**207**

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

**FAO-2505-2005(O&M)**
**Date of Decision:13.09.2024**

Rakesh Devi and others . . . APPELLANTS

**Vs.**

Mahabir and others . . . . RESPONDENTS

***

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

****

Present: Mr. Tara Chand Dhanwal, Advocate for the appellants.

Mr. Sandeep Singh, Advocate and
Mr. Vipin Kumar, Advocate for respondent No.1.

Mr. Suvir Dewan, Advocate for respondent No.3.

****

**SANJAY VASHISTH, J.**

**1.** The present appeal has been filed by Appellants/claimants /dependents of deceased Chhotu Ram (hereinafter referred to as claimant) -1. Smt. Rakesh Devi(widow) , 2. Kamlesh (daughter) 3. Santosh(daughter) 4. Amit (son) and, 5. Chawli Devi (mother) against the Award dt. 19.01.2005 passed by Motor Accident claims Tribunal, Hisar (Ld, Tribunal) wherein the claim petition has been dismissed on the ground that the petitioners/claimants were unable to prove that the Driver( Respondent no.1) of the Maruti car HR-20C/0857 was rash and negligent in driving and that the car of Respondent no.1 is factually the offending vehicle, involved in the accident.

**2.** As per pleaded case of appellants/claimants ,on 19.03.2002 complainant Satybir (brother of deceased Chhotu Ram) went to bus stand of village Panihar Chak to give meal to his brother (deceased) who went there to attend the animal fair . One Aanganwari worker who is a daily passenger from Hissar to Panihar Chak told about a young man lying dead at a distance of

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document

2/3 killa from Panihar Chak bus stand and complainant identified the body on the spot.

Resultantly, FIR No. 209, dated 20.02.2002 u/s 279/403-A IPC at P.S. Narwala, District Jind ,was registered against respondent no.1

It is alleged by petitioner no.1 that the deceased was 35 years old, worked as an Agriculturist and was working as Munshi in a brick kiln.

**3.** Respondent no.1 and 2 pleaded in their written statement that their vehicle HR20-C/0857 is not the offending vehicle in the present case and in fact the accident took place due to the coming of Blue buck (Neel cow) in front of their maruti car. Respondent no.3- Insurance Company stated that Respondent no.1 was not driving the vehicle nor was having a valid Driving License at the time of accident and also the fitness of the car had expired.

From the pleadings of the parties the following issues were raised by ld. Tribunal:

1. *Whether the accident in question resulting in death to Chhotu Ram took place due to rash and negligent driving of offending Maruti Car bearing registration no.HR-20C/0857 driven by respondent no.1*
2. *What amount of compensation and from whom the petitioners are entitled to recover the amount ?*
3. *Relief*

**4.** While deciding issue no.1&2, Ld Tribunal found that PW3-Pradeep s/o Dhup Singh, the only eye witness examined by petitioner, categorically stated that he cannot say whether Chhotu Ram or some other person had actually died on account of the accident, while he and his son were coming in Maruti car No. HR-20C/0857 driven by MahabirSingh(respondent no.1) from Siwani to Hisar. PW4 Rajender-Car Mechanic, with whom PW3 Pradeep

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document

alleged to have disclosed the accident also stated that he does not know as to who had met with the accident. Statement of PW2 Mukesh Kumar, Criminal Ahlmad admitted the pendency of criminal case against Respondent no.1 in FIR NO.209 dt. 20.03.2002. But Insurance company rebutted this fact that tribunal is not binding upon criminal court conviction and reliance is placed upon **Ram** ***Karam s/o Shri Nand Lal &ors Vs. Zile Singh &ors 2001(3)PLR125*** .

The onus to prove negligence lies upon claimants, who has to discharge their burden. After perusing the evidence, Ld.Tribunal was of the considered view that there is no positive and legal evidence on the file to show that the offending car was involved in the accident, therefore, the noose of liability cannot be fastened on respondents and thereby dismissed the claim petition.

**5**. Appellant submits that the Ld.Tribunal has not appreciated the independent eye witness PW3 Pradeep Kumar properly, as he clearly stated that Respondent no.1. (Mahabir singh) was driving the Maruti car No. HR-20C/0857 rashly and negligently ,and when they reached a killa ahead of Panihar Bus Stand, he lost control of the said car,and a man coming on foot from Hisar side, got stuck in left side of the bumper,but Mahabir(driver/respondent no.1) did not stop the car and sped away. Statement of PW4 Rajender (car mechanic) confirms the fact of the car being hit on the left side as he had repaired the left - front bumper, mud guard, headlight, indicator.

PW2 Mukesh Kumar (Criminal Ahlmad) has proved on record that after the registering of FIR (Ex P1), on the complaint of Satybir (brother of

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document

deceased), investigation was conducted and challan Ex.P-2 was filed against Respondent no.1 .

No other accident was reported on that day at that place of accident as described by PW3 .It has been so held by this Hon'ble Court ***in Girdhari lal vs. Radhey Sham 1993(2) PLR 109*** that where driver was being tried on account of rash and negligent driving, it was prima facie safe to conclude that the accident occurred on account of rash and negligent driving of driver.

Therefore submits that the fact, as to how death of a person had taken place, is proved to be because of rash and negligent driving of Respondent no.1 who, at relevant time was driving the offending vehicle (Maruti car No. HR-20C/0857 ) owned by respondent no.2, which is insured by the Respondent no.3.

**6.** I have gone through the record apart from hearing of the submissions addressed by the counsel from both the sides. Thereupon, this Court is of the view that to address the plight of the victim through the provisions of the Act of 1988, strict proof is not required for reaching to the conclusion as to whether the driver of the vehicle was rash and negligent in his driving or not. A prima facie view can be formed based upon the findings of police investigation initiated after registration of the FIR and the conclusion arrived at by the agency. In the cases where the prime object is to award the adequate amount of compensation to the victim/injured/dependents of the deceased under the Motor Vehicles Act, negligent driving is not to be proved beyond the shadow of doubt. Registration of the criminal case and its final conclusion of involvement of the vehicle, is enough to hold that the vehicle in question is the same from which the injury has been suffered in an accident.

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document

Thereupon, it would be decided whether such injury is due to the rash and negligent driving of its driver or not.

To reach to the said conclusion, this court is guided by the law cited by the appellants in ***Girdhari lal's case (supra)*** and finds that by reading the evidence of PW2-Mukesh Kumar, PW3-Pradeep and also of PW4-Rajinder (car mechanic), involvement of the Maruti Car bearing No. HR-20C/0857 is well established. Even from the statement of PW3-Pradeep and PW2-Mukesh Kumar (Criminal Ahlmad) , it is safe to conclude that the driver of the said car was also rash and negligent in his driving.

Thus, to the viewpoint of this Court, finding on issue No.1 is required to be reversed. Accordingly, it is held that " ***the accident in question resulting in the death of Chhotu Ram took place due to rash and negligent driving of offending Maruti Car Bearing Registration No. HR-20 C/0857".***

**The Next Question requires to be decided is issue No.2 i.e. adequate amount of compensation and who has to pay it.**

**7.** Ld.Tribunal has failed to give its findings as to income, multiplier and proposed compensation admissible to the appellants/claimants.

Appellant no.1 Rakesh Devi has stated that the deceased was just 35 years old and was earning Rs. 3500/month by working in a Brick Kiln and also used to earn Rs 12000/- per month from Agriculture.

**8.** I have gone through the impugned award and the findings mentioned therein, and also heard learned counsel for the parties. There is no doubt that in a situation where the different Courts at different times were at diversions in their opinion and in the absence of any clarification by the law makers despite recommendations by the Hon'ble Apex Court, all the major issues were referred to the larger Bench, and accordingly, Constitution Bench was

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document

constituted in **National Insurance Company Limited v. Pranay Sethi and Others 2017 (4) RCR (Civil) 1009:Law finder Doc ID #918174**. Thus, for the purpose of reaching out to appropriate amount of compensation for adjudging the rights of the claimants, guidelines laid down in the judgment of the Constitution Bench in **Pranay Sethi's case (supra),** would help the Courts.

**(i)** **Income :** Appellant no.1 has stated that the deceased husband was agriculturist and munshi at a brick Klin, however, no evidence with respect to same has been produced by her. Therefore for assessing the income of the deceased,this court considers the deceased as an unskilled worker and accordingly, applies the minimum wage prevalent on the date of death i.e on 19.03.2002. in the state Haryana.Therefore ,the income of deceased is assessed as Rs. 2,150/- per month.

**(ii)** **Future Prospects:** Age of the deceased is already held as 35 years and as per Pranay Sethi's case (supra), addition of 40%, on account of 'future prospects' has to be made and total amount of earnings comes to Rs.2,150+860(40% of Rs.2,150/-)=Rs.3,010 /- per month.

**(iii)** **Deduction Towards personal expenses :** Out of the same, keeping in view the number of dependents i.e. mother,widow and three children,**one-fourth** is to be deducted on account of 'personal expenses', which is to the extent of Rs.752.5 /- and the residue dependency amount works out to be (Rs.3,010-Rs.752.5) Rs.2,257.5/- per month.

**(iv)** **Annual Income:** Consequently, annual income comes to be (Rs.2,25.5 x12) Rs.27,090/-per annum.

**(v)** **Multiplier :** 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 '16' and after, so applying this multiplier, the loss of dependency comes to be Rs.27,090 x 16=Rs.4,33,440/-.

**(vi)** 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) : LawFinder 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.**

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document

**Lokendra Rathod and others, 2023 (1) R.C.R. (Civil) 229 : LawFinder Doc Id #2081014.**

a) **Funeral expenses** :Rs. 25,000/-
b) **Loss of Estate :** Rs. 20,000/-
c) **Loss of consortium :** Loss of Consortium is to be awarded to the tune of Rs.48,400/- each to all of the claimants in the instant appeal.

**9.** For the sake of convenience, a comparative table of the compensation as assessed and calculated by Ld. Tribunal and this Court is produced below in a tabular form:

| **Sr.no** | **HEAD** | **Compensation awarded by the Ld. Tribunal** | **Compensation awarded by the High Court** |
|---|---|---|---|
| 1. | Income | Nil | Rs.2,150 |
| 2. | Future Prospects | Nil | Rs.860 (40% of Rs.2150) |
| 3. | Deduction towards future expenses | Nil | Rs.752.5/- (1/4$^{th}$ of Rs.2,150 +Rs.860) |
| 4. | Total Annual Income | Nil | Rs.27,090 |
| 5. | Multiplier(age 35 yrs) | Nil | 16 |
| 6. | Loss of Dependency | Nil | Rs.27,090x16= Rs.4,33,440/- |
| 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.48,400x3= Rs.1,45,200/- |
| 11. | Loss of Filial Consortium to parents | Nil | Rs.48,400/- |
| 12. | Total Compensation | Nil | Rs.7,20,400 (rounded off 7,20,440) |

Accordingly, the claimants are entitled for a total compensation of **Rs.7,20,400/- ( Rupees Seven Lakhs Twenty Thousand and Four hundred only).**

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document

**10**. By going through the findings recorded by learned Tribunal in regard to the objection taken of not holding the valid driving license by respondent No.1, nothing substantial has been observed. Therefore, this Court holds that no such material/evidence has been produced by the Insurance Company to substantiate its plea that respondent No.1 was not holding any valid driving license. Consequently, in all eventuality it would be assumed that respondent No.1 might be holding the valid driving license and therefore, all the respondents would be liable to make the payment of compensation jointly and severally.

**11.** Let the complete compensation amount as observed hereabove Rs.7,20,400/- (Rupees Seven lakhs twenty thousand and four hundred) be paid to the appellants/claimants within three months from the date of this order alongwith interest @ 7.5 % per annum from the date of filing of the claim petition till actual realization of the complete compensation amount.

Accordingly, with the terms recorded hereabove the present appeal is allowed and consequently, impugned award is hereby set aside by reversing the findings as recorded hereabove.

**(SANJAY VASHISTH)**
**JUDGE**

**13.09. 2024**
*Rashmi*

*1. Whether speaking/reasoned?* ***Yes/No***
*2. Whether reportable?* ***Yes/No***

RASHMI
2024.10.22 16:20
I attest to the accuracy and
integrity of this document