

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-7527-2016 (O&M)
Date of Decision: February 13, 2024

Kalyan Singh and others
...Appellants

VERSUS

Mohd. Raib and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Naresh Prabhakar, Advocate
for the appellants.

Mr.V.K.Garg, Advocate
for respondent No.2.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants to assail the judgment of dismissal of the claim petition, filed to seek compensation, on account of death of Lalita Devi, in a motor vehicular accident, which took place on 07.05.2014.

In the claim petition, it was averred by the appellants-claimants that on 07.05.2014, Lalita Devi was going on her bicycle from Sector 56 to Section 38, Chandigarh. Further, it was averred that the accident in question was caused by Mohd. Raib-respondent No.1, while driving the scooter bearing registration No.CH-01Y-9267, in a rash and negligent manner and the same resulted into death of Lalita Devi. However, respondent No.1-

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Mohd. Raib, in connivance with the local police, got lodged FIR against some unknown vehicle, by giving incomplete registration of the car involved in the accident as 'CH0-4821'. Respondent No.1, while hatching a conspiracy with the local police, has projected a false story, just to save his skin. Appellant-claimant No.1 had also approached Senior Superintendent of Police, Chandigarh, vide reference No.PW201409869 dated 04.08.2014, but the police did not take any action, which shows the connivance of local police with respondent No.1.

Besides the aforesaid, it was also averred that deceased Lalita Devi was 48 years old, at the time of death and she was a housewife. The claimants are husband and children of the deceased. As such, they had sought compensation to the extent of Rs.30 lakh, on account of death of Lalita Devi.

In pursuance of the notice issued, respondents No.1 and 2 made appearance. In the written statement, respondent No.1 had taken the plea that the claimants have not approached the Court with clean hands and also took the preliminary objection of mis-joinder and non-joinder of necessary parties and that no accident took place, as alleged in the claim petition, with the answering respondent. Also, it was averred in the reply that the vehicle i.e. scooter bearing registration No.CH-01Y-9267 of the answering respondent was never involved in the accident. However, it was submitted that respondent No.1 had made the statement before the police and on his statement, FIR was registered against unknown person of offending vehicle i.e. car bearing registration No.CH0-4821, colour white, which was driven in rash and negligent manner and struck the bicycle of the deceased from

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backside, as a result whereof, the deceased got imbalanced, fell on the road and sustained grievous injuries. On merits, the factum of accident, as such, has been denied and all other averments, with regard to the age and the extent of claim asserted, had been denied.

Respondent No.2-Oriental Insurance Company Ltd., in its separate reply also raised preliminary objections about there to be no cause of action against the answering respondent and the petition is bad for mis-joinder and non-joinder of necessary parties and the driver of vehicle bearing registration No.CH-01Y-9267 was not holding valid and effective driving licence and that the claim petition has been filed in collusion with respondent No.1. Also, the insurance company disputed the maintainability of the claim petition. On merits, the factum of accident, as such, has been denied. All other averments, having bearing on the assessment of compensation have also been denied.

After framing of the issues, appellant-claimant No.1-Kalyan Singh, who is husband of the deceased, stepped into witness box as CW-1 and his sworn testimony, in the form affidavit is Ex.CW1/A and further, he had tendered into evidence documents, which are Ex.C1 to C9. Besides the same, two witnesses, who allegedly witnessed the accident, have been examined i.e. CW-2 Vishal, who affidavit is Ex.CW2/A and CW-3 Narinder, whose affidavit is CW3/A. Also, the claimants examined SI Surinder Singh (wrongly mentioned as PW-2, now be read as CW-4), who is Investigating Officer of the criminal case, qua the accident in question. He had proved certain documents. Thereafter, learned counsel tendered into evidence documents Ex.C10 and Ex.C11 and closed the evidence.

At this juncture, it is pertinent to mention that respondent No.3-Sunil Kumar, did not make appearance, even though, service was effected through publication and was proceeded against ex-parte. At the stage of the recording of respondents' evidence, even respondent No.1 did not make appearance and was proceeded against ex-parte.

After hearing the arguments, the testimonies of witnesses examined, qua the accident in question, were not believed by learned Tribunal, as a result whereof, claim petition was dismissed vide impugned judgment dated 02.08.2016.

Being aggrieved by the impugned judgment, the appellants-claimants have filed the present appeal. Only, respondent No.2-insurance company, contested the appeal.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellants-claimants has assiduously submitted that evidence brought on record, has not been appraised by learned Tribunal, in correct perspective. In fact, two of the eye witnesses have categorically deposed about manner of taking place of the accident. Even though, SI Surinder Singh has been examined by the claimants, but however, his statement, not at all, has been considered by learned Tribunal. In fact, no reference has been made to his testimony and also the documents, brought on record, at his instance. In the light of the same, it is further submitted that from the material coming forth, during the course of evidence, it stand amply established that the scooter bearing registration No.CH-01Y-9267 was involved in the accident and in view of the same, it is submitted that the testimonies of CW-2 Vishal and CW-3

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Narinder, besides the testimony of appellant-claimant No.1, ought to be taken into consideration. Furthermore, it is submitted that it should be noticed that respondent No.1 has not stepped into witness box.

On the other hand, learned counsel for the insurance company has resisted the claim of the appellants-claimants. Rather, he submits that there is no satisfactory evidence, coming on record, with regard to the imputation of rashness and negligence, on the part of respondent No.1, in causing the accident. In fact, the involvement of the scooter in question does not stand established. Rather, from the recitals of the FIR, got registered at the instance of respondent No.1, amply establish about the involvement of car in the accident in question and in these circumstances, it is submitted that insurance company, which is insurer of the scooter bearing registration No.CH-01Y-9267, as such, cannot be saddled with any liability. In the given circumstances, learned counsel for the insurance company has made a prayer for dismissal of the appeal.

At the very outset, it is pertinent to mention that the Motor Vehicle Act is a welfare and benevolent piece of legislation. Strict rules of evidence do not apply to the cases under the said Act. In fact, the evidence adduced is to be considered on the touchstone of preponderance of probability and do not require about the proof in stricto sensu, as in criminal cases.

To establish the factum and manner of accident, besides appellant-claimant No.1 himself stepping into witness box and stating about the accident to have taken place due to rash and negligent driving of scooter bearing registration No.CH-01Y-9267, the claimants have also examined

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two witnesses i.e. CW-2 Vishal and CW-3 Narinder, who, in their respective affidavits, have categorically stated about having seen the accident, which took place at round-about of Mandi Chowk and further also deposed that scooter bearing registration No.CH-01Y-9267, Bajaj Chetak, its driver and one bicycle and a lady were laid down on the road. Also, they deposed that front tyre of the bicycle was crushed with the front wheel of the scooter. Very true, as so observed by learned Tribunal that both the said witnesses, while facing cross-examination have stated that they had reached the spot, when the accident had taken place. Voluntarily, both the said witnesses stated that they reached, when they heard the sound. But anyhow, they have categorically stated about the presence of the scooter as well as bicycle, at the spot and also further they stated that front tyre of the cycle was crushed with the front wheel of the scooter.

May be so, as observed, that the said witnesses reached the spot, soon after taking place of the accident, after hearing the sound of the accident, but however, their statements ought to be taken into consideration, in totality and they categorically speak about the presence of scooter in question and bicycle, at the spot of accident. They had also categorically stated that the front tyre of the bicycle was crushed with the front wheel of the scooter.

Not only this, even Kalyan Singh had stated about the death of Lalita Devi, in the accident in question and involvement of the scooter, driven by Mohd. Raib-respondent No.1. Undisputedly, FIR in the present case was got registered by respondent No.1-Mohd. Raib. The said FIR has been proved as Ex.C9. This is the first version qua the accident, which was

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got registered soon after the accident. In the same, there is categorical statement made by respondent No.1-Mohd. Raib, thereby, asserting about involvement of the scooter, in the accident in question, as well as one car, relating to which half registration number was given, which is 'CH0-4821'. In the same, it is stated that the car struck the bicycle of Lalita Devi and bicycle of Lalita Devi struck the scooter of Mohd. Raib from backside. However, these recitals, so coming forth, in the FIR, do not find any mention in the written reply, filed at the instance of respondent No.1-Mohd. Raib, who was the best person to depose about the manner of taking place of the accident.

It is pertinent to mention that to determine the question of rashness and negligence, on the part of driver of the vehicle involved in the accident, it is always the driver of the vehicle, who is the best person to depose and explain about the manner of taking place of the accident. In this case, respondent No.1, not only remained away from the witness box, but he has also withdrawn from the Court proceedings, when he never made appearance and was proceeded against ex-parte. No sound reason, as such, has come on record, for not pursuing the claim petition. This indeed be construed as a telling circumstance, against respondent No.1. In reply, there is total denial of the accident and involvement of scooter in question, in the accident, which is contrary to the contents of the FIR, which was got recorded by respondent No.1. In such circumstances, what could be concluded is that the registration of the FIR was a clever device, on the part of respondent No.1, to shed off his involvement in the accident in question.

In the given circumstance, it should be noted that CW-4 SI

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Surinder Singh, who is Investigating Officer, has also categorically deposed about the registration of the FIR. He further deposed about the having reached the spot, soon after the accident. Further, in his examination-in-chief, he has also stated that at the spot, he found the offending vehicle and other accident vehicle, i.e. scooter and bicycle, lying on the spot. He also deposed that he called the photographer and took the photographs of the spot, copies whereof, are Mark PW2/1 to PW2/4. Besides the same, he proved mechanical report and CFSL report, which are Mark PW2/5 and PW2/6, respectively. Furthermore, he has also proved the receipt of complaint from SSP Office, copy where of Ex.C4 and C5. Further, he also submitted that he could not find about the involvement of any car in the accident in question.

No doubt, in the cross-examination, the said witness has stated about the untraced report, having prepared and that the same has been forwarded to ASP, but however, this preparation of untraced report, as such, should not weigh the mind of the Court, as the parameters of appraisal and extent of evidence, to be brought on record, to establish the case in the criminal proceedings, is entirely different from the kind and manner of appraisal of the evidence, to be brought on record, in a motor vehicular accident claim petition. Thus, in these circumstances, the submissions, so made, at the instance of learned counsel for the insurance company, with regard to accident having caused by the unknown car, as such, do not stand established.

In fact, at this juncture, it is pertinent to make reference to the statement of CW-1 Kalyan Singh, who, besides deposing about death of his

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wife, has categorically stated that wrong version of the manner of accident and involvement of vehicle has been given by respondent No.1-Mohd. Raib, in the FIR, got registered, at his instance. Relating to the same, he had filed an application before SSP, which is Ex.C4 and the public window system entry, with regard to the applicant's slip, has been proved as Ex.C5. This fact has also been admitted by CW-4 SI Surinder Singh. What is the status of this application, as such, has not come on record. Even, no cross-examination has been conducted by learned counsel for the respondents to confront claimant No.1, regarding the action taken upon the said application. There is total silence, on the part of insurance company and also respondent No.1 has not stepped into witness box. Respondent No.3 was proceeded against ex-parte, meaning thereby, the application Ex.C4 was filed by claimant No.1, under constrained circumstances, but this application had also died its own death. The Investigating Officer did not state about the status of the said application and further, even the respondents have not bothered to further assail about the filing of the said application.

In the light of the same, now, let us consider the documents, so coming forth, in the testimony of CW-4 SI Surinder Singh. Much resistance is shown to the said documents, to be considered, by learned counsel for the insurance company, as it is stated that these are marked documents. But anyhow, it should be kept in mind that the Motor Vehicles Act is a benevolent piece of legislation and as already observed aforesaid, strict rules of evidence, do not apply to the claim petitions. In the given circumstances, any document, be it marked document or not marked document, coming on record, which is beneficial for the interest of the claimants, as such, can be

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looked into. As such, the photographs Mark PW2/1 to PW2/4, reveals about the scooter as well as bicycle lying at the spot. Even, Central Forensic Science Laboratory report obtained during the course of investigation of the case has come in evidence, as Mark PW2/6. Perusal of the same reveals that scooter bearing registration No.CH-01Y-9267 as well as damaged bicycle, which was of the deceased, were sent for examination to CFSL. The scooter was marked as Ex.S and bicycle was marked as Ex.C. After the forensic examination, the result of examination was given, which for proper appraisal, is reproduced in verbatim, as herein given:-

“On the basis of physical examination of exhibits-S and C, it has been observed that:

- i. The pink colour of exhibit-C was found present on the damaged portion of the bumper on the front mudguard of the exhibit-S.*
- ii. The structure of the damaged portion on the exhibit-S was found as a canal type, and*
- iii. Scratch marks were found on the fork of the exhibit-C.*

On the basis of the above observations, it has been opined that the exhibit-S and the exhibit-C could have met in an accident.”

Thus, from the recitals of this report, it is evident that Bajaj Chetak scooter bearing registration No.CH-01Y-9267 was involved in the accident. In fact, damaged portion of the bumper of the scooter was on front mudguard and it was also the pink colour of the bicycle, was found on this damaged portion of the bumper. This recital of the report reveals about the accident to have taken place with the front side of the scooter, which also is contrary to the recitals of the FIR. This in itself, speaks about the malafide intention of respondent No.1, in lodging the FIR, thereby, stating about false

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manner of taking place of the accident. In the given circumstances, the very fact of respondent No.1, having not pursued the claim petition further and having proceeded against ex-parte and more particularly, remained away from the witness box, speaks volumes about his conduct.

However, taking into consideration the evidence in entirety as detailed aforesaid, it stands amply established that the accident had taken place due to rash and negligent driving of the scooter bearing registration No.CH-01Y-9267 and it resulted into causing of the injuries on the person of Lalita Devi, which proved fatal. The post-mortem report of the deceased has also been proved as Ex.C7.

In the light of the same, the findings recorded by learned Tribunal, on issued No.1, are hereby set aside and the said issue is decided in favour of the claimants.

No doubt, in the light of the finding recorded on issue No.1, it was still required on the part learned Tribunal, to work upon the extent of compensation, vis-a-vis, death of Lalita Devi, in a motor vehicular accident, but the same has not been done. Consciously, the case is not being now remanded to learned Tribunal, lest it may cause further undue delay, which shall deprive the appellants-claimants of the rightful claim for a sufficiently long time. In these circumstance, this Court proceeds further to work on the compensation to be granted, vis-a-vis, death of Lalita Devi.

It is categoric claim of the appellants-claimants that Lalita Devi was 48 years old, at the time of accident. Even, claimant No.1 has deposed to this effect and also in the post-mortem report, the age of the deceased is mentioned as 48 years. Thus, it stands established that the deceased was 48

years old, at the time of accident.

It is the categoric claim that the deceased was a homemaker. The grant of compensation for homemakers, on pecuniary basis, has been considered by the Courts, time and again. In this regard, suffice to make reference to *Lata Wadhwa vs. State of Bihar, 2001(8) SCC 197*, wherein, emphasis was laid by the Court to determine the compensation, on the basis of services rendered by the homemaker to the house and on the basis thereof, it was observed that though there is no data for determination of compensation, but however, taking into consideration, the multifarious services rendered by the housewives for managing the entire family, the value of the services should be assessed and compensation be worked upon.

In *Arun Kumar Aggarwal vs. National Insurance Company Ltd., 2010(9) SCC 218*, while considering the case of grant of compensation, on account of death of a housewife, due to the motor vehicle accident, it was observed that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. Furthermore, it was also observed that the gratuitous services rendered by the wife with true love and affection to the children and her husband and managing the household affairs, cannot be equated with the services rendered by others. In this context, it was also held that the term “services” is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife.

Beneficial reference is also made to *Kirti and another v/s Oriental Insurance Company Ltd., 2021(2) SCC 166*, wherein, the Hon'ble

Supreme Court, while considering the case of death of a homemaker, has observed, as herein given:-

“32. Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances.”

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“35. However, it must be remembered that all the above methods are merely suggestions. There can be no exact calculation or formula that can magically ascertain the true value provided by an individual gratuitously for those that they are near and dear to. The attempt of the Court in such matters should therefore be towards determining, in the best manner possible, the truest approximation of the value added by a homemaker for the purpose of granting monetary compensation.

36. Whichever method a Court ultimately chooses to value the activities of a homemaker, would ultimately depend on the facts and circumstances of the case. The Court needs to keep in mind its duty to award just compensation, neither assessing the same conservatively, nor so liberally as to make it a bounty to claimants [National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680; Kajal v. Jagdish Chand, (2020) 4 SCC 413].”

Therein, it was also held that effects of inflation would equally be applied to the cases of assessment of notional income of the homemaker and on this account, it was further held that the future prospects, also are required to be taken into consideration.

Thus, summing up, general observations were made regarding the issue of calculation of notional income for homemakers and grant of future prospects, with respect to them, for the purposes of grant of compensation, which was summarized, as follows:-

“a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation’s international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”

In this backdrop, adverting to the case in hand, as already observed aforesaid, the deceased was 48 years old, at the time of accident. She had two sons, besides the husband, who are claimants in the present case. There is nothing, as such, coming on record, about relative status of the deceased or of the claimants. However, CW-1 Kalyan Singh, while in the witness box had stated about the indispensable role of his wife Lalita Devi. Considering the same and by making some guess work, close to proximate reality, the value of the services rendered by deceased Lalita Devi, in modest estimate, can appropriately be taken to be Rs.4,000/- per month.

Considering the deceased to be falling in the age group of 40-50 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 25% ought to be made, on the count of ‘future prospects’. Making it to be so, the income of the deceased

is worked upon as $\text{Rs.}4000+1000(25\%)=\text{Rs.}5,000/-$.

Considering the number of dependents of the deceased, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the deduction to the extent of 1/3rd has to be made, on the count of 'personal expenses'. Thus, making this deduction, the loss of dependency comes to be $\text{Rs.}5000-1666(1/3\text{rd})=\text{Rs.}3334/-$, annual whereof, comes to be $\text{Rs.}40,008/-$.

Considering the age of the deceased, as per *Sarla Verma's case*, appropriate and suitable multiplier, to be applied is '13' and by applying the same, the loss of dependency, works out to be $\text{Rs.}40008 \times 13 = \text{Rs.}5,20,104/-$.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in *Pranay Sethi's case (supra)*. The concept of consortium, has been dilated in detail in *'Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130'*, and as per the same, the claimants are entitled to compensation, on the loss of consortium, be it 'parental', 'spousal' or 'filial'.

In consonance with the observations made in *Pranay Sethi's case (supra)*, while making addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years, at present, the amount payable, on all the three aforesaid heads, is to the extent of **Rs.48,400/-**, **Rs.18,150/-** and **Rs.18,150/-**, respectively.

Considering the same, the compensation payable to dependents, on account of death of Lalita Devi, is computed, as herein given:-

Loss of dependency : Rs.5,20,104/-

Loss of consortium	:	Rs.1,45,200/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.7,01,604/-

As such, the appellants-claimants are held entitled to the compensation to the extent of Rs.7,01,604/-. The above-said compensation will be paid by respondents No.1 to 3, jointly and severally. The appellants-claimants shall also be entitled to interest, at the rate of 6% per annum, from the date of filing of the claim petition, till realization of the amount of compensation.

In view of the aforesaid terms, the present appeal stands allowed.

February 13, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No