

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 7001 of 2016(O&M)

Order Reserved on: 21.04.2023

Order Pronounced on: 19.05.2023

Maina Chawla and another

..... Appellants

Versus

Kuldeep and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr.Rose Gupta, Advocate for the appellants.

Mr.Paul S.Saini, Advocate for respondent No.3.

HARPREET SINGH BRAR, J.

1. The present appeal has been filed by the appellant/claimants challenging the award dated 21.05.2016 passed by learned Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal' for short) whereby the claim petition filed by them under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act' for short) seeking compensation on account of death of Parveen Chawla was dismissed.

FACTUAL BACKGROUND

2. Brief facts of the case are that on 24.09.2014, Parveen Chawla (now deceased) was going to Barwala town (District Hisar) from his house on his motor cycle bearing registration No. HR-21K-2590. When he reached opposite Cloth Market, Barwala, the offending vehicle i.e. truck bearing registration No HR39B-6489, being driven by respondent No.1-Kuldeep in a rash and negligent manner, came from opposite side and hit against the motor cycle of the deceased. Due to this impact, Parveen Chawla received

injuries and died thereof.

3. Deceased Parveen Chawla was 24 years of age at the time of accident and was a student of B.A. 2nd year. He was engaged in his own business of sale and purchase of plastic in the godown owned by appellant No.1 and was earning Rs. 20,000/- per month.

4. Learned Tribunal, while passing the impugned award, assessed the income of deceased Parveen Chawla at Rs. 7500/- per month. Thus, his annual income was assessed at Rs.90,000/- (Rs.7500 x 12). Since the deceased was unmarried, 50% of his income was deducted towards his personal expenses. Hence, the dependency on the deceased was assessed at Rs. 45,000/- per annum. Taking the age of the parents of the deceased to be 55/50 years, the Tribunal applied the multiplier of '11'. Thus, the total amount of compensation was assessed at Rs. 45,000 x 11=Rs. 4,95,000/-. The Tribunal also held that the appellants were entitled to a sum of Rs. 1,00,000/- towards loss of love and affection, Rs. 25,000/- on account of transportation and funeral expenses and Rs. 25,000/- as cost of litigation. Hence, in all the claimants were held entitled to a total amount of Rs. 6,45,000/- as compensation on account of death of Parveen Chawla. However, the claim petition was dismissed by the Tribunal on the ground that it could not be proved that the accident had taken place due to the rash and negligent driving of respondent No.1-Kuldeep.

CONTENTIONS

5. Learned counsel for the appellants has argued that on account of the accident and death of Parveen Chawla, FIR and final report under Section 173 of the Cr.P.C. had already been filed and police have concluded in the investigation that respondent No.1-Kuldeep had caused the accident

by driving the offending vehicle in a rash and negligent manner. Even respondent No.1-Kuldeep has not stepped into the witness box to deny the accident. PW1-Vinod Kumar, Criminal Ahlmad, has duly placed on record various documents i.e. Ex.P2 to Ex.P8 showing that the respondent No.1 had been challaned and had faced trial for driving the offending vehicle in a rash and negligent manner. Therefore, from the statement of PW1-Vinod Kumar coupled with the evidence available on record in the shape of final report under Section 173 of Cr.P.C. (Ex.P2), it has been established that deceased Parveen Chawla died at the spot due to the rash and negligent driving of respondent No.1. Counsel for the appellants has relied upon **National Insurance Company Ltd. vs. Pushpa Rana and others, 2009 A.C.J. 287 (Delhi).**

6. Per contra, learned counsel for respondent No.3-insurance company has vigorously argued that the learned Tribunal has rightly come to the conclusion that it is not proved that death of deceased Parveen Chawla had occurred due to the rash and negligent driving of offending vehicle by respondent No.1-Kuldeep. Neither any eye witness nor the investigating officer of the FIR was produced as a witness. Admittedly, the FIR was lodged on the statement of Naveen Kumar (PW2) against the unknown driver and unknown vehicle. Learned counsel for respondent No.3 further argued that learned Tribunal, after due consideration of the arguments advanced by learned counsel for the parties, dismissed the claim petition on the basis of the findings recorded on the issue of negligence as the onus to prove the involvement of the offending vehicle was on the appellants and they failed to prove the same. He has relied upon **Balbir @ Leela and another vs. Vikas and others, 2014(1) PLR 459** and **Ram Karan vs. Zile**

Singh, 2001(3) PLR 125, to seek dismissal of the appeal on the ground that the appellants have not been able to prove that Kuldeep-respondent No.1 was driving the offending vehicle in a rash and negligent manner and the death of deceased Parveen Chawla occurred due to the same.

ISSUE

7. After hearing learned counsel for the parties and carefully examining the record of the case, the following issue arises for adjudication by this Court:-

‘Whether the standard of proof required for a trial under Code of Criminal Procedure i.e. proving case beyond reasonable shadow of doubt is applicable to the proceedings before the Tribunal under the Motor Vehicles Act, 1988?’

ANALYSIS AND OBSERVATION

8. Undisputedly, vide Ex.P2, the report under Section 173 of Cr.P.C., the investigating agency has concluded that respondent No.1 is responsible for the death of deceased Parveen Chawla and further the post mortem report (Ex.P1) indicates that the injuries suffered by the deceased in the accident were sufficient to cause death in the ordinary course of life. As such, death of deceased Parveen Chawla in the accident is fully established. Moreover, respondent No.1 has failed to deny the factum of the accident by appearing as a witness and no material is brought on record by the respondents to show that respondent No.1, driver of the offending vehicle, was not involved in the accident. Further, there was no reason for the investigating agency to falsely implicate respondent No.1-Kuldeep.

9. Learned Tribunal has committed a serious error in passing the impugned award by negating the claim of the appellants only on the ground that the negligence on the part of respondent No.1 has not been proved. The

parameters of standard of proof beyond reasonable doubt cannot be applied in a strict sense while dealing with a claim petition in terms of Section 166 of the Act. The only requirement under the above provision is to ascertain that an accident had taken place and the victim has suffered injuries or loss of life. The objective purpose of the Act is to determine the amount of fair compensation in the event of an accident having taken place. The Hon'ble Supreme Court in **Shivaji Dhyanu Patil vs. Smt.Vatschala Uttam More, 1991(3) SCC (Cri.) 865**, has categorically held that compensation can be granted under the Motor Vehicles Act even if accident is caused by a standing vehicle. Their lordships held that even when the motor vehicle is stationary due to a break down, the death of deceased falls within the scope of the expression '*use of motor vehicle.*'

10. The Hon'ble Supreme Court in **Helen C. Rebello (Mrs.) and Others vs. Maharashtra State Road Transport Corporation and Another, 1999(1) SCC 90**, held that the Act is a beneficial piece of legislation and hence the object of the Courts ought to be to assist the injured/deceased person. A two Judge Bench of the Hon'ble Supreme Court in **Bimla Devi and others vs. Himachal Road Transport Corporation and others, 2009 (13) SCC 530**, speaking through Justice A.K.Ganguly, held as follows:-

"13. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos.2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored.

14. Some discrepancies in the evidences of the claimant's

witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos.2 and 3.

15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.

16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.”

11. In this context a reference can also be made to **Kusum Lata and others vs. Satbir and others, 2011 (3) SCC 646** and **Parmeshwari vs. Amir Chand and others, 2011(1) SCR 1096**. In view of the settled law referred to above, in the considered opinion of this Court, the strict rules of evidence or the standard of proof as required under the Code of Criminal Procedure would not apply to claim proceedings before the Tribunal under the Act.

CONCLUSION

12. After careful consideration of the arguments of both the parties and perusal of the record, this Court is of the opinion that the amount of compensation needs to be redetermined as per the judgement of the Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) R.C.R. (Civil) 1009** and **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009 (6) SCC 121**. Although the appellants have claimed the income of the deceased as Rs. 20,000/- per month but no proof with regard to the same has been placed on record. Thus, the income of the deceased is taken as Rs. 7500/- per month as assessed by the learned Tribunal.

13. The learned Tribunal has applied the multiplier of '11' for assessing the compensation keeping in view the age of the parents of the deceased whereas age of the deceased would have to be taken into consideration while applying the multiplier. Hence, in view of the decision in case of **Sarla Verma (supra)**, multiplier of '18' needs to be applied.

14. The Tribunal has not assessed any amount towards loss of estate and loss of consortium. In view of judgement of the Hon'ble Supreme Court in **Pranay Sethi (supra)**, an amount of Rs. 15,000/- is awarded towards loss of estate, amount of Rs.15,000/- on account of funeral expenses and an amount of Rs. 40,000/- each towards loss of consortium to both the appellants.

15. Learned Tribunal has also not awarded any amount for loss of future prospects. Deceased was a young man of 24 years of age. His income was likely to increase in the near future. Hence, this Court grants 40% towards future prospects. Furthermore, a sum of Rs. 25,000/- is

awarded towards litigation expenses as assessed by the learned Tribunal.

Accordingly compensation under different heads is determined as under:-

Sr.No	Under Head	Amount
A	Pecuniary	
1.	Income	Rs. 7500/- per month
2.	Annual Income	Rs. 7500 x 12= Rs. 90,000/-
3.	Future prospects (40%)	Rs. 90,000 x 40/100= Rs.36,000/-
4.	Deductions (50%)	Rs.90,000+Rs.36,000/-= Rs.1,26,000/- Rs.1,26,000 x 50/100= Rs. 63,000/- Rs.1,26,000-Rs.63,000/-= Rs.63,000/-
5.	Multiplier (18)	Rs. 63,000 x 18= Rs.11,34,000/-
	Total Column A	Rs. 11,34,000/-
B	Non-pecuniary	
1.	Loss of estate	Rs. 15,000/-
2.	Funeral expenses	Rs. 15,000/-
3.	Loss of consortium(40,000 x 2)	Rs. 80,000/-
4.	Litigation expenses	Rs. 25,000/-
	Total Column B	Rs. 1,35,000/-
	Total amount of compensation (A + B)	Rs. 12, 69,000/- @ 7.5% p.a.

16. The appellants are entitled to interest at the rate of 7.5% p.a. on the amount of compensation, as awarded above from the date of filing of the claim petition till the date of actual payment.

17. Appeal is allowed in the aforesaid terms.

(HARPREET SINGH BRAR)
JUDGE

19.05.2023
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Whether Reasoned/Speaking : Yes/No
Whether Reportable : Yes/No