IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-9428-2014 (O&M)
Date of decision: May 26, 2023

Usha Devi and others

….Appellants

versus

Satpal and another

….Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Ashwani Arora, Advocate for applicant-appellants/ claimants.

Mr. Sandeep Suri, Advocate for respondent No.2/Insurance Company.

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ARUN MONGA, J.

Appellants before this Court are (widow, two sons and mother of deceased victim) claimants seeking to set aside impugned award dated 15.04.2014 rendered by learned Motor Accidents Claims Tribunal, Chandigarh (for brevity, "Tribunal") whereby, claim petition filed by the claimants for compensation Rs.30.00 lakhs on account of death of Rakesh Kumar in accident in question, was dismissed.

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

> "*2. The case of the claimants is that in the intervening night of 31.5.2011/ 1.6.2011, Rakesh Kumar (since deceased) was coming on the road leading from Gorakpur to Chandigarh while sitting in a Maruti Omni Ambulance bearing registration No.CH-38-T-4614 which was being driven by Phool Singh alias Sagar at fast speed. When they have gone little ahead from Jamuliya Dhaba in the area of village Jamuliya PS Chawani, District Basti at that time their Ambulance struck against an unknown trolla truck which was parked on the road. As a result of that accident, the deceased and Phool Singh received serious injuries and the deceased died on the spot. Phool Singh alias Sagar also died in this accident. They were taken to the hospital immediately. The accident took place due to rash and negligent driving of Maruti Omni Ambulance bearing registration No.CH-38-T-4614 by Phool Singh alias Sagar (since deceased). Deceased Rakesh Kumar was not at fault. According to the claimants, at the time of accident deceased Rakesh Kumar was 43 years of age, working as Sanitary Attendant in PGIMER, Chandigarh, getting salary of Rs.12,000/- per month and FIR with PS Chawani, District Basti was registered. It is averred that Rs.30,000/- were spent on the funeral and last rites of the deceased. Rs.30.00 lacs has been claimed as compensation along with interest at the rate of 12% per annum till realization.*"

3. Upon notice, respondent No.1 (owner of offending vehicle) did not appear and was proceeded against *ex parte* on 04.10.2011 by learned Tribunal.

3.1. Respondent No.2/ Insurance Company filed its written statement raising preliminary objections regarding maintainability, non-joinder of necessary parties etc. It was averred that respondent No.1 was not holding valid and effective driving licence at the time of alleged accident. The Ambulance was meant to carry the patients or the doctors or the related staff as per the sitting capacity of the insured vehicle but the person namely Rakesh Kumar who allegedly died in the accident was travelling in the said vehicle unauthorizedly being gratuitous passenger in violation of the terms of the policy. The *trolla* truck had been wrongly parked on the road, Basti Cantonment Area (Chawani) UP due to which the accident, if any took place. It's owner/ driver was not made a party to the claim petition. It was further averred that even the police which registered the FIR No.657 of 2011, under Sections 279, 304-A IPC, Police Station Chhabni, had submitted final report dated 14.06.2011 that accident had occurred by chance and there was no negligence of anyone. Insurance Company had taken defence under Sections 147, 149, 157, 170 and 172 of Motor Vehicles Act.

3.2. On merits, Insurance Company submitted that accident had occurred by chance and there was no negligence of anyone. It was submitted that Insurance Company was not liable to pay the amount of compensation since there was breach of terms and conditions of policy, under which vehicle was insured. At the end, prayed for dismissal of claim petition.

4. Learned Tribunal framed the following issues:

> "*1. Whether accident in the intervening night of 31.5.2011/ 1.6.2011, resulting in death of Rakesh Kumar, occurred on account of rash and negligent driving of Vehicle No.CH-38-T-4614 by respondent No.1? OPP*
>
> *2. Whether the claimants are entitled to compensation for death of Rakesh Kumar, if so, to what extent and from whom? OPR*
>
> *3. Whether the driving of offending vehicle was not holding a valid and effective driving licence on the date of accident and the vehicle was being driven in violation of terms and conditions of the insurance policy? OPR3*

4. Relief."

5. On appraisal of record/ evidence, learned Tribunal decided issue No.1 against the claimants. While deciding issue No.2, it was stated that since claimants failed to prove negligence of driver of Maruti Omni Ambulance No.CH-38-T-4614, therefore, claimants were not entitled to any compensation. Issues No.3 was ordered as redundant since issues No.1 and 2 were decided against claimants. Consequently, claim petition filed by the claimants for compensation of Rs.30.00 lakhs on account of death of Rakesh Kumar in accident in question was dismissed.

6. Learned counsel for appellant/ claimants submitted that there was collision between an unknown *trolla* which was parked on the road and the ambulance Omni Van in which the deceased was sitting as an occupant. He submitted that factum of accident was not in dispute. Learned Tribunal got over swayed with the fact that FIR was registered against an unknown *trolla* and the police had also filed closure repot.

6.1. Learned counsel for the appellants contended that if any of the occupant dies in a collision between two or more vehicle, then *qua* him, it is a case of composite negligence and claimants have option to sue and realize the entire amount of compensation from any of the joint tortfeasors. In support of his argument, he relied on the Apex Court judgment rendered in **Khenyei versus New India Assurance Company Limited**[1].

6.2. Learned counsel further contended that in the affidavit Exhibit PW4/A, eye-witness namely Ram Milan-PW4 had clearly deposed that at the time of accident in question, he was present at the spot and one Maruti Omni Ambulance came at a high speed/ rash and negligent manner and struck against unknown *trolla* parked on the road. He contended that said witness was thoroughly cross-examined but aforesaid version of his statement could not be shaken and was never rebutted. In support

1 **2015 (2) R.C.R. (Civil) 1019**

thereof, he relied on the Apex Court judgment rendered in **Anita Sharma and others versus New India Assurance Co. Ltd.**[2].

6.3. He contended that at the time of accident, deceased was 43 years of age and was working as a Sanitary Attendant in the Department of Histopathology, PGI, Chandigarh. Deceased was earning a sum of Rs.12,788/- per month. He submitted that claimants are entitled to compensation on account of death of Rakesh Kumar in the accident in question.

7. Vide order dated 25.07.2019, service of respondent No.1 was ordered to be dispensed with as he had been proceeded against *ex parte* before the learned Tribunal, at own risk of appellants.

8. On the other hand, learned counsel for respondent No.2/ Insurance Company opposed the prayer of appellants/ claimants and supported the impugned award contending that the same was based on cogent and convincing findings rendered on the issues framed by the learned Tribunal. He contended that appellants/ claimants are therefore, not entitled to any compensation.

9. I have heard rival contentions of learned counsel for the parties and perused the record.

10. Learned Tribunal ought to have been mindful of the legal proposition that standard of proof in enquiries to be made for deciding the compensation claims under the Motor Vehicles Act is preponderance of probabilities and not the requirement of strict proof beyond reasonable doubt as in the case of a criminal trial.

10.1. In the case in hand, claimants categorically pleaded that Rakesh Kumar was travelling in the vehicle in question at the time of accident. Satpal, owner of Ambulance (Maruti Omni car) was proceeded against *ex parte* as he did not appear despite service. He neither filed any written statement to the claim petition nor did he enter the witness-box during trial to deny involvement of his vehicle in the accident.

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2 **2021 ACJ 17**

The driver (Phool Singh alias Sagar) also died in the same very occurrence. No doubt, respondent No.2 (insurer) denied that vehicle was involved in the accident, but without stating anything as to the location of the vehicle at the relevant time. The denial of respondent No.2 is evasive, non-specific and vague and thus, tantamount to admission of the claimants' plea. Such a vague denial in fact merely shows that vehicle in question was actually involved in accident resulting into death of Rakesh Kumar.

11. Furthermore, the Insurance Company pleaded that final police report dated 14.06.2011 had been submitted by the local police stating that accident had occurred by chance without there being negligence on the part of any drivers of the vehicles involved. Basis thereof, the final police report recommended that FIR be closed. The said report which was though produced before the learned Tribunal and/ or relied upon by the insurer does not in any manner negate the claimants' version, atleast to the extent, that the vehicle in question was involved in the accident. On the contrary, if anything, it rather seems to support the claimants' version that Maruti van was in fact involved in the accident.

12. Let us now see the testimonies of the witnesses who deposed before the learned Tribunal, which in my view has been completed mis-construed by the learned Tribunal resulting in returning of wrong findings. PW4-Ram Milan is resident of village Dostpur, P.S. and Tehsil Gauriganj (Uttar Pradesh) and was residing at the relevant time in Chandigarh. Even on the date of his examination before the learned Tribunal, he was a resident of Chandigarh. During his examination-in-chief, he clearly stated that on the intervening night of 31.05.2011 and 01.06.2011, he was having his meal in Jamuliya Dhaba in the area of village Jamuliya P.S. Chawani and saw Maruti Omni Ambulance No.CH-38-T-4614 coming at high speed from the side of Gorakhpur. He further deposed that a little ahead of the Dhaba where he was sitting, the Ambulance hit an unknown parked/ stationary *trolla* truck. Resultantly, three

occupants of the Ambulance including the driver sustained injuries. One of them died on the spot itself. He also deposed that accident took place due to rash and negligent driving of Maruti Omni car. He further deposed that later he came to know of the name of occupant who had died at the spot which was disclosed to him as Rakesh Kumar. The entire of his cross-examination by learned counsel for respondent No.2 being relevant is reproduced herein below:-

> "*xxxxx by Sh. Rajesh Verma,*
> *Cl. For respondent No.2.*
> *It is incorrect to suggest that I was not present at the time of accident. It is incorrect to suggest that there was no fault of driver of Ambulance. It is incorrect to suggest that I am deposing falsely in order to help the claimants to get undue compensation from the insurance company. I have not informed the police about the accident. It is wrong to say that I am deposing falsely.*"

13. Form the aforesaid, it would be seen that testimony of PW4-Ram Milan showing his presence at the relevant time at the place of occurrence and his eye-witness account of the accident remained unshaken during cross-examination. Mere suggestions were put to him as aforesaid, which were emphatically denied by him. In any case, the said suggestions do not mean much and/ or have no effect on the credibility of his examination-in-chief. It would be further seen that no question was put to him and/ or any answer elicited to shatter his testimony. Merely because PW4 had not informed the police about the accident for registering the FIR, which was later on lodged by the father of the deceased, would also not justify discarding his testimony. No doubt, there was third occupant of the ambulance van which met with the accident, who was also injured as stated by PW4-Ram Milan, but the learned Tribunal fell in grave error in discarding the evidence of eye-witness PW-4 Ram Milan merely because third occupant of the van was not called and examined by the claimants. His non-summoning as a witness would not once again justify discarding the evidence of the eye witness (PW-4 Ram Milan) produced by the claimants on a mere presumption. In fact, respondent No.2, if it so wanted, could also have called the third occupant as a witness to refute the claimant's version and prove own case.

Having not done so, respondent No.2 cannot turn around to find fault with the evidence actually led by the claimants proving involvement of Maruti Ambulance van in the accident and negligence of its driver. There is no rebuttal to the aforesaid ocular evidence.

14. In view of my aforesaid discussion, to my mind, learned Tribunal seems to have misconstrued the evidence and it was not justified in discarding eye-witness account of PW-4.

15. As regards, testimony of RW1 (Manoj Kumar) who was summoned from the office of Registering and Licencing Authority, Chandigarh at the instance of Insurance Company, the driving licence Exhibit R6/7 of the driver Phool Singh was meant for two wheelers and four wheelers including Light Motor Vehicle valid from 15.05.2006 to 14.05.2026. The same again has been misread by the Tribunal. Firstly, it seems that Maruti van comes within the definition of Light Motor Vehicle and is even registered in the same category by the registering authority. Secondly, be that as it may, assuming it was not registered as Light Motor Vehicle, it is not disputed that mechanism and method of driving light transport vehicle is same as that of Light Motor Vehicle. In this context, reference may be had to Apex Court judgment rendered in **Mukund Dewangan versus Oriental Ins. Co. Ltd.**[3] wherein it was held that where the mechanism and method of driving of two categories of vehicles is same, driving licence valid for one category out of them is equally valid for both the categories. I, therefore, reject the contention of learned counsel for respondent No.2-Insurance Company that driving licence of Phool Singh was not valid for driving Maruti Omni Ambulance car, even if it is to be treated as a light transport vehicle. In the light of aforesaid, it is held that death of Rakesh Kumar was caused in the accident which happened due to rash and negligent driving of Maruti Ombi Ambulance car bearing registration No.CH-38-T-4614 being driven by Phool Singh (deceased) who

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3 **2017 AIR (Supreme Court) 3668**

also died in the same accident. Accordingly, finding of learned Tribunal on issue No.1 is reversed and same is decided in favour of claimants.

16. PW-1-Dilbahadur Thaka, Clerk, PGI Accounts Branch had deposed that deceased-Rakesh Kumar was working as Sanitary Attendant. He had also tendered salary certificates duly attested by accounts officer of the deceased-Rakesh Kumar as Exhibits P-1 and P-2. Perusal of the same shows that deceased-Rakesh Kumar was earning gross income of Rs.12,788/- per month at the time of accident in question.

17. Having heard learned counsel for the parties, and applying the principles in cases of **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**[4], **National Insurance Co. Ltd. v. Pranay Sethi**[5]**,** read with **Magma General Insurance Co. Ltd. Versus Nanu Ram alias Chuhru Ram and others**[6], I am of the view that claimants are entitled to receive compensation on account of death of Rakesh Kumar in motor vehicular accident, in the following terms:

Deceased	Rakesh Kumar
Date of accident/death	31.05.2011/ 01.06.2011
Age	43 years
Claimants	Wife, two sons and mother
Income of the deceased	Rs.12,788/- per month
Future prospects	30% (Rs.12,788+3,836) = Rs.16,624/-
Deduction in dependency for personal expenses	1/4th (16,624-4,156)=Rs.12,468/-
Annual dependency	Rs.1,49,616/- (12,468 x 12)
Dependency after deducting Multiplier of 14	Rs.20,94,624/-
Loss of Consortium (Parents, two sisters & brother)	Rs.44,000/- x 4 = Rs.1,76,000/-
Loss of estate & funeral expenses	Rs.16,500/- + Rs.16,500/- = Rs.33,000/-
Total amount of compensation to be paid	**Rs.23,03,624/-** (Rs.20,94,624/- + Rs.1,76,000/- + Rs.33,000/-)

18. Accordingly, instant appeal is allowed by reversing findings of learned Tribunal on issue No.1. Entire compensation as aforesaid shall be payable to

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[4]2009 (3) The Punjab Law Reporter 22
[5](2017) 16 SCC 680
[6]2019 (3) SCC (Cri) 153

claimants along with interest @ 7% per annum from the date of filing of claim petition till actual payment by apportionment as under:-

1.	Claimant No.1-Usha Devi widow of deceased	-	50%
2.	Claimants No.2 and 3 both sons of deceased	-	15%
3.	Claimant No.4-mother of deceased	-	20%

Claim shall be disbursed as aforesaid 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.

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

(ARUN MONGA)
JUDGE

May 26, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No