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

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**FAO-3516-2006 (O&M)
Date of Decision : 22.03.2024**

Smt. Kaushal and Others

....Appellants

VERSUS

Raj Kamal and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vikas Kumar, Advocate, for the appellants.

None for respondent Nos. 1 and 2.

Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate for respondent No.3.

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SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred against the award dated 22.04.2006 passed by the Motor Accident Claims Tribunal, Faridabad, whereby the claim of appellant has been rejected.

2. The brief facts of the case as mentioned in the claim petition are that on 20.03.2004 at about 1.15 a.m, Angesh Kumar was returning from his Company and going to his residence in village Ajronda on cycle. When he reached Neelam fly-over, TATA Sumo HR-38/HT-9590 came from behind i.e from the side of Neelam Chowk and hit Angesh Kumar from behind. Resultantly he suffered serious injuries. He was taken to B.K.Hospital, Faridabad from where he was referred to Safdarjung Hospital, Delhi, but due to serious condition, he was got admitted in Fortis Excorts Hospital, Faridabad. However, he succumbed to his

injuries there in the evening. It was averred that the accident occurred due to rash and negligent driving of the aforesaid TATA Sumo by Raj Kamal (respondent No.1) who was driving it at the time of accident. Angesh Kumar was plying his cycle on correct left side and it was hit from behind and, so, principle of *res ipsa loquitur* is attracted. F.I.R No. 99 dated 20.03.2004 was registered with police station Central Faridabad regarding the accident. Respondent Nos. 2 and 3 are owner and insurer respectively of the offending TATA Sumo Vehicle. On these averments, the claimants prayed for compensation to the tune of Rs.10 lacs.

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 was caused due to rash and negligent driving of TATA Sumo HR-38/HT-9590 by Raj Kamal respondent No.1?OPP
2. Whether the petitioners are entitled to compensation? If so, how much and from whom? OPP
3. Whether the petition is not maintainable? OPP
4. Whether the petitioners have no locus-standi and cause of action in the present petition? OPR
5. Whether respondent Nos. 1 and 2 have violated the terms and conditions of insurance policy? If so to what effect? OPR3
6. Whether the petition is bad for non-joinder of necessary parties? OPR
7. Relief.

4. Learned counsel for the appellants contend that the Tribunal even after observing and determining the amount of compensation of Rs.3 lakhs to be payable, dismissed the claim petition only on the ground of non-joinder of mother of the deceased either as co-petitioner or as proforma respondent. He further contends that under Section 166 of the Motor Vehicle Act, 1988, where death has resulted from the accident, the claim petition can be filed by all or any of the legal representatives of the deceased and in the present case the claim petition was preferred by the widow, minor son and daughter of the deceased, who were dependent upon the deceased and had no source of income and the mother of the deceased was not dependant and was not interested in the claim. Therefore, only on this ground the petition of the appellants could not be rejected by the learned Tribunal. He further contends that without directing the claimant to implead the mother of the deceased as party in the claim petition and giving the claimants one opportunity to amend the claim petition and even after observing that the claimants have suffered huge loss by the death of the deceased only on the ground that mother is not impleaded as party (i.e the claimant or the respondent), the claim of the appellants was rejected.

5. Per contra, learned counsel for respondent – Insurance Company vehemently argued on the lines of the award. He further submitted that the compensation has rightly been rejected and the appeal is liable to be dismissed.

6. I have heard learned counsel for the parties and perused the whole record.

7. A perusal of the record shows that Krishan Kumar, Additional Ahlmad PW-2 brought file of the case pending against respondent No.1 relating to this accident and stated that charges under Sections 279 and 304-A IPC had been

framed against respondent No.1 for causing this accident by TATA Sumo bearing registration No.HR-38/HT-9590.

8. **Amarpal PW-4** was examined as eye-witness, who deposed as under:-

“that he was going on his motor-cycle from Ballabgarh to Ankhir. He reached Neelam over bridge, Faridabad at about 1.00 a.m in the night. From his opposite direction i.e. from Neelam side a cyclist was coming. The aforesaid TATA Sumo came from behind the cyclist being driven rashly and negligently by Kamal, respondent No.1 and hit the cyclist from behind and then went on to footpath. The cyclist suffered injuries in the accident and become unconscious and later on died. The accident occurred due to fault of TATA Sumo driver.”

This evidence is unrebutted and his testimony is corroborated by the FIR which was lodged promptly. FIR was lodged by another independent witness named as Rajesh Kumar Chobe. And Amar Pal (PW-4) and Rajesh Kumar Chobe did not know the deceased. Even after investigation, report under Section 173 Cr.P.C was presented and charges were framed against respondent No.1 (Raj Kamal). Further it was proved that TATA Sumo hit the cyclist from behind. Issue No.1 *as to whether the accident in question was caused due to rash and negligent driving of TATA Sumo HR-38/HT-9590 by Raj Kamal respondent No.1*, was decided in favour of the claimants.

9. Even with respect to Issue No.1, it was proved that the claimants were widow, minor son and daughter of the deceased and the deceased remained admitted in Fortis Escort Hospital, Fardidabad and the claimant spent Rs.30,000/-

on his treatment, only on the ground that mother of the deceased is class-I heir and was not impleaded as party, the claim of the appellant/claimant was denied.

10. For reference, Section 166 of the Motor Vehicles Act, 1988 is reproduced as under:-

“166. Application for compensation. - (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made :-

(a) by the person who has sustained the injury; or

(b) by the owner of the property; or

(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or

(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

[Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.]

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having

jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

*[***]*

[(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.]

[(4) The Claims Tribunal shall treat any report of accidents forwarded to it under [section 159] as an application for compensation under this Act.]

[(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.]

11. A bare perusal of the above-mentioned provision shows that where the death has resulted from the accident, the application for compensation may be filed by all or any of the legal representatives of the deceased.

12. Learned Claim Tribunal while deciding the claim petition adjudicated upon the petition like a trial where principles of Code of Civil Procedure are strictly applied, whereas it failed to appreciate the very fact that as per Section 166 of the Motor Vehicles Act, 1988, once the application for compensation is filed before it, the claim should not be dismissed for non-joinder of party.

13. In the present case only because the mother was not impleaded as party, the claim petition of the appellant was dismissed.

14. Learned Single Judge of this Court in **FAO No.120 of 2003 titled as New India Insurance Company Vs. Janak decided on 12.07.2010** held as under:-

“3. Even the issue of whether a non-impleadment of all legal representatives would be material, has been considered literally by all High Courts including this Court where the consistent line of authority is that such a defect will not have a bearing to the maintainability of the petition. The law does not require that all the legal representatives of a deceased should be impleaded in a claim petition. In a given situation, where all the representatives are not impleaded, an opportunity shall be given to the claimants to implead the legal representatives not so impleaded. If on the other hand, the proceedings has gone without impleadment of them, it should be seen whether the persons who have not been impleaded were required to be impleaded and whether the claimant could be treated as trustee for all others as well. One method of ensuring that all the legal representatives take the benefit of the award would be to array the legal representatives, who are not impleaded as respondents. Another situation could be when the claimant amongst several persons is the only person, who is deprived of his dependence by the death and other siblings are not in any way affected since they had their own means of support. In a typical Indian social setting, it could be that the younger brother would be dependent on particular brother while there could

be other major brothers, who had independent sources of income by their own earning and they did not depend on the brother who died. All this is only to state that there could be several instances where to show that the mere absence of all the legal representatives on the one side figuring as petitioners or respondents is not a sine qua non for considering the maintainability of the petition.”

15. Hon’ble Supreme Court in the case of **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai and Another** 1987 AIR (Supreme Court) 1690 has held as under :-

“13. We feel that the view taken by the Gujarat High Court is in consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by Section 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in Section 110-B of the Act to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by Section 110-B of the Act amongst the legal representatives for whose benefit an application may be filed under Section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and

brothers' children and sometimes foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megibhai Khimji Vira. v. Chaturbhai Taljabhai (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under Section 110-A of the Act if he is a legal representative of the deceased.”

16. In view of the above discussion, the present appeal is allowed and the award dated 22.04.2006 passed by the Tribunal is set aside.

17. 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.”

18. In view of the law laid down by the Hon’ble Supreme Court in the cases of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]; Pranay Sethi (supra) and Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram & Ors. [(2018) 18 SCC 130], the claimant-appellant is held entitled to the compensation amount calculated as under:

Sr. No.	Heads	Compensation Awarded
1	Monthly Income	Rs.2,245/-
2	Future Prospects 40%	Rs.898/- (2245 x 40%)
3	Personal Expenses 1/3 rd	Rs.1048/- (1/3 rd of 3143)
4	Multiplier	16

5	Annual Dependency	Rs.4,02,240/- (2095 x 12 x 16)
6	<u>Loss of Consortium</u> Spousal Parental	Rs.48,000/- Rs.96,000/- (48,000 x 2)
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
	Total Compensation	Rs.5,82,240/-

19. 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.
20. The Insurance Company is directed to deposit the awarded amount along with interest with the Tribunal within a period of two months from today. Thereafter, out of the total compensation amount, the Tribunal shall disburse 60% of the amount to appellant No.1 (widow of the deceased), 20% each to the appellant No.2 and 3, son and daughter of the deceased respectively (who are stated to have attained majority). The appellants-claimants are directed to furnish their bank account details to the Insurance Company.
21. Pending applications, if any, also stand disposed off.

March 22, 2024

(SUDEEPTI SHARMA)
JUDGE

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Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No