

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

227

FAO-1088-2006 (O&M)

Date of Decision: October 04, 2024

State of Haryana and others

.....Appellants

Vs.

Anamika Mehra and another

.....Respondents

227-A

FAO-1089-2006 (O&M)

State of Haryana and others

.....Appellants

Vs.

Manu Bhandari and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr.Harish Nain, AAG, Haryana for the appellants.

None for the respondents

SUDEEPTI SHARMA J. (ORAL)

Since both the claim petitions of MACT case No.42 of 2000 and MACT case No.43 of 2000 are decided by a common award dated 11.11.2005, this judgment shall dispose of the above said two appeals as one vehicle of the department i.e. bus bearing registration No.HR-05-PA-0126 (hereinafter referred as offending vehicle) was involved in both the cases.

2. The instant appeals have been preferred by the State of Haryana for setting aside the award dated 11.11.2005 passed by the learned Motor Accident Claims Tribunal, Panchkula (for short, 'the Tribunal'), whereby in the claim petition No.42 of 2000 titled as *Manu Bhandari Etc Vs. Tasvir Singh*

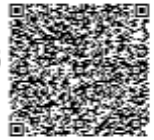


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claimants in claim petition No.43 of 2000 titled as *Mrs. Anamika Mehra etc. Vs. Tasvir Singh* were awarded compensation to the tune of Rs.8,45,000/- alongwith interest @ 7.5% per annum.

FACTS NOT IN DISPUTE

3. The consolidated facts of both the cases as mentioned in the claim petitions are that on 1.3.1998, Sh.K.B.Bhandari and Mrs. Kamlesh Bhandari (Now both deceased) were going from Chandigarh to Delhi in a Maruti Car bearing registration No.CH01-A-0008. At about 4.00 p.m., when they reached near New Moga Hotal near Kahanpur Kohllan on their extreme left side at a very slow speed, then a Haryana Roadways bus bearing registration No.HR-05A-0126 driven by Tasvir Singh driver-respondent no.1 came at a very high speed driven in a rash and negligent manner from Pipli side and hit Maruti Car of Mr.K.B.Bhandari and Mrs. Kamlesh Bhandari on wrong side. Due to forceful hitting of the bus to Maruti Car, Mr.K.B.Bhandari and Mrs. Kamlesh Bhandari fell out of the said car and died at the spot. The accident took place due to rash and negligent driving of bus driver driven by respondent No.1. This accident was seen by Bal Kishan son of Lal Chand and passengers of bus No.HR-05-PA-0126 and several other persons present at the spot. FIR No.206 dated 1.3.1998 under sections 279/304-A IPC regarding this accident was registered at Police Station Sadar Thanesar against respondent No.1. Mrs. Kamlesh Bhandari (deceased) was 58 years old and she was self employed earning Rs.15000/- per month from private tuitions and also from the garment business by bringing clothes from Ahmedabad and selling the same at Panchkula and Patiala. Mr.K.B.Bhandari (deceased) was Senior Advocate in Punjab & Haryana High Court, Chandigarh and he was earning Rs.50,000/- per month approximately as he used to conduct cases on behalf of several



companies besides dealing in service and civil matters and hence, the first claim petition has been filed by the claimants for compensation of Rs.30 Lacs on account of death of Smt.Kamlesh Bhandari and second claim petition has been filed for compensation of Rs.50 Lacs on account of death of Sh.K.B.Bhandari under section 166 of the Motor Vehicle Act, 1988 (hereinafter referred as the Act).

3. Upon notice of the claim petitions, respondents appeared and denied the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. *Whether the accident in question took place due to rash and negligent driving of bus No.HR05-PA-0126 by respondent no.1? OPP*

2. *If issue No.1 is proved, whether the claimants are entitled to compensation on account of death of Smt.Kamlesh Bhandari and Sh. K.B.Bhandari in the said accident, if so, to what amount and from whom? OPP*

3. *Whether the vehicle in question was being driven by respondent No.1 without having a valid and effective driving licence in violation of terms and conditions of insurance policy? OPR-3*

4. *Relief*

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal in claim petition No.42 of 2000 titled as ***Manu Bhandari Etc Vs. Tasvir Singh etc.*** awarded compensation to the tune of

Rs.1,97,000/- to the claimants and in claim petition No.43 of 2000 titled as



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Mrs. Anamika Mehra etc. Vs. Tasvir Singh awarded compensation to the tune of Rs.8,45,000/- to the claimants alongwith interest at the rate of 7.5% p.a., which was to be paid by all the respondents jointly and severally. Hence, the appellant-State of Haryana filed the present appeal for setting aside the award of the Ld. Tribunal.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the appellant contends that Ld. Tribunal has erred in law in passing the impugned award while relying upon the statement of PW8-Bal Kishan, who is interested witness.

i) Further, the Ld. Tribunal has erred in law in holding that the accident took place due to rash and negligent driving of the driver of the bus.

ii) Further he contends that the compensation awarded to the appellants/claimants is on the higher side and prays that the present appeals may be allowed and the award dated 11.11.2005 passed by the Ld. Tribunal, Panchkula, be set aside.

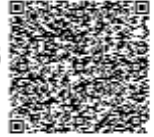
7. I have heard learned counsel for the appellant-State and perused the whole record of this case.

9. The relevant portion of the award dated 11.11.2005 is reproduced as under:-

“9. Both these issues are inter-connected and taken up together for adjudication.

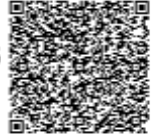
PW1 Shiv Ram Head Constable Police Station Sadar Thanesar, Kurukshetra has proved copy of FIR Ex.P1 from the original record brought by him.

10. PW2 Chander Mohan Ahlmad in the court of ACJM, Kurukshetra brought the record of case FIR no.206 Dated 1.3.98



under sections 279/304-A IPC Police Station Sadar Thanesar and as per record, Tasvir Singh son of Chhote Ram has been charge sheeted by the ACJM, Kurukshetra on 14.10.98 under sections 279/304-A IPC and he is facing trial and the case was fixed for prosecution evidence. He further proved Postmortem reports Ex.P2 of Smt.Kamlesh Bhandari and Ex.P3 of Kulbhushan Parkash Bhandari from the original record. He stated in cross-examination that he had no personal knowledge about this accident.

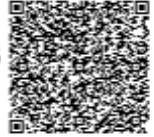
11. PW3 Ved Parkash son of Ram Nath resident of Village Rattangarh, near Shahbad Markanda, an eye witness of the accident filed his affidavit Ex.P4 deposing therein that on 1.3.98 at about 4.00 p.m., he was coming back from Karnal to Shahbad after getting treatment of his Bhabhi. When they reached near New Moga Hotal near Kahanpur Kohlian village, at that time, a Car bearing registration no.CH01A-0008 was going from Chandigarh side to Delhi side at a very slow speed on its extreme left side and bus bearing registration no.HR05-PA-0126 in which he was travelling was driven by Tasvir Singh driver in a rash and negligent manner and at a very high speed. While overtaking another bus, it went on the wrong side and struck to car No.CH01A-0008. Car driver tried to save the accident by taking his car on the extreme left side of the road but due to rash and negligent driving of respondent no.1, this accident occurred and all the passengers including he came down and he saw that the occupants of the car namely K.B. Bhandari and Kamlesh



Bhandari, whose names came in his knowledge later on, expired on the spot and on the back side of the seat briefs and envelopes in the name of K.B.Bhandari alongwith his address and telephone number were lying. He rang up at the residence of late K.B.Bhandari and intimated about the occurrence. He after some road. He was driving the bus at a speed of 60 Km per hour and he saw that a Maruti Car bearing no.CH01A-0008 was coming with a high speed on which side he had to go. He had seen the car at a distance of 100 yards and he took his vehicle on the left side of the footpath and the car driver hit his car on the driver side of th bus and this accident took place due to negligence of the car driver and there was no fault on his part. Due to accident, right wheel of the car jammed and the car took a turn towards Chandigarh side. The car driver and a lady sitting in the car died at the spot and the police reached at the spot and he has been falsely implicated in this case.

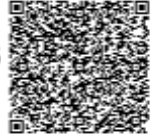
16 RWI Tasvir Singh Driver (Respondent no.1) stated in cross-examination that he did not make any complaint to the senior police officer for falsely implicating in this case by the police but he made a complaint to his General Manager. He admitted in cross- examination that a criminal case was pending against him regarding this accident in Kurukshetra Court but he has been acquitted in that case.

17. If statement of PWI Shiv Ram Head Constable, PW2 Chander Mohan, PW3 Ved Parkash, PW5 Manu K.Bhandari and PW8 Bal Kishan are read in corroboration with documents Ex.Pl copy of



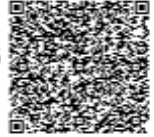
FIR. Ex.P2 copy of postmortem report of Smt.Kamlesh Bhandari and Ex.P3 copy of Postmortem report of Kulbhushan Bhandari, it is established that this accident causing death of both the deceased took place due to rash and negligent driving of offending bus driven by respondent no. 1.

18. It was argued on behalf of respondent no.1 that respondent no.1 has been acquitted by the Criminal Court under sections 279/304-A/427 IPC as per judgment Ex.R1. As per statement of RWI Tasvir Singh, he has not denied the accident but claimed that this accident was caused due to negligence of deceased Kulbhushan Bhandari and this fact has admitted by an eye witness of the accident on whose statement criminal case was registered being PW8 Bal Kishan. This argument of learned counsel for respondent no.1 has no weight reason being that FIR pertaining to this accident Ex.P1 was recorded against respondent no.1 on the statement of PW8 Bal Kishan and in original version of the FIR, it has specifically stated by Balkishan that this accident was caused due to rash and negligent driving of bus no.HR05-PA-0126 driven by respondent no.1. PW8 Bal Kishan in his cross-examination has stated that in his view there was fault of car driver in this accident. This statement of PW8 Bal Kishan must be read in totality and if statement of this witness is read in totality, it is established that this accident causing death of both the deceased took place due to rash and negligent driving of offending bus driven by respondent no. 1. In his examination-in-chief, PW8 Bal Kishan has specifically stated that the bus in question of Haryana Roadways



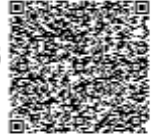
no.HR05-PA-0126 came with a high speed and driven in a negligent manner and hit the car. Judgment Ex.R1 establishes that a criminal case was registered against respondent no.1 causing this accident and during the investigation of FIR, it was found by the Investigating Agency that this accident took place due to rash and negligent driving of offending bus driven by respondent no.1. This Tribunal has to appreciate the evidence produced in the present case and the evidence led by the prosecution in the criminal case before the Trial Magistrate cannot be read for the purpose of proving this fact and hence, judgment Ex.R1 does not exonerate the present respondent no.1 of the liability attracted in these claim petitions. Except the statement of RWI Tasvir singh driver, there is no other evidence that this accident was caused due to sole negligence of deceased driver of the car. Hence, from the entire evidence led by the claimants, I am of the view that the claimants have succeeded in proving that this accident causing death of Smt.Kamlesh Bhandari and Sh.Kulbhushan Bhandari took place on 1.3.98 due to rash and negligent driving of offending bus driven by respondent no. 1.

19. As regards the quantum of compensation in claim petition Manu Bhandari etc. Versus Tasvir Singh etc. on account of death of Smt.Kamlesh Bhandari, PW5 Manu K.Bhandari in his affidavit Ex.PW5 stated that his mother Smt.Kamlesh Bhandari was house wife as well as she was she was consultant with Blossoms School Patiala and she was post-graduate in Hind as per certificate Ex.PW5/7 and she was earning Rs.2500/- per month on account of



consultancy given to Blossoms and having bank account and proved statement of account of Ex.PW5/9. He further stated that Smt. Kamlesh Bhandari was also earning from private tuitions and her monthly income was around Rs.15000/- from all sources. Except the statement of PW5 Manu K.Bhandari, no other evidence has been produced by the claimants regarding income of deceased Smt.Kamlesh Bhandari. It is established on record that deceased was wife of Senior Advocate of High Court and she was post graduate in her education as per certificate Ex.PW5/7. In absence of evidence regarding definite income of the deceased for the purpose of compensation, income of deceased Smt.Kamlesh Bhandari is assessed Rs.3000/- per month. 1/3rd of the same, she might have been spending on her personal expenses and hence, annual dependency qua the present claimants is assessed Rs.24,000/- (2000X1200). In postmortem report Ex.P2 the age of deceased Smt.Kamlesh Bhandari has been mentioned as 60 years and if appropriate multiplier 8 is applied, then compensation comes out Rs.1,92,000/-, Funeral expenses are assessed Rs.5000/-. Hence total compensation on account of death of deceased Smt.Kamlesh Bhandari is assessed Rs. 1,97,000/-.

20. As regards quantum of compensation in second claim petition titled as Mrs. Anamika Mehara etc. Versus Tasvir Singh etc. on account of death of Sh.Kulbhushan Bhandari, PW5 Manu K.Bhandari filed his affidavit Ex.PW5 deposing therein that his father was an income tax payee and before shifting to Chandigarh in the year 1987, his father was practicing as an Advocate at



Patiala. His father was having permanent account number and proved copy of income tax return Ex.PW5/1 and other income tax returns could not be traced from the income tax lawyer. He further deposed that his father was designated as Senior Advocate at Serial no.992 by the Hon'ble Punjab & Haryana High Court vide Notification dated 19.12.89 and proved list of bar council as Ex.PW5/2. He further stated that the income of his father at the time of death was around Rs.70,000/- per month. His father was retainer counsel with M/s Escorts Ltd. and M/s Balarpur Industries Ltd. And they were together paying Rs.15000/- per month. Apart from that, he was handling cases of private litigants in the field of Civil, Criminal and service matters. He further produced certified copied of bank account of his deceased father as Ex.PW5/3 to Ex.PW5/6. He further deposed that his entire family was dependent upon the income of his deceased father. That PW5 son of deceased stated in cross-examination that he did not know about the correct income of his father as it used to be changed every month. He also admitted in cross-examination that he had no record regarding income of Rs.15000/- per month earned from M/s Escorts Limited and M/s Balarpur Industries Ltd.

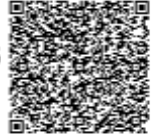
21. PW4 Ashok Chopra Deputy Manager Sales Tax Balarpur Industries, Yamunanagar has stated that late K.B.Bhandari, Senior Advocate was personally known to him from 1988 and he was Advocate of his company and used to pay Rs.5000/- per month a retainer ship fees and fees of every case was to be paid separately and he proved copy of bill Ex.P6 dated 10.1.89. He further stated



that they used to pay fees worth Rs. One lacs to K.B.Bhandari, Senior Advocate. he stated in cross-examination that legal fees used to increase or decrease as per case to case.

22. PW7 P.C.Gupta, Chief Manager of M/s Escorts Limited, Faridabad filed his affidavit Ex.PW7 deposing therein that late Sh.K.B.Bhandari was panel counsel for M/s Escorts Limited and its sister concerns and he was conducting the cases on behalf of M/s Escorts Limited in the Punjab & Haryana High Court. The bills of fees for conducting cases were processed at their end being the legal department of the company and payment were made through cheques from time to time and the deceased was being retained by the company at a monthly retainer of Rs.10,000/- per month. Since January 1993 till his death. He further stated that bills mentioned in para No.5 of the affidavit were received and the payments were made to late K.B.Bhandari Senior Advocate from time to time and he proved copies of bills as Ex.PW7/2 to Ex.PW7/24 and photo copies of cheques as Ex.PW7/25 to ExPW7/37. That PW7 admitted in cross-examination that no record after 13.8.96 and 14.9.96 has been produced on record regarding fees. He further admitted in cross-examination that he has not brought the record regarding giving as fees Rs. 10,000/- per month to late K.B.Bhandari.

23. PW6 S.P.Bhandari aged about 75 years filed his affidavit Ex.PW6. Who is brother of the deceased, proving this fact that his father Ram Karan Dass Bhandari died at the age of 92 years as per death certificate Ex.PW6/1 and his mother Smt. Vidyawati

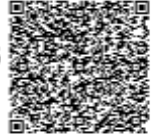


Bhandari died at the age of 92 years as per death certificate Ex.PW6/2 and his brother Sh.K.P.Bhandari is still alive having age of 72 years. His another brother Sh.I.B.Bhandari is still alive at the age of 69 years. He further deposed that his father was actively practicing in the Punjab & Haryana High Court as an Advocate upto the age of 85 years and his deceased brother was expected to rise more day by day in the practice and his practice was increasing and his brother was sole bread earning his family.

24. Learned counsel for the claimants argued that deceased K.B.Bhandari was Senior Advocate in Punjab & Haryana High Court and Advocates have no age of retirement and they continue practicing till their advanced age and multiplier of 20 is to be applied in the present case as life expectancy of the family was on higher side and in support of his argument, reliance was placed on judgment Swaran Kanta Seth Versus Gijay Aggarwal 2003 (2) C.C.C. 459 (Delhi).

25. Before proceeding further, it is necessary to find out what was the income of deceased Sh.Kulbhushan Bhandari at the time of death. Claimants have only produced one income tax return Ex.PW5/1 pertaining to assessment year 1978-79 assessing total income as Rs.10850/-. It may be noted here that no income tax return pertaining to the income thereafter has been filed by the claimants.

26. As per circular of Bar Council of India Ex.PW5/2, deceased Sh.K.B.Bhandari was designated as Senior Advocate of Punjab & Haryana High Court at Serial no.992.

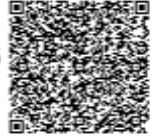


27. As per statement of PW4 Ashok Chopra, deceased had conducted cases pertaining to M/s Balarpur Industries Ltd. and bill Ex.P6 dated 10.1.89 has produced on record. This witness has also deposed that deceased was retainer counsel at the rate of Rs.5000/- per month as retainer fees. PW7 P.C.Gupta Chief Manager of M/s Escorts Limited in his affidavit Ex.PW7 deposed that Sh.K.B.Bhandari deceased was being retained by the company at a monthly retainer of Rs. 10,000/- since January 1993 till his death and he has proved in his affidavit certified bills of 1990, 1991, 1992, 1993, 1994, 1995 and 1996. No bill has been produced regarding year 1997 and 1998 if the deceased had conducted any case of M/s Ezcorts Ltd. and payment was made to Sh.K.B.Bhandari. PW5 Manu K.Bhandari son of the deceased and one of the claimants filed his affidavit Ex.PW5 and he stated that his father was income tax payee and his father was retainer with M/s Escorts Limited and M/s Balarpur Industries Ltd. who were together paying a sum of Rs.15000/- per month. Apart from that he was handling cases of private litigants in the field of Civil, Criminal and service matters and income of his deceased father was around Rs.70,000/- per month at the time of death.

28. When that no income tax return has been produced on record by the claimants regarding income of the deceased except on income tax return pertaining to the assessment year 1978-79 and further no documentary evidence has been produced regarding definite annual income of the deceased, in such circumstances, the Hon'ble Tribunal assessed the income of the deceased is to be



assessed by this Tribunal in accordance, with evidence produced on record. It is established as per document Ex.PW5/2 that deceased was notified as Senior Advocate of Punjab & Haryana High Court. If the evidence of PW4 Ashok Chopra and PW7 P.C.Gupta is appreciated alongwith voucher and bills produced on record, even by this evidence, income of the deceased at the rate of Rs.70,000/- per month has not been proved. No doubt, the no evidence regarding retainer fees by deceased at the rate of Rs.5000/- per month and Rs.10,000/- per month from M/s Balarpur Industries Ltd. And M/s Escorts Limited has been produced on record. Even if statement of claimant PW5 Manu K.Bhandari is presumed to be correct that his deceased father was earning Rs.15000/- per month from these Industries, they yearly income comes out Rs.1,80,000/-. It can be presumed that deceased was a Senior Advocate and he might have been doing the cases of private litigants in the field of Civil, Criminal and service matter and hence, in such circumstances, the annual income of the deceased at the time of death is assessed Rs.2,10,000/-. In Postmortem report Ex.P3, the age of the deceased has been shown as 64 years and as per second schedule, the appropriate multiplier for this age is five but keeping in view life expectancy of the family at higher side, if appropriate multiplier 6 is applied on annual dependency, after reducing 1/3d of annual income being spent by the deceased on his personal expenses, the compensation comes out Rs.8,40,000/- (1,40,000/- x 6). Funeral expenses are assessed Rs.5,000/-. Hence, total compensation on account of death of

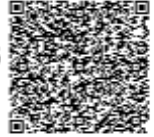


deceased Kulbhushan Bhandari is assessed Rs.8,45,000/-. I have gone through judgment Swaran Kanta Seth's (Supra). In this judgment, deceased was an Advocate of the age of 48 years wherein Hon'ble Delhi High Court gave multiplier of 20 with the finding that an Advocate like professionals have no age of retirement and they continue practising till their advanced age and they have better future prospects and annual income was assessed Rs.40,000/-. In the present case, the age of deceased was 64 years and hence, this judgment is distinguishable on facts and the multiplier of 20 can not apply in the present case.

29.It has been established on record that respondent no.1 is driver of the offending bus and respondents no.2 to 4 are owners of the offending bus and hence, all the respondents are jointly and severally liable to pay above referred compensation amount alongwith interest at the rate of 7.5% per annum from the institution of claim petitions till realization.

30. For the reasons recorded above, Issues no.1 and 2 are decided in favour of claimants to the effects that the accident in question took place due to rash and negligent driving of Bus No.HR05-PA-0126 driven by respondent no.1 and the claimants are entitled for compensation alongwith interest as referred above from all the respondents jointly and severally.”

10. A perusal of the above referred to award shows that the Ld. Tribunal has discussed each and every aspect of the accident and has taken into consideration oral as well as documentary evidence on record and passed a detailed award.



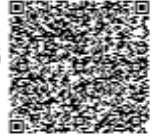
11. A perusal of the award further shows that the factum of accident is proved and FIR was registered against the driver (Tasvir Singh). Further, Bal Kishan (PW-8) on whose statement, the FIR was lodged, specifically stated that the offending vehicle of Haryana Roadways came with high speed being driven in negligent manner and hit the car.

12. Ex.R1 is the certified copy of the judgment of criminal case which was registered against the driver, wherein, during investigation, it was found that death of two persons was caused due to rash and negligent driving of the offending vehicle by respondent No.3-Tasvir Singh.

13. Even if the driver of the offending vehicle was acquitted in the criminal case registered against him in case FIR No.206 dated 1.3.1998 under section 279/304-A at Police Station Thanesar, but still the factum of accident has been established on record and Ld. Tribunal has rightly allowed the claim petitions.

14. Further, it is a settled law that the strict principle of proof in a criminal case are not attracted in motor accident claim petition. The claimants are required to establish their case on the touchstone of preponderance of probability as held by Hon'ble the Apex Court in judgment titled as ***Parmeshwari Vs. Amir Chand and others, 2011 (11) SCC 635***. The relevant extract of the same is reproduced as under:-

“12. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident



claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009(3) RCR (Civil) 805: 2009(4) R.A.J. 408: 2009(2) AICJ 167: (2009)13 SCC 530 are very pertinent:

"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."

15. In view of the above, I do not find any infirmity in the award dated 11.11.2005 passed by the Ld. Tribunal, Panchkula and both the appeals filed by the appellants-State are **dismissed**.

16. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

October 04, 2024

sonia arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes