

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

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**FAO No.36 of 1992 (O & M)
Date of Decision : 14.3.2024**

*Veena Kumar and others**..... Petitioners**versus**Hira Lal and another**..... Respondents*

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vipin Kumar, Advocate, for
Mr. S.M. Sharma, Advocate, for the appellants
None for respondent no.1
Mr. Amrinder Sidhu, Advocate, for respondent no.2/
Insurance co.

TRIBHUVAN DAHIYA J. (ORAL):

This appeal has been filed by the claimants against the award, dated 5.9.1991, passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'), vide which the claim petition was dismissed.

2. Briefly, as per facts apparent on record, the deceased, who was coming on scooter towards his village on 5.5.1990, was hit by a car bearing registration no.DNB-7587, driven by the first respondent and insured by the second respondent. He fell down on the road, received multiple injuries, and later died in the hospital on that account. The Tribunal, while deciding Issue no.1 held that the claimants, who are wife, minor daughter and parents of the deceased, failed to prove that any accident had taken place due to rash and negligent driving of respondent/driver, and decided the issue against them. While returning finding on Issue no.2, the Tribunal held that the deceased died at the young age of thirty two years. But in the absence of any evidence about income, he was

considered a labourer earning ₹900 per month. A deduction of one-third from his monthly income was made on account of personal expenses, and an amount of ₹150 was further reduced on account of his taking meals from the common kitchen at home. Accordingly, the dependency of claimants was held to be ₹450 per month. By applying a multiplier of '16', total compensation was assessed to be ₹86,400. Since the accident had not taken place due to rash and negligent driving of the respondent/driver, the claimants were not awarded any compensation by dismissing their petition.

3. Learned counsel for the claimants has argued that the Tribunal's findings are not sustainable as the factum of accident having been caused due to rash and negligent driving of first respondent stands duly established on record by way of testimonies of the eye witnesses, Veena Kumari, PW-1, Dinesh Kumar PW-2 as well as the respondent's witness Ram Singh RW-1; photocopies of these statements are hereby taken on record as Annexures A, B and C. It is further contended that merely because FIR concerning the incident was not lodged, it cannot be said that accident did not take place. The amount of compensation assessed by the Tribunal is on the lower side and needs to be suitably enhanced. The dependency has been wrongly assessed, and the claimants have not been awarded any compensation on account of future prospects, loss of consortium and funeral expenses, etc.

4. Learned counsel for the Insurance company, on the contrary, contends that the findings are well reasoned and need not be interfered with by this Court. There is no cogent evidence on record establishing the accident or rash and negligent driving by the respondent/driver. He also

contends that the offending vehicle was, *in fact*, planted to take compensation from the insurance company. The accident in question has been caused while the deceased, who was riding the scooter, hit the bullock cart, and was not hit by the car. The testimony of PW-2 establishes the fact.

5. Arguments addressed by learned counsel for the parties have been considered.

6. A perusal of the statement of eye witness Dinesh Kumar, PW-2, shows that on the date of accident he was going to his village, when he spotted a person/deceased coming on scooter. One car and a bullock cart were also coming from the opposite side. The car, which was being driven at a high speed, hit the scooterist who fell on the road. In cross-examination, it has been stated that his statement was recorded by the police on the date of accident, though he was not summoned by the police thereafter. He did not remember the name of driver of the vehicle who was clean shaven by appearance. The scooter was being driven at a moderate speed and he did not remember its registration number, nor did he know the deceased's name. He has denied the suggestion that no accident took place with the car.

7. The respondent's witness, Ram Singh, RW-1, has testified that he was bringing the injured to the hospital. In cross-examination he states that the driver of the car gave him ₹20 asking him to come as and when called. The car was coming at a high speed and had hit the scooter. The scooterist fell down and received injuries. The car driver requested him for help in taking the injured to hospital. On seeing the photograph, affixed on his driving licence, he stated that this was the person who

caused the accident.

8. The testimonies of these witnesses duly establish the accident having been caused due to the car hitting the scooter, as also that the car was being driven rashly and negligently by the first respondent, whereas the scooter was being driven at a moderate speed by the deceased. Merely because PW-2 did not recollect registration number of the scooter, does not create any doubt about the veracity of his testimony. Nor does non-registration of FIR by the police puts it in question, as neither the witness nor the claimants can be at a disadvantage on that account. In fact, the factum of accident having been caused on account of the scooter being hit by the speeding car driven by the first respondent, has been duly established by the respondents' witness, RW-1, also. Much stress has been laid by learned counsel for the Insurance company on the response to a suggestion by PW-2, to contend that the accident, in fact, took place with the bullock-cart and not the car. That part of the statement reads, *'...it is wrong to suggest that in fact no accident took place with the car. In fact, the accident took place with the bullock cart in which injured was being taken to Ambala City side. The driver of the car simply stopped the car to carry the injured to some nearby hospital for treatment. It is wrong to suggest that it was on this count that the FIR was registered against the owner and driver of the car'*. A reading of the statement in totality makes it apparent that the witness testified the accident was caused by the speeding car which hit the scooter. A single line during suggestions contradicting entire statement of the witness, appears to be out of context and cannot undo the testimony as such. Besides, this solitary statement in itself does not establish that the accident has not been caused by the

speeding car rashly driven by the first respondent. The negligence stands substantiated by the testimony of RW-1 also. Consequently, there is no escape from concluding that the accident in question was caused due to rash and negligent driving by the first respondent, and the Tribunal's findings to the contrary are hereby set-aside. Issue no.1 stands decided in favour of the claimants.

9. So far as the assessment of compensation by the Tribunal on Issue no.2 is concerned, it needs to be suitably enhanced. The Tribunal has gone wrong in deducting fifty per cent of the deceased's earning towards personal expenses, and assessing dependency of ₹450 per month only. As per law laid down by the Supreme Court in *Sarla Verma and others v. Delhi Transport Corporation and another*, 2009 (3) RCR (Civil) 77, deduction of one fourth from the deceased's income towards personal and living expenses has to be made if the number of dependents is four to six. In the instant case, there are four dependents of the deceased, his widow, minor daughter and old parents, who are the claimants. Therefore, the dependency was required to be assessed by applying a cut of one-fourth on the deceased's income.

10. Besides, the amount of compensation under the conventional heads and future prospects has not been awarded as per law settled in *National Insurance Company Limited v. Pranay Sethi and others*, 2017 (4) RCR (Civil) 1009, wherein it was held that the claimants are entitled to an addition of forty per cent to the deceased's income towards future prospects, if he was not in a permanent employment. And reasonable figures under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000, ₹40,000 and ₹15,000

respectively. The aforesaid amounts should be enhanced at the rate of ten per cent every three years.

11. Accordingly, dependency of the deceased is to be assessed by deducting one-fourth of the amount, instead of one-half from his income; and compensation under the conventional heads and future prospects is to be given as per the settled law. As a result, the appellants/claimants become entitled to the following amount of compensation:

Sr. No.	Head	Compensation awarded by this Court
1	Annual income (900 x 12)	10,800
2	Future prospects @ 40% of annual income	4,320
3	Total income including future prospects	15,120
4	Deduction @ 1/4th towards personal expenses	3780 (15,120-3780 = 11340)
5	Multiplier (16), 11340 x 16	1,81,440
6	Loss of consortium (with 10% increase)	48400 x 4 =1,93,600
7	Funeral expenses (with 10% increase)	18,150
8	Loss of estate (with 10% increase)	18,150
9	Total amount of compensation	4,11,340

12. In view of the aforesaid discussion, the appeal is allowed and the Tribunal’s award dated 5.9.1991 is set-aside. The appellants/claimants are held entitled to compensation of ₹4,11,340 alongwith interest at the rate of seven per cent per annum, from the date of filing of the claim petition till its realisation. The liability to pay the compensation shall be joint and several on the respondents.

13. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(TRIBHUVAN DAHIYA)
JUDGE

14.3.2024
Ashwani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No