

Mandeep Singh and another

....Appellants

versus

Gurmail Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Vivek Sharma, Advocate for the appellants.

Mr. R.K. Bashamboo, Advocate for respondent No.3.

ARUN MONGA, J. (ORAL)

Aggrieved by award dated 26.11.2013 rendered by learned Motor Accident Claims Tribunal, Ludhiana (for brevity, Tribunal), dismissing the claim petition arising out of the death of Ravinder Pal Singh, the appellants/claimants are before this Court by way of an appeal seeking setting aside of impugned award.

2. Facts are not in dispute. Succinct facts as noted by the Tribunal are as below:

"3. On 22.10.2010, the deceased was going from his residence towards Ucha Pull Dholewal on his Hero Honda Motor cycle bearing registration No.PB-10-BN-8650. At about 9.00 am when he was going from Cheema Chowk to the said over bridge, then the respondent No.1 came driving the offending bus bearing registration No.PB-13-V-2838. He was driving it in a rash and negligent manner. The respondent No.1 banged his bus against the deceased from behind. The deceased, therefore, fell down and received multiple grievous injuries. At the time of the accident, Lal Chand son of Dukhi was the pillion rider of the motor cycle. He also received various injuries. While on his way to Civil Hospital, Ludhiana, the deceased breathed his last by succumbing to the injuries. Thus, on the death of the deceased, the claimants have suffered a loss of Rs.15 lacs. They are, therefore, entitled to recover the same from the respondents along with interest @ 24% per annum."

3. Upon notice, respondents No.1 & 2 contested the petition raising preliminary objections *inter alia* regarding *locus standi* of the claimants. It was asserted that accident in fact had taken place on account of the rash and negligent driving of the motor cycle in question, by the deceased as he was driving the motor cycle in a zigzag manner. While driving the motor cycle in the above said manner, he himself hit the offending bus and fell off on the road. Other pleas in petition were refuted.

4. Insurer/respondent No.3 contested the claim petition raising preliminary objections regarding maintainability of the petition, validity of the registration certificate and route permit of the offending vehicle and driving license of respondent No.1. Accident in question was disputed.

5. Learned Tribunal framed the following issues:

- “1. *Whether Ravinder Pal Singh died in the motor vehicular accident, which occurred on 1.3.2010 at about 11.00 am near Samrala Chowk, Ludhiana due to rash and negligent driving of Bus No.PB-13-V-2837 by respondent No. 1? OPP*
2. *Whether the claimants are the legal representatives of Ravinder Pal Singh deceased? OPP*
3. *Whether respondent No.1 was not holding valid and effective driving licence at the time of accident? OPR-3*
4. *To what amount of compensation, the claimants are entitled for and from which of the respondents.*
5. *Relief.”*

6. On appraisal of record/ evidence, learned Tribunal decided issue No.1 holding that though deceased had died by receiving injuries in the accident in question, yet, the accident had not taken place on account of rash and negligent driving imputable to the offending bus. While deciding issue No.2, claimant No.1 was not held to be dependent upon the deceased and claimant No.2 was held to be dependent/ legal representative of the deceased. Issue No.3 was decided against the respondents. While deciding

issue No.4, learned Tribunal held that the respondents are not responsible for causing loss in question and held claimant No.2 not entitled to recovery of any compensation from the respondents. Consequently, the claim petition filed by the appellants/ claimants was dismissed.

7. Learned counsel for the appellant/claimants *inter alia* contends that finding recorded by the learned Tribunal *qua* accident not having taken place due to rash and negligent driving because FIR was cancelled, is not sustainable. Further, contends that a compensation of Rs.6,39,000/- was, though, assessed by the Tribunal, but same was not allowed to be paid in view of the aforesaid finding.

8. I have heard competing arguments of learned counsels and perused the record. The foremost ground of defence taken by Insurance Company, in support of the impugned award, is that accident had taken place on account of rash and negligent driving of the deceased himself who is stated to have been riding his motorcycle in a zigzag manner. While riding his motorcycle, deceased himself fell off after hitting the offending bus and thus, died of the injuries while was still on way to the hospital. Learned Tribunal returned a finding that since the deceased was himself negligent in the manner, he was riding his motorcycle, therefore, no compensation is payable to any of the claimants. As regards the finding *qua* involvement of the offending vehicle, same is not under challenge by the respondent-Insurance Company and to that extent, same has attained finality. Being apposite, the same is reproduced herein below:-

“8. I have heard the learned counsel for the parties and have also gone through the file. My findings on the issues are being given below”

ISSUE NO.1:

Whether Ravinder Pal Singh died in the motor vehicular accident, which occurred on 1.3.2010 at about 11.00 am near Samrala Chowk, Ludhiana due to rash and negligent driving of Bus No.PB-13-V-2837 by respondent no. 1? Opp

9. *The FIR and the documents produced by the insurer on the file reveal that it is conceded that the bus in question was infact involved in the accident and that Ravinder Pal Singh received injuries in the said accident and had died due to them. In view of the said documents, it stands proved on file that the deceased Ravinder Pal Singh received injuries in the said accident involving the bus in question and died due to them."*

9. In the aforesaid background of the finding *qua* offending vehicle, what is required to be determined now is in the absence of any witness being produced by the claimants to undo the unsubstantiated allegation of the deceased riding the motorcycle in zigzag manner, could there had been a legal presumption drawn by the learned Tribunal as has been done in the present case. Before proceeding, it would therefore, be relevant to first have a look at the defence rendered *qua* negligent driving contained in Paras-10 & 11 of the impugned award as reproduced herein below:-

"10. It is claimed that the accident had occurred on account of rash and negligent driving of offending bus by the respondent no.1. The respondents on the other hand have asserted that the accident had in fact occurred on account of rash and negligent driving of the motor cycle the deceased was riding at the time of the accident. In these circumstances, the claimants were required to prove their claim above said by bringing in cogent evidence. However, they have not brought any evidence whatsoever to indicate that accident had taken place on account of rash and negligent driving of the bus in question. Hence, it has to be held that the claimants have failed to prove that the accident had occurred on account of rash and negligent driving of the offending bus by the respondent no.1.

11. The learned counsel for the claimants has contended that since the FIR was registered against the respondent no.1, therefore, it stands proved that the accident had occurred only on account of rash and negligent driving of the bus in question. However, it is to be noted that the RW2 HC Dilbagh Singh has stated on oath by bringing record that the FIR in question stands

cancelled. In the absence of any explanation to the contrary, it is understandable that the FIR was cancelled only because it was not found that the accident had occurred on account of the rash and negligent driving of the bus in question. Hence, I hold that the contention above said is not tenable.”

10. Perusal of the aforesaid reveals that in sum and substance, the Tribunal's finding is based on the fact that FIR, which was registered pursuant to the accident, was since later on cancelled; same results in a legal presumption of the deceased himself being negligent. On that ground alone, claim petition was dismissed. I am of the view that the Tribunal fell in error of facts as well as in law in returning the finding of rash and negligent driving by the deceased himself merely on the ground of FIR having been cancelled. In this context, when it stands proved that death of the deceased was caused owing to the accident caused by the offending vehicle having hit the motorcycle, the principle of *Res Ipsa Loquitur* becomes applicable. No doubt that said principle is not invariably to be construed to mean that negligence is of the offending vehicle. All that said principle envisages is that once injuries and/ or death have resulted out of the collusion of accident, then depending upon the accident and in this case, since it is a death, then onus of proving negligence of the deceased shifts on the driver of the offending vehicle. It was open to the Insurance Company, at the same time, to have also examined the pillion rider of the motorcycle who was also injured in the accident, but it appears, for the reasons best known to the Insurance Company, the said pillion rider was never brought into the witness box.

10.1 That apart, there is merely a bare bald assertion in the written statement filed before the Tribunal that the rider of the motorcycle was

riding in a zigzag manner. There is nothing on record other than having mentioned the same in the pleadings. Admittedly, the driver of the offending vehicle was an eye-witness, it was open to the Insurance Company to have brought him into the witnesses-box in support of its pleadings. Same was also not done either. *Qua* my discussion recorded above on the principle of *Res Ipsa Loquitur*, reference may be had to a judgment rendered by Madras High Court in **Shanti and others versus K. Nallasamy and another**, reported in **2008 (50) R.C.R. (Civil) 795**, relevant part thereof is reproduced herein below:-

“8. *It is pertinent to point out that in an action for negligence, the legal burden of proof, no doubt rests on the claimant, but barring certain exceptional matters it may not be possible for the claimants to know what precisely led to the accident, in the considered opinion of this Court. As a matter of fact, this difficulty to the claimants can be avoided by applying the maxim 'Res Ipsa Loquitur', which is not a principle of law, but a rule of evidence. Moreover, in certain cases it is quite possible for the claimants to rely on mere fact that something happened as affording Prima facie evidence of want of due care on other's part. In reality, 'Res Ipsa Loquitur' is a principle which help them to do so.*

9. *In **Surjeet Singh v. Santhosh Kumari, 1989 ACJ 466: 1989 (1) T.A.C. 241 (P&H)**, it is observed that 'the doctrine of 'Res Ipsa Loquitur' does not dispense with the need to prove a fact alleged by a person. It only affects the mode of proof, with a view to mitigating the rigour of proof of negligence under certain circumstances, the common law invokes the doctrine'.*

10. *It is to be pointed out that the maxim of 'Res Ipsa Loquitur' will come into operative play to the aid of the appellants/claimants, only when the circumstances indicate negligence on the part of the driver of the bus. The general principle that the burden of proof of negligence rests on the claimants cannot be altered in any manner, in the considered opinion of this Court. However, if the accident is proved to have occurred due to the negligence of the driver, the maxim 'Res Ipsa Loquitur' squarely applies and the presumption of negligence can be inferred and the burden will shift on the driver of the vehicle to show that he was not negligent at the time of the accident.*

11. *In **Basthi Kasim Saheeb v. Mysore State Road Transport Corporation, 1991 ACJ 380 :1991 (1) T.A.C. 715(S.C.)**, the Hon'ble Supreme Court has observed that 'if accident is admitted*

and the driver is not able to explain the accident, the principle of 'Res Ipsa Loquitur' can be applied'."

10.2 I am in respectful agreement with the aforesaid observations by M. Venugopal, J. of Madras High Court over the same principle. I see no reason why claim petition be not accepted.

11. I do not find any substance in the insipid arguments of learned counsel for the respondent-Insurance Company that issue on driving licence was not decided, and therefore, legal presumption has to be drawn that the driving licence of the deceased was invalid. Firstly, neither any evidence was adduced by the Insurance Company *qua* the same nor even otherwise, there can be any legal presumption in the absence of any evidence. There is no occasion for this Court to discuss the validity or otherwise of the licence in the absence of any evidence.

12. In the premise, applying the principles in the case of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, reported in **2009 (3) The Punjab Law Reporter 22**, **National Insurance Co. Ltd. v. Pranay Sethi**, reported in **(2017) 16 SCC 680** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**, reported in **2019 (3) SCC (Cri) 153**, I am of the opinion that claimants are entitled for compensation, which is calculated as below:

Deceased	Ravinder Pal Singh
Date of accident/death	01.03.2010
Age	25 years
Marital Status	Unmarried
Claimants	Brother and Sister
Income of the deceased	Rs.4,000/- per month
Future prospects	40% (Rs.4,000+1,600) = Rs.5,600/-
Deduction in dependency	1/2 nd (Rs.5,600-Rs.2,800)=Rs.2,800
Annual dependency	Rs.33,600/- (2,800x 12)

FAO-1454-2014 (O&M)

Multiplier	18
Funeral exp. and loss of estate	Rs.30,000/- (15,000+15,500)
Consortium	Rs.80,000/- (Rs.40,000 x 2)
Total	Rs.7,14,800/- (33,600 x18+30,000+80,000)

12. Accordingly, Insurance Company is directed to pay compensation to the claimants, both younger brothers of the deceased as above along with interest@ 7% per annum, from the date of filing of the claim petition till the actual date of payment. The same shall be payable to claimants within a period of 2 months of their approaching the insurance company along with web print of the instant order, failing which additional penal interest of 3% p.a. shall be paid from the date of filing of the claim petition. Compensation amount be disbursed to the claimants in equal shares.

13. Disposed of in above terms.

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

(ARUN MONGA)
JUDGE

February 02, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No