

201

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-. -

FAO-465-2006 (O&M)
Date of Decision : 05.04.2024

Budh RamAppellant

VERSUS

XEN PWD B & R Sirhind and othersRespondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. P.S.Punia, Advocate for the appellant.
Mr. M.K.Singla, Advocate for respondent Nos. 7 and 8.
Mr. Vinod Chaudhri, Advocate for the respondent – Insurance Co.

-. -

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred against the award dated 26.10.2005 passed by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib.
2. The brief facts of the case as mentioned in the claim petition are that on 26.06.1999 at about 6.00 PM Ishar Singh, the father of the claimant was going to his house after taking bath on a tubewell and when he reached near the house of Sit Singh son of Chanan Singh of village Sounti, a truck bearing No. PB-11-A-9729 loaded with gravel was being reversed by Amritpal, respondent No.3, in a rash and negligent manner at full speed without blowing any horn or bothering about the rear view and thereby it crushed Isher Singh and caused his death. There was no cleaner in the offending truck. The claimant reported the matter to the police on the next day and DDR was recorded about the incident. On 27.06.1999

post mortem was conducted on the dead body of Isher Singh at Civil Hospital, Mandi Gobindarh. Ishar Singh was 58 years of age at the time of accident and he was labourer, earning Rs.3000/- per month. The claimant accordingly prayed for compensation.

3. Upon notice respondents appeared and denied the averments made by the claimant.

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

1. Whether Isher Singh died on 26.09.1999 at 6.00 PM at Village Saunti, on account of rash and negligent driving of truck No.PB-11-A-9729? OPP

2. Whether claimant is entitled to compensation on account of legal heirs of deceased Isher Singh. If so, at what amount and from whom? OPP

3. Whether respondent No.4 has already sold above referred truck No.PB-11-A-9729 to Mukhtiar Singh on 19.11.1997 vide agreement dated 19.11.1997? OPR-4

4. Relief.

5. Learned counsel for the appellant submits that only because the name of the eye-witness was not mentioned in the DDR, it would not falsify the claim petition. He further submits that post mortem report was not taken into consideration while passing the award, wherein it is clearly written that the cause of death is haemorrhage and shock and the evidence of doctor was also not taken into consideration while passing the award. Learned counsel has relied upon para 18 of the judgment of this Court in the case of **United India Insurance Company**

Ltd. Vs. Sham Lal and Others, 2010(4) R.C.R (C) 975, which is reproduced as under:-

“18. On consideration, I find no force in the contentions raised by the learned counsel for the appellant. It may be noticed that this argument raised by the learned counsel for the appellant was considered by the learned Tribunal, and was rejected in view of the fact that eyewitnesses to the accident had supported the accident as mentioned in the claim petition. Furthermore, the driver of the offending vehicle had chosen not to appear in the witness box to prove the case set up in the written statement. Reading of the written statement itself shows that the factum of accident was admitted, as negligence of the accident was attributed to the claimant/respondent, by the driver of Indica car.”

6. Learned counsel further replies upon the judgment passed in case of the New India Assurance Company Limited Vs. Ginni Devi and Others 2022(2) TAC 440, wherein it has been held as under:-

“9. Having heard the counsel for the appellant and having perused the case file, this Court does not find any substance in the arguments of the counsel for the appellant. Undisputedly, respondent No.1 i.e. the driver of the offending vehicle had admitted the factum of the accident as such. Therefore, the argument of the counsel for the appellant that the involvement of the vehicle becomes doubtful only because the wife of the deceased has made a statement that she was told the number of the offending vehicle by Raju and Raju had gone to Bihar on the day next to the accident, is totally irrelevant. Although the factum of telling

the number of the offending vehicle to the wife of the deceased by Raju is not negated by the fact that the next day Raju had gone to Bihar, however, this entire aspect is totally irrelevant when the driver of the offending vehicle himself has admitted the factum of accident as such.

10. The argument of the counsel for the appellant that the DDR gave the first version qua the nature of the accident and therefore, the offending vehicle was not negligent is also without any substance. It is not even in dispute that the deceased was not negligent in his driving. He had undisputedly stopped his motorcycle on the side of the road and fell on the road only because of having been hit by one of the fighting bulls. The offending vehicle came and hit against the body of Munna Shah. The eye witness has deposed as to the negligence in driving of the offending vehicle. If respondent No.2 claims no negligence in the accident on the part of the offending vehicle, then having admitted the factum of accident, it was for the respondents to lead evidence to substantiate their assertion that the driver of the offending vehicle was not negligent. However, the driver of the offending vehicle has not even appeared as a witness before the Tribunal so as to face the cross-examination by the claimants. No other evidence has been led on file by the Insurance Company to negate the assertion of the claimants qua the negligence in driving of the offending vehicle by respondent No.1. In view of positive testimony in the form of statement of pillion rider Happy, mere recording of the DDR in a particular manner is an irrelevant fact qua the aspect of the claim petition. In fact, any criminal proceedings qua an accident are

not of much relevance except to suggest the factum of an accident having taken place. Any other detail has to be claimed and proved by leading evidence in the claim petition independently. However, in the present case though the claimants have led positive evidence qua the negligence of the driver of the offending vehicle, yet the respondents have not led any evidence to rebut the same. Hence, even this argument of the counsel for the appellant is bound to be rejected.”

7. Per contra, learned counsel for the respondent argued that narration given in the DDR at the very instance of the complainant cannot be set aside. He relies upon the judgment of this Court passed in the case of **Pritam Singh Vs. Jaswant Singh and Others**, 2016 (2) PLR 125, wherein it has been held as under:-

“11. It is not disputed that Ex.P3 is the first version of the accident narrated by the appellant to the police wherein it is mentioned that the accident had taken place per chance and, there was no fault of the bus driver and he does not want to initiate any action against the bus driver. The appellant cannot be allowed to wriggle out from the initial version of the occurrence. In case Surinderjit Singh Ve. Kuldeep Rai Thapar and others 1982 PLR 711 in the statement immediately made after the accident, the claimant absolved the car driver of his negligence. Later on he filed the petition claiming compensation. This Court held that claimant cannot resile from the statement made to the police. The same ratio of law has been laid down by this Court in case Jagdish Kaur and another Vs. Raghbir and others 2004(1) PLR 670. The ratio of law laid down in the cases referred above is fully applicable to the facts of the case.”

He further contends that the claim under Section 166 has to be proved, whereas in the DDR it has been written in the last four lines “that there is no fault of anyone and the claimant does not want to take any action.” Further the contention is that the eye-witness is planted since his name is not there in the DDR. He further contends that in his statement Budh Ram (PW-1) states that Bir Davinder Singh (PW-2), who is an eye-witness in the present case accompanied him to the hospital and the police station, whereas Bir Davinder Singh (PW-2) in his cross-examination categorically denied that he accompanied Budh Ram (PW-1) to the police station. He further contends that the accident never took place because of rash and negligent driving on the part of the driver of the offending truck.

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

9. A perusal of the statement of PW-1 Budh Ram, PW-2 Bir Davinder Singh (eye-witness) proves the factum of accident since there are no major contradictions in their examination-in-chief as well as cross examination. Further, in his statement Ex.P/3, Dr. Ranjit Singh, Medical Officer, Civil Hospital, Mandi Gobindgarh, stated as under:-

“ that on 26.6.1999, I was posted at Civil Hospital, Mandi Gobindgarh and at that day Ishar Singh deceased was brought after being met with an accident as he was crushed by a speedy truck. Ishar Singh deceased was brought in a very critical condition to the hospital. The matter was reported to the police by the claimant and a DDR was lodged in the police station Amloh next day at 3.30 P.M. Postmortem upon the dead body of the Ishar Singh who succumbed to

his injuries, was got conducted vide Post mortem report No. 2/RS/99 dated. 27.6.1999 by me in the capacity of Medical practitioner at Civil Hospital, Mandi Gobindgarh, Distt. Fatehgarh Sahib. As per post mortem report whole the abdomen including upper part of both thighs and external genital body torn and crushed. Intestine is crushed. Liver coming out of the right plank of burst abdomen. Collected blood present in the wound. Fracture on the left clavical and upper part of left humurous at the left shoulder joint. Right leg amputated below its lower 1/3rd. Amputated part lying separate. Fracture at the level - or right elbow joint. Cause of Death:- Haemorrhage and shock because of A above mentioned injuries.”

Even in his cross-examination, he stated that the death is caused due to the accident.

10. Gurminder Singh (PW-4), in his statement filed by way of affidavit has stated that on 26.06.2004, he was called by Budh Ram (S/o Ishar Singh), who stated about the incidence. He was asked to click the photographs of the spot. He further stated in his affidavit that he accompanied Budh Ram to the spot and he saw the body of said Ishar Singh lying in a pool of blood there and he clicked the photographs. In his cross-examination no discrepancy was found.

11. Learned Tribunal has denied the claim to the appellant only on the ground that in the DDR (Ex.A/2), it was stated by claimant – Budh Ram (PW-1) before the police that his father was hard of hearing and could not hear the horn of the truck and accident had taken place naturally and suddenly without any fault of any person. The claim is further denied on this ground as well that the name of Bir Davinder Singh (PW-2), who is eye-witness in this case, does not find mention in

the DDR. A perusal of the award shows that whole record/evidence has been totally ignored by the learned Tribunal while dismissing the claim petition.

12. 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.”

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

14. 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.”

15. 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 of the deceased	Rs.1500/-
2	Annual Income of the deceased	Rs.18,000/- (1500 x 18)
3	Future Prospects @ 40%	Rs.600/- (40% of 1500)
4	Annual dependency after deduction of 1/3rd	Rs.16,800/- [1/3 rd of 2100 (1500+600) x 12]
5	Multiplier of 9	Rs.1,51,200/- (16,800 x 9)
6	<u>Loss of Consortium</u> Parental	Rs.48,000/-
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
	Total Compensation	Rs.2,35,200/-

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 the claim petition, till the date of realization.

17. The Insurance Company is directed to deposit the award amount along with interest with the Tribunal within a period of two months from today. Thereafter, the Tribunal shall disburse the same to the appellant-claimant. The

appellant-claimant is directed to furnish his bank account details to the Insurance Company/Tribunal.

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

April 05, 2024
tripti

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No