

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

FAO-552-2006(O&M)

Reserved on:-18.4.2023

Date of Pronouncement:-24.4.2023

Smt.Brij Bala and others

...Appellants

Versus

Raj Kumar and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Vaneet Thakur, Advocate for
Mr.Arjun Sharma, Advocate
for the appellants.

Mr.Rahul Bansal, Advocate for
Mr.D.R. Bansal, Advocate
for respondent No.2.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on account of death of one Baldev Raj in a motor vehicular accident, his LRs i.e. Brij Bala – widow, Kuldeep Sharma – son, Nisha Sharma, Anita Sharma – minor daughters and Manish Sharma – minor son, all residents of Baldev Nagar, Ambala City had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Raj Kumar – driver-cum-owner and National Insurance Company Ltd. - insurer of Maruti Car bearing registration No.HR-01M-6633 (hereinafter referred to as the offending car), claiming compensation, before the Motor Accidents Claims Tribunal, Ambala

(hereinafter referred to as the Tribunal).

2. As per the version of the claimants on 28.10.2003, Baldev Raj deceased was going from his house to Cloth Market, Ambala City on his bicycle on correct left hand side of the road; at about 10:00 a.m., when he had reached near Civil Hospital Chowk, Ambala City then the offending car being driven by respondent No.1 Raj Kumar in a rash and negligent manner came from behind and hit against his bicycle; resultantly Baldev Raj fell down and suffered injuries; he was firstly taken to Civil Hospital, Ambala City from where he was shifted to Military Hospital, Ambala Cantt., however, he succumbed to the injuries on 4.11.2003. On the matter being reported to the police, formal FIR with regard to the accident was recorded.

3. According to the claimants, the deceased was aged about 53 years and he had retired from Indian Army; he was getting pension of Rs.4,620/- per month; he used to work with Vinking Taruners, Ambala City and was being paid Rs.2,700/- per month as salary; all the claimants were dependent on his earnings. The claimants craved for compensation of Rs.10 lakhs.

4. On being given notice, both the respondents appeared and filed separate written statements contesting the claim petition.

5. In the written statement filed by respondent No.1, he denied that he had caused the accident in which Baldev Raj had lost his life by rash and negligent driving of the car in question by him rather he came up with a version that he had been falsely involved in the case by the police at the instance of the claimants.

6. In the written statement filed by respondent No.2 – insurance company, it also denied involvement of the the car in question in the accident stating that it has been planted in this case by the police in collusion with respondent No.1 just to extract compensation from the insurance company. Such insurance company also raised an objection that respondent No.1 was not having a valid and effective driving licence at the time of accident and he had violated terms and conditions of the insurance policy, therefore, the insurance company is not liable to pay any compensation.

7. On the pleadings of the parties following issues were framed:

1. Whether the death of Baldev Raj took place due to the rash and negligent driving of Maruti Car No.HR-01-M-6633 by respondent No.1? OPP.
2. Whether the claimants are the only legal heirs of the deceased and entitled to compensation. If so, how much and from whom? OPP.
3. Whether the respondent NO.1 was not holding a valid driving licence at the time of alleged accident. If so, its effect? OPR-2.
4. Whether the claim petition is bad for non-joinder of necessary parties? OPR-2.
5. Relief.

8. Both the parties were afforded adequate opportunities to lead evidence in respect of their respective claims.

9. After hearing learned counsel for the parties, the claim petition was dismissed by the Tribunal vide Award dated 8.6.2005, which left the claimants aggrieved and they have filed an appeal before this

Court, notice of which was issued to the respondents. However, only respondent No.2 insurance company has put in appearance through counsel to offer a contest.

10. I have heard learned counsel for the parties besides going through the record and I find that the impugned award cannot stand judicial scrutiny and is liable to be set aside.

11. The Tribunal has mainly dismissed the claim petition as a result of finding on issue No.1 deciding that issue against the claimants holding that the accident was not caused due to rash and negligent driving of the car by Raj Kumar – respondent No.1 and the car has been falsely involved in this case by the claimants in collusion with Raj Kumar and Sushil Kumar, who is an interested witness being relative of the claimants and for that reason he has deposed falsely.

12. However, the entire approach of the Tribunal in the matter was erroneous and improper. The Tribunal dealt with the matter as if it was deciding a criminal case where onus to prove guilt of the accused to high is stationary on the prosecution, completely forgetting that the matter before it was a claim petition under Section 166 of the Motor Vehicles, which is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property which is damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. Strict rules of procedure and evidence are not applicable there.

13. Nevertheless, the claimants had led sufficient oral as well as

documentary evidence to prove issue No.1 but the Tribunal completely misread the evidence and wrongly interpreted the law. PW6 Sushil Kumar had provided the eye-witness account of the accident supporting the case of the claimants as given in the claim petition. He was cross-examined at length on behalf of the respondents but he could not be shattered on any material point. No previous enmity between him and respondent No.1 has been proved, prompted by which he might have deposed falsely against such respondent. The Tribunal has rejected his deposition for the reason that he comes out to be a relative of the claimants and the deceased. Deposition of this witness could not have been discarded in such a manner. It is nowhere provided that deposition of a relative is to be rejected outrightly. Though it can be said that such deposition is to be scrutinized closely. Here the credibility of PW6 Sushil Kumar could not be shaken on any material point. His presence at the spot at the relevant time comes out to be natural and probable and account given by him worthy of reliance. It was he, who had taken the injured initially to Civil Hospital, Ambala City and then to Military Hospital, Ambala Cantt. It was he, who had reported the matter with regard to the accident to the police and on the basis of his statement, formal FIR had been recorded. Doubting the version given by Sushil Kumar for the reason that the FIR was registered on 31.10.2003 i.e. on the fourth day of the accident was not justified. After the mishap the immediate concern of the witness was to take the injured to the hospital in order to save his life rather than leaving him unattended and going to the police station first to lodge report there. Even otherwise, there is no much delay in reporting the matter to the

police. The accident had taken place on 28.10.2003. The injured was hospitalized and at Military Hospital, the police had recorded his statement. It may be mentioned here that the report with regard to the accident had already been lodged on 28.10.2003 vide DDR No. 17, copy of which Ex.PE proved by PW7 HC Suresh Kumar. From the statement of PW1 Shally Sharma, Additional Ahlmad in the Court of CJM, Ambala, it came out that respondent No.1 Raj Kumar is facing criminal trial for causing the accident. She had proved photocopy of site-plan of the place of accident as Ex.PA, further stating that the car was taken into custody by the police and it had been got released on superdari by Raj Kumar. It is to be taken note of that respondent No.1 had not bothered to step into the witness-box to depose on oath that the maruti car being driven by him had not caused the accident. Therefore, the evidence adduced by the claimants has gone un rebutted.

14. The plea taken by the insurance company that the claimants had filed the claim petition in collusion with respondent No.1 falls flat for the reason that respondent No.1 would not have taken the trouble of getting himself involved in a criminal case being arrested in that case, getting himself released on bail, his car being seized by the police, getting that released on superdari and producing the car in the Court on each and every date of hearing; himself being challaned in the case; appearing in the Court on each and every date of hearing and facing the risk of imprisonment without any rhyme or reason. Nobody takes that much risk and trouble just to enable some persons to get compensation. This plea of the insurance company is least convincing. Therefore, the verdict given by

the Tribunal on issue No.1 is not legally sustainable and the same is set aside and issue is decided in favour of the claimants against the respondents holding the death of Baldev Raj had taken place due to rash and negligent driving of Maruti Car No.HR-01-M-6633 by respondent No.1 Raj Kumar.

15. Another error on the part of the Tribunal is that after deciding issue No.1, it did not bother to decide the other issues when it was required to give issue-wise findings.

16. Nevertheless, I proceed to decide other issues also.

17. With regard to issue No.2 *“Whether the claimants are the only legal heirs of the deceased and entitled to compensation. If so, how much and from whom? OPP”*, from the record it transpires that Brij Bala is widow, Kuldeep Sharma is major son, Nisha Sharma and Anita Sharma are minor daughters and Manish Sharma is minor son of Baldev Raj, as such his LRs and therefore they are entitled to get compensation.

At the time of his death, deceased was stated to be aged about 53 years, getting pension of Rs.4,620/- and monthly salary of Rs.2,700/-. The evidence adduced by the claimants by examining PW2 Som Parkash, Accountant, Y-King Tanners, Ambala City, who stated that deceased was employed as a Gate Keeper with the factory and was getting salary of Rs.2,700/- per month proving salary certificate as Ex.PB and testimony of PW3 Ramesh Sachdeva, Special Assistant, PNB, Baldev Nagar, Ambala, who had brought the pension record of deceased stating that he had got pension to the tune of Rs.4618/- in the month of October, 2003 and after his death his widow Brij Bala was getting pension of Rs.4938/-. It comes

out that pension being drawn by Baldev Raj was Rs.4618/- with Rs.2700/- monthly salary, total income comes out to Rs.7318/-.

18. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the age of deceased was between 50 to 60 years, 10% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.7318} + 731 = \text{Rs.8049/-}$.

19. In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** where the number of dependent family members are four to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.6037/- per month, annual dependency comes out to $\text{Rs.6037} \times 12 = \text{Rs.72,444/-}$.

20. Keeping in view the age of deceased to be 53 and in view of judgment **Smt. Sarla Verma and others (supra)**, a multiplier of 11 is required to be applied. Doing that the compensation payable comes out to $\text{Rs.7,96,884/-} (72,444 \times 11)$.

21. As per the latest judgment **Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP[C] Nos.11669-11671/2020]**, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

22. The total compensation comes out to $\text{Rs. 7,96,884} + 70,000 = 8,66,884/-$. Both the respondents are liable to pay the compensation jointly

and severally with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides costs of the petition.

Thus issue No.2 is decided in favour of the claimants/petitioners and against the respondents.

23. Now coming to issue No.3 i.e. *“Whether the respondent NO.1 was not holding a valid driving licence at the time of alleged accident. If so, its effect? OPR-2.”*. The onus to prove this issue was on the insurance company but it has not brought any evidence on record to discharge the onus. Counsel for the insurance company had closed its evidence after tendering insurance policy only. Thus, this issue is decided against the insurance company.

24. As regards issue No.4 *“Whether the claim petition is bad for non-joinder of necessary parties? OPR-2”*, it is observed that the driver, owner and insurance company of the offending car have been impleaded as respondents. No other person is found to be necessary before the Tribunal for effective adjudication of the claim petition. Therefore, the petition is not bad for non-joinder of the necessary parties and this issue is decided against the respondent No.2 and in favour of the claimants.

25. Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.8,66,884/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides costs of the petition is awarded to claimants.

26. Of the compensation awarded, the liability shall be joint and several of both the respondents. The amount shall be apportioned as follows:

1. Petitioner No.1 – Smt.Brij Bala - 45%
2. Petitioners No.3 to 5 – Nisha Sharma, Anita Sharma and Manish Sharma(minors) – 15% each
3. Petitioner No.2 Kuldeep Sharma – 10%.

Since the claim petition is of the year 2003 and 20 years have elapsed from the date of its institution, petitioners No.3 to 5 – Nisha Sharma, Anita Sharma and Manish Sharma must have attained majority by now. As such on furnishing of proof of majority, their shares be released to them straightway instead of depositing those in the form of FDR in some nationalized bank.

Since the main appeal stands accepted, the miscellaneous application(s), if any, stand disposed of accordingly.

24.4.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No