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

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Reserved on:- 07.11.2023

Pronounced on:- 04.12.2023

Raj Kumari and others

...Appellants

Versus

Ashok Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Omkar Rai, Advocate for the appellants.

Mr. Pradeep Kumar, Advocate for respondent No.3.

AMARJOT BHATTI, J.

1. The appellants/claimants – Raj Kumari, Baby Neelam and Master Yashvardhan (minor through their mother Raj Kumari being natural guardian) and Sukhbiro have filed present appeal against impugned Award dated 31.05.2016 passed by learned Motor Accident Claims Tribunal, Faridabad vide which the claim petition filed by the appellants/claimants has been dismissed.

2. The facts of the case are that Raj Kumari the widow along with her 2 minor daughters being their natural guardian and Kanhiya Lal father, Sukhbiro mother of late Rajesh had filed claim petition under Section 166 of Motor Vehicles Act for grant of compensation on account of his death in a motor vehicular accident. Rajesh was 26 years old, doing the business of Halwai/Catering and it was alleged that he was earning Rs.20,000/- per month. On the fateful day of 20.02.2015 at about 4:30 p.m., he was going on his motorcycle No.UP-16-AS-7483 driven by him on which Sanjay his brother was pillion Rider. When he reached near

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village Maujpur Mor, the offending motorcycle No.HR-29-AH-0192 came at a high speed in a zigzag manner driven rashly and negligently, hit the motorcycle of Rajesh. After causing the accident, the driver of offending motorcycle managed to escape. However, the number of motorcycle was noted down by one Amar Chand passerby. Sanjay the brother of the deceased called his uncle Krishan and with his help Rajesh was admitted in Green Field Hospital, Chhainsa where he remained under treatment and ultimately succumbed to the injuries on 23.02.2015. On the statement of Sanjay, FIR No.25 dated 21.02.2015 was registered under Sections 279, 337 of IPC and offence under Section 304-A of IPC was added later on. During treatment, huge amount was spent on the treatment of Rajesh but his life could not be saved. The petitioners have lost sole bread winner of their family. They have claimed compensation to the tune of Rs.80 lacs along with interest at the rate of 18% per annum from the date of accident till realization of the amount.

3. Notice of the claim petition was given to the respondents. The respondents No.1 and 2 filed their joint written reply taking preliminary objections that the petitioners had no cause of action to file the claim petition nor they have any *locus standi*. The claim petition is not maintainable in the present form. They have not come to the Court with clean hands. The alleged offending motorcycle has been falsely implicated in order to get the compensation. On the merits of the case, the facts are denied. It is prayed that the petitioners may be put to strict proof, to prove the facts by leading reliable evidence. The manner of accident and the money spent on treatment were also denied. However, the vehicle was insured with Universal Sampo General Insurance Company Ltd. The

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respondents No.1 and 2 placed on record the driving licence, registration certificate and insurance policy of alleged offending motorcycle No.HR-29-AH-0192. It was prayed that the claim petition filed against them deserved dismissal.

4. The insurance company also filed its written reply taking various preliminary objections including the objection that the driver of alleged offending motorcycle was not holding valid and effective driving licence at the time of alleged accident. In case the accident is proved on record, then the driver was driving the said motorcycle in breach of the terms and conditions of the insurance policy. There is denial of said accident caused by motorcycle No.HR-29-AH-0192 . A false FIR has been registered. On merits, the facts are denied for want of knowledge. The age, monthly income of the deceased were also denied. It was alleged that the deceased was a casual labourer not earning more than Rs.4000/- per month. It was prayed that the claim petition filed by the claimants was false without merits and the insurance company has no liability to pay any compensation to them.

5. No replication was filed by the petitioners and on the basis of the pleadings of the parties, following issues were framed by the Tribunal on 21.08.2015:-

1. Whether Rajesh son of Sh. Kanhiya Lal had died in a motor vehicular accident, which took place on 20.02.2015 at about 4:30 PM. at Chhainsa Atali road at Village Maujpur Mor, District Faridabad, within the jurisdiction of Police Station Chhainsa, Faridabad, due to rash & negligent driving of vehicle Honda Shine (Motorcycle) bearing registration No. HR-29-AH-0192, by respondent no. 1? OPP

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2. If issue no. 1 is proved, to what amount of compensation the petitioners are entitled to and from whom? *OPP*

3. Whether the insured has violated the terms and conditions of the insurance policy, or that respondent no. 1 was not holding a valid and effective driving licence at the time of alleged accident? *OPR2*

4. Relief.

6. In order to prove the claim petition, the petitioners/claimants examined Sanjay (eye witness) as PW1, Raj Kumari as PW2, Devender Kumar, Record Keeper Gold Field Hospital, Faridabad as PW-3, Nagender Kumar of concerned Pharmacy as PW-4, Amar Chand as PW-5, Manoj Kumar as PW-6 and tendered Exhibit P-1 to Exhibit P-16 and closed the evidence.

7. In order to rebut the evidence of the claimants/petitioners, respondents examined Devender Kumar, Record Clerk, Gold Field Hospital as RW-1 and thereafter the evidence of the respondents was closed by order.

8. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the petitioners/claimants was dismissed by passing impugned Award dated 31.05.2016, as referred above. Feeling aggrieved of this Award, the present appeal has been preferred by appellants/claimants for compensation.

9. 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 impugned award dated 31.05.2016 passed by the learned Motor Accident Claims Tribunal, Faridabad is arbitrary and against the evidence

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available on record. The facts of the case were proved on record by one of the claimant Raj Kumari as PW-2. She lost her husband Rajesh in a motor motor vehicular accident which took place on 20.02.2015 and Rajesh ultimately died on 23.02.2015. The copy of MLR proved on file is Exhibit P-11 and copy of post-mortem report is Exhibit P-12. The bills regarding hospital and purchase of medicines are also duly proved on record by examining Devendra Kumar- PW 3 and Nagender Kumar of concerned pharmacy as PW-4. The claimants incurred huge medical expenditure for the treatment of Rajesh but he could not be saved. The claimants have suffered great loss on account of untimely death of late Rajesh, who was a young boy of 26 years of age.

The learned counsel for the claimants further pointed out that in the case in hand, the accident as well as rash and negligent driving were duly proved on record. Sanjay one of the eye witness stepped into the witness box as PW1, who has narrated the manner in which the accident took place. He filed his affidavit as Exhibit PW1/A wherein he categorically stated that on 20.02.2015, the deceased along with him were going from Atali to village Chhainsa on motorcycle No.UP-16-AS-7483. The deceased was driving motorcycle at a moderate speed on correct side of the road and when they reached near the turn of village Maujpur, the offending motorcycle driven by respondent No.1 came at a high speed in reckless manner and without observing traffic rules, hit their motorcycle as a result of which both of them fell on the road. Rajesh had suffered serious injury on his head. He immediately called his uncle for help. After causing the accident, the respondent No.1 managed to fled away from the spot. On his statement, FIR No.25 dated 21.02.2015 was registered under

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Section 279/337 of IPC and after the death of Rajesh offence under Section 304-A of IPC was also added. It is argued that the said FIR was registered against unknown driver and the number of the offending vehicle was not mentioned. Sanjay PW 1 clearly stated that he was busy in taking care of Rajesh and in meantime, the motorcyclist managed to escape from there. The number of the motorcycle was noted down by a passerby namely Amar Chand resident of village Macchgar who later on disclosed the number of the motorcycle and thereafter his supplementary statement was recorded by the police. The copy of FIR is Exhibit-P1 and copy of supplementary statement of Sanjay recorded on 28.02.2015 is Exhibit-P2. It is pointed out that statement of Amar Chand PW5 was also recorded before the Tribunal who also confirmed the aforesaid facts. The claimants had also examined Manoj Kumar PW6 who produced the summoned record of the case file titled "State vs. Ashok Kumar" in the aforesaid FIR in which chargesheet was framed on 04.05.2015 and at that time, the case was fixed for prosecution evidence. From the summoned record the driving license, the registration certificate of the offending vehicle and the insurance cover note were also produced which are Exhibits P-14 to P-16.

It is argued that the the learned Motor Accident Claims Tribunal, Faridabad has decided issue No.1 against the claimants on hyper technical grounds. The claimants led each and every possible evidence available on record to prove the accident as well as rash and negligent driving on the part of respondent No.1. Therefore, the findings given by the learned Motor Accident Claims Tribunal pertaining to issue No.1 are liable to be set aside. It is further prayed that no compensation has been awarded in the present case since the issue No.1 was decided against the

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appellants/claimants. It is prayed that the claimants are entitled to receive compensation after assessing the income of deceased from the evidence available on record.

10. On the other hand, the learned counsel for the insurance company raised the issue that the facts of the case and evidence on record were properly appreciated by the learned Motor Accident Claims Tribunal. The findings on issue No.1 are based on the evidence available on record. The FIR was registered against unknown person and after the lapse of time, the alleged offending motorcycle as well as Ashok Kumar were falsely implicated in the said accident. The learned counsel for the insurance company referred to the corss-examination of Sanjay PW-1, Amar Chand PW-5 which clearly indicates that their conduct was not normal. Even the presence of Sanjay PW-1 was highly doubtful at the time of said accident. As per his own version, he did not suffer any injury in the accident whereas Rajesh suffered serious injury which resulted into his death. Amar Chand PW-5 admitted that he did not stop to take care of injured rather he preferred to go to his house. The number of the offending motorcycle as well as the name of motorcyclist figured for the first time when supplementary statement of Sanjay was recorded on 28.02.2015. Therefore, all these facts were rightly appreciated by the learned Motor Accident Claims Tribunal, while deciding issue No.1. The learned counsel for the insurance company further raised the issue that in the criminal case No.264/02.01.2015 Ashok Kumar has been acquitted of the charge framed against him in the aforesaid FIR No.25 dated 21.02.2015 under Sections 279, 337, 304-A of IPC registered at Police Station Chhainsa vide judgment dated 22.05.2019. Therefore, there is no

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convincing evidence on record to show that the accident had taken place with the alleged offending motorcycle No.HR-29-AH-0192 driven by respondent No.1-Ashok Kumar. The findings given by the learned Motor Accident Claims Tribunal, pertaining to issue No.1 does not require any interference and consequently the claimants are not entitled to receive any compensation from the respondents.

11. I have considered the arguments advanced before me and have also gone through the record carefully. The claim petition filed by the claimants has been dismissed by the learned Motor Accident Claims Tribunal, by passing Award dated 31.05.2016 on the basis of findings given on issue No.1 where it is held that the claimants had failed to prove the accident as well as rash and negligent driving on the part of respondent No.1 while driving motorcycle No.HR-29-AH-0192. Feeling aggrieved of the Award, the present appeal has been filed by the appellants/claimants. Therefore, firstly we will deal with the issue No.1 as to whether from the evidence available on record, the accident as well as rash and negligent driving on the part of respondent No.1 while driving motorcycle No.HR-29-AH-0192 is proved on record or not. It is matter of record that the FIR No.25 dated 21.02.2015, under Section 279, 337 and 304-A of IPC registered at Police Station Chhainsa, District Faridabad has been registered on the statement of Sanjay PW-1 (brother of the deceased) which is Exhibit P-1. The said FIR was registered against unknown vehicle. The supplementary statement of Sanjay PW-1 was later on recorded on 28.02.2015 where the number of offending vehicle as well as name of the motorcyclist were revealed. The said supplementary statement of Sanjay is Exhibit P-2. In order to prove issue No.1, Sanjay

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stepped into the witness box as PW-1 and in his affidavit Exhibit PW-1/A narrated the manner in which the accident took place. He conceded that when the accident took place, he started taking care of his injured brother Rajesh and in the meantime, the motorcyclist, who caused the accident managed to escape from there. He also stated that in this accident, his brother received serious injury on his head whereas he did not received any serious injury. He called his uncle Krishan who came there and shifted the injured to Green Field Hospital, Chhainsa where the injured was given treatment, who ultimately died on 23.02.2015. The statement of Sanjay PW-1 was recorded by the police on 21.02.2015 i.e. on the next day on the basis of which this FIR was registered. The deposing witness Sanjay has clearly explained that he was unable to see the driver as well as the number of the motorcycle when the said accident took place. It is a common factor that when the accident takes place, the impact of accident is so huge that it is not possible for a person to note down the number of the offending vehicle or to see the person who was driving. The person who meets with an accident, firstly look into his well being and thereafter he is able to see the condition of other person. On the other hand the person who causes the accident tries his level best to escape from there. Therefore, I do not find any falsehood in the statement of Sanjay PW-1 who was present at the time of said accident. Apart from this, the claimants examined Amar Chand as PW-5 who had noted down the number of offending motorcycle. He had disclosed the identity of offending motorcycle to Sanjay PW-1 and thereafter, further investigation was carried out on the basis of supplementary statement of Sanjay which is Exhibit P-2. Amar Chand PW-5 is not related to Sanjay or deceased

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Rajesh in any manner. Therefore, there was no reason for Amar Chand to go out of the way to help the claimants. Sanjay PW-1 and Amar Chand PW-5 are residents of different villages and different Tehsil but in the same District Faridabad. In case Amar Chand PW-5 did not prefer to stop at the place of accident, it cannot be considered adverse to the claim application filed by the claimants. The claimants further examined Manoj Kumar, Ahlmad in the Court of Judicial Magistrate First Class, Faridabad as PW-6 who produced the summoned record in criminal case titled as "State vs. Ashok Kumar" bearing FIR No.25 dated 21.02.2015 under Section 279, 337 and 304-A of IPC registered at Police Station Chhainsa, District Faridabad. The statement of this witness further shows that it was Ashok Kumar who was challaned in the aforesaid FIR. He was chargesheeted on 04.05.2015 and the case was fixed for prosecution evidence when this witness stepped into the witness box on 03.11.2015. It further shows that the matter was investigated and thereafter, the respondent No.1 Ashok Kumar was challaned in the said FIR.

The learned counsel for the insurance company has referred to the downloaded copy of judgment in the aforesaid criminal case in which Ashok Kumar was acquitted of the charge framed against him vide judgment dated 22.05.2019. I have also perused the said judgment. It is not the case that the witnesses did not support their version. The learned Judicial Magistrate after appreciating the evidence on record concluded that prosecution had failed to prove the guilt of accused beyond the shadows of reasonable doubt and accordingly, he was acquitted by giving him benefit of doubt. It is settled principle that the criteria for proving the guilt of accused in a criminal case is of higher level and the prosecution is

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required to prove the guilt beyond the shadow of reasonable doubt. On the other hand, in a civil case the case is decided on the basis of preponderance of probabilities. The proceedings under the provisions of Motor Vehicles Act are summary proceedings. As referred above, the claimants had led each and every possible evidence available with them to prove the accident as well as rash and negligent driving on the part of respondent No.1-Ashok Kumar. The testimony of Sanjay PW-1, Amar Chand PW-5 as well as the presentation of challan against Ashok Kumar after thorough investigation cannot be brushed aside. The aforesaid evidence led by the claimants before the learned Motor Accident Claims Tribunal remained unrebutted. The respondents No.1 and 2 contested the claim petition. They filed their joint written statement. However, neither Ashok Kumar (driver) nor Sandeep (owner) of the said offending motorcycle opted to step into the witness box. Therefore, considering the aforesaid facts, in my opinion the findings given by the learned Motor Accident Claims Tribunal, pertaining to issue No.1 are not justified. Keeping in mind the unrebutted testimony of Sanjay PW-1, Amar Chand PW-5 coupled with other documents proved on record, in my opinion, the accident caused by Ashok Kumar-respondent No.1 while driving his motorcycle No.HR-29-AH-0192 rashly and negligently is duly proved on record. Therefore, the findings of the learned Motor Accident Claims Tribunal, pertaining to issue No.1 are accordingly set aside and this issue is decided in favour of the appellants/claimants and against the respondents.

12. The other important aspect of the present case is the quantum of compensation which the claimants are entitled to receive. In the claim

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petition it is alleged that Rajesh the deceased was 26 years old young boy who was working as a Halwai/Caterer and earning Rs.20,000/- per month. Raj Kumari one the claimant has stepped into the witness box as PW-2 but there is no evidence on record to establish the profession of Rajesh or his income. During corss-examination of Raj Kumari PW-2, she categorically stated that her husband was a tea seller and she did not have any proof regarding the income as well as profession of her husband. Therefore, considering these facts the monthly income of Rajesh claimed by the claimants is without any justification. Considering the cross-examination of Raj Kumari PW-2 the deceased Rajesh is considered as a labourer and his monthly income is assumed as Rs.7,000/- per month. Since, he was 26 years old at the time of accident, therefore, by relying upon the authority cited in “**National Insurance Company Limited versus Pranay Sethi and Ors.**”, **2017(4) R.C.R.(Civil) 1009**, the 40% increase in income is taken up, which comes out to be Rs.2,800/-. Therefore, the monthly income is taken as Rs.9,800/- and annual income is taken as Rs.1,17,600/-. At the time of filing of claim petition, Raj Kumari, her two minor children and her in-laws had filed this claim petition, but at the time of filing of this appeal Raj Kumari (widow), two minor children and Sukhbiro (mother of the deceased) have filed the present appeal. Therefore, $\frac{1}{4}$ income is deducted towards personal expenditure and the annual dependency of the family comes out to be Rs.88,200/-. By applying the law settled in **2009 (3) RCR (Civil) Page 77 Supreme Court of India**, in case titled “***Smt. Sarla Verma and others Vs Delhi Transport Corporation and another***”, considering his age as 26 years, the multiplier of 17 is appropriate and with this multiplier, quantum of compensation comes out to be Rs.

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14,99,400/-. Raj Kumari lost her husband in her youth whereas the children have also lost their father in their young age and the mother has also lost her young son. Therefore, considering these facts, the claimants are granted compensation for loss of consortium/filial consortium to the tune of Rs.48,400/- each which comes out to be Rs.1,93,600/-. The claimants are granted Rs.18,150/- towards loss to estate, Rs.18,150/- towards funeral expenditure, transportation etc. and the total amount of compensation comes out to be Rs.17,29,300/-. The claimants are further entitled to receive Rs.43,000/- towards medical expenditure incurred on the treatment of late Rajesh which is duly proved on record by examining the relevant witnesses. Thus total amount of compensation comes out to be Rs.17,72,300/- which the claimants are entitled to receive from the respondents.

The documents on record clearly show that the offending motorcycle No.HR-29-AH-0192 was duly insured for the period 08.10.2014 to 07.10.2015 vide insurance cover note Exhibit P-16 whereas the accident had taken place on 20.02.2015. Therefore, the liability of the respondents to pay the amount of compensation is joint and several. The claimants are further entitled to interest @ 7% per annum on the aforesaid amount of compensation from the date of filing of claim petition till passing of the Award by the learned Motor Accident Claims Tribunal, and further interest at the same rate from the date of filing of present appeal till realization of the amount. The claimants are further awarded litigation expenditure to the tune of Rs.10,000/- .

Out of the aforesaid amount, appellant No.4-Sukhbiro is entitled to receive Rs.1,00,000/- whereas the minor children are entitled to

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receive Rs.4,00,000/- each and the remaining amount in favour of Raj Kumari the widow. The share of minor children be deposited in the shape of fixed deposit in a Nationalized Bank which they will be entitled to receive on attaining majority with the prior permission of the learned Motor Accident Claims Tribunal.

The appeal preferred by the appellants/claimants is accordingly accepted by setting aside the impugned Award dated 31.05.2016.

The photocopy of record received from the Tribunal be sent back to the concerned quarter. Pending application(s), if any, also stand disposed off.

04.12.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes