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

FAO-3842-2004 (O&M)

Date of Decision: 24.09.2024

Bijna Devi and others

...Appellants

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present:- Mr. Chetan Kapoor, Advocate,
for the appellants.

Ms. Mamta Singh Talwar, DAG, Haryana,
for respondents No.1 & 2.

Mr. R.C.Kapoor, Advocate,
for respondent No.4-Insurance Company.

SANJAY VASHISTH, J.(Oral)

1. The instant appeal has been filed by the legal representatives of deceased-Gian Singh Chauhan, who lost his life, in motor vehicular accident. Award dated 04.03.2004 passed by the Motor Accident Claims Tribunal (Adhoc) Fast Track Court, Patiala, (for short, 'the Tribunal'), has been challenged, whereby MACT Case No.11 of 03.04.2002 (25T/02.09.2003) was dismissed on account of death of Gian Singh Chauhan.

2. On the fateful day i.e. 17.12.2001, deceased-Gian Singh Chauhan was coming from Rajpura in the bus No.HR-55-9134 of Haryana Roadways of Gurugram Depot, which was going to Katra via Delhi. When this bus reached at the place of occurrence i.e. Sirhind-Patiala road near



Faridpur Tehsil Rajpura, District Patiala, Gian Singh Chauhan was getting down from the bus but before he could fully get down from the bus, driver of the said bus i.e. respondent No.3 started and drove the bus suddenly at a very high speed. Due to the rash and negligent act/driving of the said driver, Gian Singh Chauhan fell down on the road and suffered multiple injuries on his head, mouth and other parts of the body resulting into his death at the spot. The said accident was witnessed by one Gurwinder Singh S/o Sewa Singh, owner of the Dhabha and also by one Sukhbir alias Ghola. Gurwinder Singh reported the matter to the police and consequently, FIR No.562 dated 17.12.2001 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860, against respondent No.3 at Police Station Sadar, Rajpura.

3. Claimants filed their claim petition by pleading that deceased-Gian Singh Chauhan was the sole bread winner in the family and they were entirely dependent upon him.

4. In the written statement filed by respondent No.2-owner of offending bus apart from the formal objections regarding the maintainability etc., it was pleaded that no such accident took place and the averments made in the claim petition were denied.

In the written statement filed by respondent No.3, driver of the offending bus No.HR-55-9134, denied the happening of accident and the fact was also denied that deceased-Gian Singh Chauhan could not step down from the bus and that it started suddenly, resulting into the death of Gian



Singh Chauhan. Even the factum of witnessing of the occurrence by Gurwinder Singh and Sukhbir Singh was also denied.

In the written statement filed by respondent No.4 (National Insurance Company Ltd.), it was pleaded that the driver of the offending bus was not holding a valid driving licence at the time of the alleged accident and that the bus in question was not having a valid Registration Certificate, route permit and fitness certificate at the time of accident.

5. Considering the pleadings of the parties, learned Tribunal framed the following four issues:-

1. Whether respondent no.3 Madan Lal while driving Bus No.HR-55-9134 on 17.12.2001 at about 7:45 P.M. at Sirhind Rajpura Road, Rajpura (owned by respondents no.1 and 2) so rashly and negligently near village Faridpur and caused the death of Gian Singh? OPP.
2. If issue no.1 is proved, to what amount of compensation the claimants are entitled to and from whom? OPP.
3. Whether respondent no.4 was holding a valid and legal driving licence? OPP.
4. Relief.

6. PW1-Gurwinder Singh, the prime witness in the case, who as an eye-witness to the accident in question, got aforesaid FIR No.562 dated 17.12.2001 lodged against respondent No.3. As per his deposition, Gian Singh Chauhan had hardly come down from the bus but the driver of bus



drove the bus at a high speed and resulting thereto, Gian Singh Chauhan fell down from the bus.

7. To authenticate the version of PW1-Gurwinder Singh, another witness Tripan Singh also appeared as PW3, who informed that after about half an hour of accident, he received a telephonic message from PW1-Gurwinder Singh, who told that Gian Singh Chauhan had come to see him but had died due to the rash and negligent driving of the bus driver. From the deposition of PW3-Tripan Singh, the presence of PW1-Gurwinder Singh is further substantiated. However, in Paragraph No.11 of the impugned award, learned Tribunal has recorded its finding that the claim petition is not worth to be accepted for the reason that **Gian Singh Chauhan might have fallen from the bus because he started coming down from it while it was in motion.**

8. For reference, findings recorded by learned Tribunal in Paragraph No.11 is reproduced herein-under:-

“11. However the contention of the Ld. Counsel for the claimants is not tenable because the manner in which the accident occurred can warrant no fastening of the blame upon the bus driver in as much as, it was when the deceased was trying to get down from the bus that he (Gian Singh) is said to have fallen and sustained injuries. Even if it is assumed that Gian Singh was trying to get down from the bus, it was incumbent upon him to allow the bus to stop before trying to come down and if indeed the bus had stopped, it cannot be accepted that the bus would suddenly take off at such speed that Gian Singh would have fallen from it on that account alone. More so PW3 Tripan Singh has deposed that Gurwinder Singh had told him that the driver of the bus was driving the bus rashly and Gian Singh fell from the bus and died. So there was no negligence on the part of respondent no. 3. So in this



view of the matter I am fortified by a decision cited as Gurmail Kaur and others Versus General Manager, Pepsu Road, Transport Corporation Patiala and another 1987-1 Punjab Law Reporter 559. So this issue is decided against the claimants.”

9. While defending the findings recorded by learned Tribunal, Mr. R.C.Kapoor, Advocate, representing respondent No.4-Insurance Company, submits that the same have been recorded correctly by making a true appreciation of the evidence, as there is no material available on record to reach to the conclusion that the bus had actually stopped, before Gian Singh Chauhan started coming down from it.

10. I have considered the facts and circumstances and the arguments addressed by both the parties and also the findings recorded by learned Tribunal.

11. This Court is surprised to see that the State of Haryana (respondents No.1 and 2) has taken the plea of false FIR being registered with the help of the local police, with a purpose of receiving a huge amount of compensation. Though, it is also made clear that the bus of the State of Haryana is already insured with the National Insurance Company Limited-respondent No.4. This Court has also examined the stand taken by the respondents wherein the accident in question has been denied. Even the reply filed by respondent No.4-Insurance Company goes to the extent of stating that the driver (respondent No.3) was not having valid driving licence and that the bus in question did not have valid Registration Certificate, route permit and fitness certificate at the time of accident. It is more surprising



that, on the one hand, each and every respondent has attempted to wash out their hands from statutory obligation by denying the happening of any such accident or involvement of bus in question. On the other hand, no evidence has been led in regard to the fact that driver was not having any valid licence or that the bus in question was not having any Registration Certificate, route permit and fitness certificate etc.

12. Not only this, learned Tribunal has also drawn its own theory in regard to the manner of happening of accident and has given its findings which are based upon the assumptions, without there being any clear evidence on record. At the same time, in Paragraph No.9 of the award, deposition of the star witness Gurwinder Singh (PW-1) has been considered. It has been recorded by learned Tribunal that *“Gian Singh tried to drop from the bus at his Dhabha and that Gian Singh had hardly dropped from the bus but the driver of that bus drove the bus at a high speed and that immediately after fall from the bus, Gian Singh received injuries in his head and died at the spot”*.

13. Once deposition has been considered, it was to be examined as a whole. Undoubtedly, the bus driver appears to be rash and negligent in his action, who as per the deposition of PW1-Gurwinder Singh, stated that the driver restarted the bus and drove it at a very high speed, creating a situation of havoc for the passenger, who was trying to alighten from it. It is the lawful duty of the driver and owner of the bus to allow the passengers alight from the bus after it has completely stopped and is in a zero motion



position. Herein the situation seems to be otherwise. Not only this, despite registration of the criminal case against the driver of the bus, the factum of accident has been denied by respondents No.1 to 3, including the driver and the insurance company. Moreover, neither the driver nor conductor of the bus appeared in the witness-box to support their stand taken in the written statement. Therefore, there was no occasion with the learned Tribunal to accept the plea taken by the respondents, which in any case, is self contradictory as stated in the written statements filed by them.

14. Considering all the aspects and the observations made and recorded herein-above, I reverse the findings under Issue No.1 and hold in specific that Gian Singh Chauhan lost his life due to the rash and negligent driving of respondent No.3-Madan Lal Ratra, while he was driving the bus No.HR-55-9134 on 17.12.2001 at about 07:45 P.M at Sirhind-Patiala road near Faridpur Tehsil Rajpura, District Patiala, owned by the Haryana Roadways.

15. Just Compensation:

Now proceeding further for the purpose of awarding of '*just compensation*', Counsel for the appellants submits that the Ld. Tribunal has erred in assessing the income of the deceased. Ld. Tribunal has assessed income of the deceased-Gian Singh Chauhan as Rs.2,700/-per month, as a laborer. In fact, he has been working as a cook in a Dhaba and earning Rs.5,000/- per month.

No evidence has been led to prove that deceased was working



as cook and earning Rs.5,000/-per month In the absence of any evidence, This court considers deceased as an unskilled worker and accordingly, applies the minimum wage prevalent on the date of death of the deceased. Therefore, the monthly income of deceased has been correctly assessed by the Tribunal as Rs.2,700/- per month.

From the evidence on record, it stands established that the deceased was 27 years of age and as per Pranay Sethi's case (supra), addition of 40%, on the count of 'future prospects' has to be made and total amount of earnings comes to be Rs.2,700/- + Rs.1,080/- (40% of Rs.2,700/-)=Rs.3,780/- per month.

Out of the same, keeping in view the number of dependents i.e. four- widow, parents of deceased, and a minor son, $\frac{1}{4}$ th is to be deducted on account of 'personal expenses', which is to the extent of Rs.945 /- ($\frac{1}{4}$ th of Rs.3,780/-) and the residue amount works out to be Rs.2,835/- per month and annual comes to be Rs.34,020/- (Rs.2,835/- X 12).Considering the age of the deceased as per **Smt. Sarla Verma & Ors. Vs Delhi Transport Corporation & Anr., (2009) 6 SCC 121**, the appropriate multiplier to be applied in the present case is '17' and after, so applying this multiplier, the loss of dependency comes to be Rs. 34,020/- x 17 = Rs.5,78,340/-.

Ld. Counsel for the respondent-Insurance Company contents that the Parents of the deceased-respondent no.3 and 4 were not dependent over the deceased; therefore, they have no right to claim compensation for the death of their son.



Considering the aspect that Appellants No.3 and 4 related as father and mother of the deceased were aged about 65 years and 63 years respectively at the time of filing of the claim application, without there being any material on record, it can't be assumed that at such an elderly/advanced stage of life, a father and mother would not need support of their son.

Therefore, argument of Insurance Company that father and mother have no right to claim compensation for death of their son is not acceptable to the view point of this court.

Rest of the parameters are assessed and calculated in accordance with the judgment of this Court titled as **Sangtari Muleem v. Karnail Singh, (FAO No. 2538 of 2006, D/d. 07.07.2023) : Law Finder Doc Id # 2270482**, which is in consonance with the settled proposition of law laid down by the Apex Court in **Pranay Sethi's case (supra)**, and **Smt. Sarla Verma's case (supra)** and **Smt. Anjali and others v. Lokendra Rathod and others, 2023 (1) R.C.R. (Civil) 229 : Law Finder Doc Id #2081014**.

Claimants are also entitled for Rs. 25,000/- as compensation under the head of funeral expenses and Rs.20,000/- towards loss of estate. Loss of consortium is to be awarded to the tune of Rs.48,400 /- to each of the claimants (widow, minor son and parents of deceased) in the instant appeal.

16. For the sake of convenience, a comparative table of the compensation as assessed and calculated by Ld. Tribunal and this Court is

shown below in a tabular form:

Sr. No.	HEADS	Compensation assessed and not by the Ld. Tribunal	Compensation awarded by the High Court
1.	Income	Rs.2,700/-p.m.	Rs.2,700/-p.m.
2.	Future Prospects	Nil	Rs.1,080(40% of Rs.2,700/-)
3.	Deduction towards personal expenses	Rs.900/- (1/3 rd of Rs.2,700)	Rs. 945/-(1/4 th of Rs.2,700 +Rs.1,080)
4.	Total Annual Income	Rs.21,600 /- (Rs.1,800 X 12)	Rs.34,020/- (Rs.2,835 X 12)
5.	Multiplier (Age 27 Yrs.)	13	17
6.	Loss of Dependency	Rs.2,80,800	Rs.5,78,340/-
7.	Funeral Expenses	Nil	Rs.25,000/-
8.	Loss of Estate	Nil	Rs.20,000/-
9.	Loss of Spousal Consortium	Nil	Rs. 48,400 /-
10.	Loss of Parental Consortium	Nil	Rs. 48,400 /-
11.	Loss of filial Consortium	Nil	Rs.96,800/- (Rs. 48,400 /- X 2)
12.	Total Compensation to be Paid	Rs.2,80,800/-	Rs.8,16,940/-

17. Thus, keeping in view the aim of this beneficial legislation of providing relief to the victims or their families, the total compensation payable to the appellant (petitioner/claimant) is calculated as **Rs.8,16,940/- (Rupees Eight Lakh Sixteen Thousand and Nine Hundred Forty only)**. Let compensation amount be paid to the claimants within a period of three months from the date of this order, along with interest at 7.5% per annum from the date of filing of claim petition till the date of payment of



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compensation to the appellants (petitioners/claimants).

18. In view of the above recorded terms, appeal is hereby **allowed**.

Resultantly, Award dated 04.03.2004 passed by the Tribunal is set-aside and MACT claim petition No.11 of 03.04.2002 is hereby allowed.

24.09.2024
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(SANJAY VASHISTH)
JUDGE

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