

FAO-1942-2007 (O&M)

-1-

205

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

-.-

**FAO-1942-2007 (O&M)
Date of Decision : 05.04.2024**

Anju Mehta and Another

....Appellants

VERSUS

Ram Lal and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ashwani Arora, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate for the respondent- Insurance Co.

-.-

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred against the award dated 08.03.2007 passed by the learned Motor Accident Claims Tribunal, Panchkula, whereby the claim of the appellants has been rejected.

2. The brief facts of the case as mentioned in the claim petition are that on 20.09.2005 at about 10.10 PM, Sanjeev Kumar (deceased) was on his way from Pinjore to Panchkula, on his scooter. At that time he was driving his scooter at a slow speed and on his left side of the road. When he was near Railway Station Gate No.435, Military Unit Chandimandir, a Tata 407 bearing registration No.HP-12-A-5300 had reached there at high speed from behind and struck against his scooter. At that time, the above said Tata 407 was being driven by respondent No.1 rashly and negligently. As a result of the accident Sanjeev Kumar (deceased)

had fallen down on the road and serious injuries were received by him. He was

taken to the General Hospital Sector 6 Panchkula where he was declared brought dead. After the accident, the driver of the offending vehicle had stopped his vehicle for a while and thereafter he ran away from there. The accident was witnessed by Parveen Kumar son of Kehar Singh. It is further mentioned in the claim petition that Sanjeev Kumar (deceased) was 33 years old at the time of his death. He was employed with Haryana Ware Housing Corporation Sector 2, Panchkula and was drawing a salary of Rs.8348/- per month. The claim petition is filed for the compensation to the tune of Rs.50 lakhs for the death of Sanjeev Kumar.

3. Upon notice, the respondents appeared and denied the allegations of the claimants.

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

1. Whether the accident in question took place due to rash and negligent driving of vehicle No. HP-12-A-5300 by respondent No.1?
OPP

2. If issue No.1 is proved, whether the claimants are entitled to receive any compensation on account of death of Sanjeev Kumar in the accident in question if so, to what amount of compensation they are entitled to and from who? OPP

3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of accident, if so to what effect?
OPR-3.

4. Relief.

5. Learned counsel for the appellants contend that claim petition was dismissed only on the ground that in the FIR registration number of the truck/canter (offending vehicle) was not there. He further states that the statements of PW-3 and PW-4 have been overlooked. The challan was presented against respondent No.1 (driver of TATA 407) before the learned Judicial Magistrate Ist Class and the driver and owner did not step in the witness box. Even insurance company has not led any evidence and the statements of the witnesses remain unrebutted. Learned counsel further states that salary certificate has been placed on record as Ex.P/4. He has relied upon the judgment of Hon'ble Supreme Court in the case of **Ashalata Suryakant Patil & Ors. Vs. New India Assurance Company Ltd. & Anr.** 2023(2) TAC 725, wherein it has been held as under:-

“4. Having heard learned counsel for the appellants as also learned counsel for the respondents, we have at the outset, adverted to the consideration made by the MACT. Insofar as involvement of the vehicle and also the rash and negligent driving by the driver of the vehicle, the issue was considered while answering issue No.1, which has been raised for consideration in that regard. With regard to the involvement of the vehicle, the claimants apart from tendering their evidence had also examined PW-3, the investigating officer who filed the charge sheet. This is for the reason that initially the details of the vehicle was not mentioned in the FIR and it was during the course of investigation the vehicle had been identified and charge sheet had been filed.

5. *The MACT having taken note of this aspect and also having taken into consideration that the respondent No.3 who was the driver of the vehicle in question, though was notified had not appeared. Further the Insurance Company also did not take any steps to secure and examine the said driver with regard to the accident since his evidence could have clinched the issue.*

6. *Therefore, taking all these aspects into consideration and in a matter where the claimants had discharged their initial burden, the MACT had held the accident to have occurred due to negligence of the driver and the vehicle in question to be involved. The High Court however, without considering these aspects of the matter had only discarded the evidence of PW-3 since he was not the person who had conducted the investigation, though he had filed the charge sheet. Such consideration by the High Court is not justified in the facts and circumstances since the investigation and filing the charge sheet is a continuing process. Therefore, the judgment dated 04.10.2018 passed by the High Court is set aside and the Award dated 11.11.2014 passed by the MACT is restored.”*

6. He further relies upon the judgment of this Court in FAO-5033-2022, titled as **“The United India Insurance Company Ltd. Vs. Radha Sharma and Others”**, decided on 04.01.2024. It has been held as under in the present case:-

“8. *The argument of learned counsel for the Insurance Company that the driver of the offending vehicle was implicated in the present case, after 56 days of the registration of FIR, in connivance with the*

claimants just to grab compensation from the Insurance Company, is without any merit as information regarding accident was given in time but since the FIR was initially registered against unknown vehicle, it took time for the police to investigate the matter. PW3-Krishan, who was the eyewitness to the accident, had stated that he noted down the number of offending tractor as HR-60-E-7896 which was being driven in a rash and negligent manner. Respondent No.1-Sunil, driver of offending vehicle, is facing trial on the ground that he caused the death of Mukesh Kumar by driving the offending vehicle in a rash and negligent manner. Neither respondent No.1-Sunil stepped into the witness box nor any other witness is examined to rebut the evidence led by claimants. From the oral as well as documentary evidence led by the claimants, it was proved that the accident occurred due to rash driving of the offending vehicle by respondent No.1. The Tribunal has rightly held so and this Court too does not find any ground for interference on said issue.”

7. Learned counsel for the appellants has also relied upon the judgment of Hon’ble Supreme Court in case of Hon’ble Supreme Court in **Sunita and Others Vs. Rajasthan State Road Transport Corporation & Another** [2019(2) R.C.R (Civil) 209] in Para 31 has held as under:-

“31. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witness in the case

but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in Dulcina Fernandes (supra), faced a similar situation where the evidence of claimant's eye-witness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.”

8. Per contra, learned counsel for the respondent – Insurance Company has vehemently argued and stated that author of the FIR was not examined and there is no number of the offending vehicle in the FIR, therefore, the FAO should be dismissed.

9. I have heard learned counsel for the parties and thoroughly gone through the record.

10. After going through the records, this Court observed as under:-

i) A perusal of the award shows that the learned Tribunal decided Issue No.1 against the appellants/claimants and in favour of the respondents only by observing that FIR was lodged by Deepak Thaper, brother-in-law (jija) of Sanjeev Kumar (deceased), who was not examined in support of the case.

- ii) Further **PW-3 Parveen Kumar**, who was examined as eye-witness was not able to tell the house number of Sanjeev Kumar (deceased). A perusal of the record shows that the statement of **Sh. Parveen Kumar PW-3**, who was eye-witness to the accident could not be ignored and doubted only on the ground that after reading regarding the accident of 27.09.2005 in newspaper, he came forward to help the claimants.
- iii) Post mortem report **Ex.P/1** is totally ignored by the learned Tribunal while passing the award, relevant portion whereof is re-produced as under:-

“EXTERNAL APPEARANCE

<i>4. Wounds, bruises position, size, tenure</i>	<i>Multiple small abrasions over the dorsum of both the hands. 2 small abrasion marks over left knee laterally. A large patchy contusion mark over right hip laterally about 6” long and 4” broad. A large contusion mark about 10” long 6” broad over upper half of abdomen (in Epigastric, Supraumbilical, Left hypochondrium right hypochondric region) centrally present multiple abrasions over left hip in lateral region</i>
--	--

III- THROAX

4. Right Lung	Crushed with multiple tears
---------------	-----------------------------

IV – ABDOMIN

2. Peritoncum	Hemoperitoncum Present
5. Small intestines and their contents	Multiple perforations and tear present
6. Large intestines and their contents	Multiple tears present over ascending relong, transverse colon
7. Liver	Multiple small tear over its lateral surface

VI – REMARKS BY MEDICAL OFFICER

Death caused due to shock and haemorrhage due to crush injury of rt. Lung, injury over small instestine and large intestine and liver, rt. hemothorax and left hemothorax as described.

Between death and post-mortem Within 24 hours approx.”

iv) **Ex.PB** is evidence by way of affidavit of Sh. Parveen Kumar PW-3, which is reproduced as under:-

“ **EVIDENCE BY WAY OF AN AFFIDAVIT**

Affidavit of Sh. Parveen Kumar age 11 years son of Sh. Kehar Singh R/o #1268 B-2 Anand Bagh Vishwa Karma Colony Pinjore. District Panchkula.

I, the above named deponent do hereby solemnly declare and affirm as under:-

That the deponent is practicing as doctor at Pinjore. That on 20-9-2005 the doctor received a phone call of his wife from his village Kusarh district Hamirpur i.e. in-laws village of the deponent and the deponent was told by her on the telephone about the sickness of his daughter who was born just two-three days before. The deponent started from Pinjore to go to Chandigarh bus stand to board a bus going to Hamirpur in his Maruti Van. It is about 10.10 p.m. on 20-9-2005 when the deponent reached near railway station Chandimandir i.e. in front of gate No. 435 Military Unit at that time a Tata 407 bearing registration No. HP-12-A-5300 came at fast speed from his behind and after over taking the deponent the said Tata 407 struck against a scooterist which was going ahead of him. The aforesaid Tata 407 was being driven at fast speed and in a rash and negligent manner by Sh. Ram Lal. The driver of the scooter fell down on the road alongwith his scooter and receive serious injuries. The front left wheel of the Tata 407 ram over the scooterist. After causing the accident the driver of the aforesaid Tata 407 stopped his vehicle and he got down from his vehicle: The deponent ask the name of the driver who disclosed his name as Ram Lal. Thereafter when the deponent was attending the injured - scooterist at that time the driver of the Tata 407 sped away from the site of accident. The deponent followed to a longer distance the Tata-407 but could not catch him. Thereafter the deponent came back to the accident spot but he found only the scooter lying on the road. The deponent came to know the name of the injured as Sanjeev Kumar Mehta. The deponent was in hurry to catch the bus from Chandigarh Bus stand to go to Hamirpur to attend his daughter who was sick. The deponent boarded the bus from Chandigarh bus stand. The accident took place due to rash and negligent driving of Sh. Ram Lal. A criminal case was registered against Sh. Ram Lal for causing the accident. The statement of the deponent was recorded by the police.

PANCHKULA

Dated: 26-10-2006

Deponent

VERIFICATION

Verified that the contents of above affidavit are true and correct to the best of my knowledge and no part of it is wrong and nothing has been concealed therein.

PANCHKULA

Dated: 26-10-2006

Deponent

Further his cross-examination is reproduced as under:-

“Statement of Shri Parveen Kumar son of Shri Kehar Singh, age 31 years. resident of House No 1268, B-2 Anand Bagh Vishwa Karma Colony Pinjore. District Panchkula.

I tender in evidence my affidavit PB which may be read as part of my examination. After understanding the contest of the same, I have signed it. I also tender in evidence my statement recorded by the police by the police in FIR NO 173 dated 21.9.2005 as Ex.P5 (Objected to)

Xxxxn by counsel for the respondents

I have two children aged 3 years and 1 year respectively. I am B.E.M.S. Doctor practicing at Pinjore for the last four years. I do not know the deceased namely Sanjeev Kumar Mehta. I am not a summoned witness. I was telephonically told by Anju Mehta wife of the deceased to depose in court today. No body was present at the spot at the time of accident except me, I have returned from Hamirpur on 27.9.2005. I have read regarding the accident on 27.9.2005 in newspaper. Thereafter on 28.9.2005 I visited the house of Sanjeev Kumar Mehta. I do not remember the number of the house of Shri Sanjeev Kumar Mehta. I have informed regarding the vehicle with which accident had taken place to the wife of Shri Sanjeev Kumar Mehta. My statement was record by the police on 28.9.2005, I was

taken to the police station by brother-in-law of the deceased. It is incorrect to suggest that I was not present at the spot. It is also incorrect to suggest that I am deposing falsely in connivance with the claimant and falsely involved the vehicle in question just to help the claimant to get the compensation from the insurance Company.

RO&AC

MACT/PKI

26.10.2006

v) A perusal of the above shows that only because Parveen Kumar PW-3 did not go to General Hospital, Sector 6, Panchkula, where Sanjeev Kumar (deceased) was taken to and did not report the matter at Police Station Chandimandir, which was situated at the distance of about 2/2-1/2 kms from the place of occurrence, learned Tribunal washed out his whole evidence. Whereas in his affidavit **Ex.PB**, it has specifically been mentioned that he was in hurry to catch the bus from Chandigarh Bus Stand to Hamirpur to attend his daughter, who was sick. And even in his cross no contradiction with regard to his affidavit (**Ex.PB**) was there.

vi) Even the mechanical report, which is **Ex.P/8** has been totally ignored by the learned Tribunal, which is reproduced as under:-

“Damage:-

Agle v pichle pahiye ke beech main body par ragad ka nishan”

11. A perusal of the above shows that the record has not been properly examined by the learned Tribunal while dismissing the claim petition, which was filed by the appellants.

12. Hon'ble Supreme Court in the case of Anita Sharma Vs. The New India Assurance Co. Ltd. and Another 2021 AIR (Supreme Court) 302, held as under:-

“23. The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum- driver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof.”

13. Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

(A) Deduction of personal and living expenses to determine multiplicand;

- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“ Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

14. Accordingly, award dated 08.03.2007 passed by the Tribunal is set aside and the present appeal is allowed.

15. In view of the above, the claimant-appellant is held entitled to the calculated amount as under :

Sr. No.	Heads	Compensation Awarded
1	Income	Rs.8,348/-
2	Future Prospects 50%	Rs.4,174/-
3	Deduction towards Personal Expenses 1/3 rd	Rs.4,174/- (8,348+4,174=12,522 1/3 rd)
4	Multiplier of 16	8348 x 12 x 16
5	Total Income	Rs.16,02,816/-
6	<u>Loss of Consortium</u> Parental Spousal	Rs.96,000/- (48,000 x 2)
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
	Total Compensation	Rs.17,34,816/-

16. So far as the interest part is concerned, as held by Hon’ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the amount so calculated shall carry an interest @ 9% per annum from the date of filing of claim petition till the date of realization.

17. Pending applications, if any, also stand disposed off.

April 05, 2024
tripti

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No