashmira Singh, respondent No.1? OPP.*
2. *If issue No.1 is proved, whether the claimants are entitled to seek compensation, if so, to what extent and from which of the respondents? OPP.*
- 2-A. *Whether respondent No. 1 was not holding a valid and effective driving licence at the time of accident ? OPR-3.*
3. *Relief.”*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 and 2 against claimants. Issue No.2-A was decided against respondent No.3 and in favour of respondents No.1 and 2. Consequently, claim petition filed by the claimants was dismissed.

6. Learned counsel for appellant-claimants contends that respondent No.1-Driver of offending vehicle was charge-sheeted by the police in FIR with regard to accident in question, which was duly proved from cogent and trustworthy evidence of appellants and the same is sufficient enough to hold negligence of respondent No.1 in causing accident in question. Presence of PW-2 at the time of accident was wrongly held to be doubtful as working hours of PW-2 in the factory were 3:30 p.m. to 12 midnight. Learned Tribunal failed to appreciate the fact that Section 134 of the Indian Evidence Act, 1872 postulates that no particular number of witness in any case was required for the proof of any fact. It is well settled law that in motor accident compensation claim cases, approach to find out as to who was rash and negligent in causing accident, is different than the one, when a person is facing trial in a criminal court on culpable charges. Burden to prove is not that heavy as is required to prove a criminal charge for rash and negligent driving. Claimants led sufficient reliable evidence to prove negligence of respondent No.1 and even in cross-examination

FAO-1451-2005 (O&M)

conducted upon witnesses, nothing substantial material could be elicited to dislodge their testimonies.

7. On the other hand, learned counsel for respondent No.3-Insurance Company supports the findings rendered by learned Tribunal while rejecting claim petition of the claimants and states that learned Tribunal rightly held the negligence of respondent No.1 in causing accident in question, as doubtful.

8. I have heard learned counsel for the parties and perused case file.

9. Having seen the impugned award, I am unable to convince myself with the findings returned by learned Tribunal *qua* testimony of PW-2. There is no reason whatsoever for not accepting the unimpeached and unrebutted testimony of PW-2, who was duly cross-examined and stood by his version. Merely because a question was put to him with regard to timing of his working which he stated as 3:30 p.m. to 12 a.m., a presumption was drawn that without there being any evidence to the effect that accident since took place at 4:00 p.m., he could not have been an eyewitness to the same and being a brother, he was simply making a self-serving statement in order to get compensation from the Insurance Company.

9.1. Furthermore, not only PW-2, but even father of the deceased, who deposed that he was also present at the time of accident riding his bicycle alongside his son and witnessed the accident. His testimony has also remained un-shattered in the cross-examination. There is no discussion *qua* the same by learned Tribunal and in a complete short-shrift to the same, a summary finding against claimants has been returned on the basis that since final report of police under Section 173 Cr.P.C. was adduced in evidence as Exhibit P-3 but FIR was not placed on record, that factum of FIR was not proved. It is rather preposterous to suggest and proceed on the premise that an FIR, which is essential legal precursor to charge-sheet, was not proved to have been registered despite the fact that charge-sheet was there.

9.2. Additionally, what seems to have transpired in the mind of learned Judge of the Tribunal below is that in the absence of any identification being done by

FAO-1451-2005 (O&M)

brother of the deceased *qua* identity of the driver (respondent No.1 herein), he could not have been arrayed as an accused in criminal case. Once again it committed a manifest error in law in returning the finding that he was wrongly arrayed as an accused, which was, to say the least, completely beyond the scope of inquiry by the learned Tribunal in civil proceedings, as it is for the competent criminal Court to return such a finding in the criminal proceedings arising out of the FIR in question. The learned Tribunal erred in applying the standard of proof in present case like a criminal trial.

10. In the totality of circumstances, the impugned award is set aside and issue No.1 is decided in favour of claimants. As a necessary corollary, they are held entitled to compensation due to involvement of offending vehicle being driven by respondent No.1 in rash and negligent manner. As the offending vehicle was duly insured with respondent No.3, the liability has to be borne by the Insurance Company. Deceased was 16-year old at the time of his death and there is ample evidence on record to hold that he was contributing an amount of Rs.1,500/- per month to the income of his father by helping him in selling tea on car after his school hours. On completion of education, he would have worked whole time and earn more than that.

11. In the premise, applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another¹**, **National Insurance Co. Ltd. v. Pranay Sethi²**, read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others³**, I am of the view that claimants are entitled to receive compensation on account of death of Mangu Ram in motor vehicular accident, in the following terms:

Deceased	Mangu Ram
Date of accident/death	05.09.2003
Age	16 years
Claimants	Mother, father and brother
Income of the deceased	Rs.1,500/- per month

¹2009 (3) The Punjab Law Reporter 22

²(2017) 16 SCC 680

³2019 (3) SCC (Cri) 153

FAO-1451-2005 (O&M)

Future prospects	40% (Rs.1500+600) = Rs.2,100/-
Deduction in dependency for personal expenses	1/2 (2,100-1,050)=Rs.1,050/-
Annual dependency	Rs.12,600/- (1,050 x 12)
Total loss of dependency with Multiplier of 18	Rs.2,26,800/-
Loss of Consortium (Parents and brother)	Rs.44,000 x 3 = 1,32,000/-
Loss of estate & funeral expenses	Rs.16,500/- + Rs.16,500/- = Rs.33,000/-
Total compensation	Rs.3,91,800/- (Rs.2,26,800/- + Rs.1,32,000/- + Rs.33,000/-)

12. Accordingly, impugned award dated 04.11.2004 is set aside. Claimants are held entitled to compensation as aforesaid along with interest @ 7% per annum, from the date of filing of claim petition till actual date of payment. Same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of instant order, failing which additional compensatory interest of 3% p.a. shall be paid from the date of filing of claim petition till payment. Out of the total compensation amount, claimants No.2 and 3 (father and brother of deceased) shall be entitled to receive Rs.44,000/- each while remaining amount of compensation along with interest shall be disbursed in claimant No.1 (mother of deceased).

13. In the premise, appeal filed by claimants stands disposed of in above terms.

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

(ARUN MONGA)
JUDGE

May 11, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No