



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.4808 of 2023 (O&M)

Reserved on: 27.05.2024

Pronounced on: **31.05.2024**

United India Insurance Company Limited

.... Appellant

Versus

Raj Bala and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. V. Ramswaroop, Advocate, for the appellant.

Mr. Dheeraj Narula, Advocate,
for respondents No.1 and 2/claimants.

Mr. Naveen Kumar, Advocate and
Mr. Arman Goyal, Advocate, for respondents No.3 and 4.

GURBIR SINGH, J.

1. Present appeal has been filed by the insurer of offending vehicle bearing registration No.HR46D-6855, against the award dated 30.05.2023 passed by learned Motor Accident Claims Tribunal, Sirsa, whereby the appellant herein along respondents No.3 and 4 i.e. driver and owner of said vehicle, have been jointly and severally held liable to pay the amount of compensation to the claimants/respondents No.1 and 2 i.e. parents, on account of death of their son Arvind Kumar in a motor vehicle accident that took place on 09.08.2020.

2. Briefly stated, the claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of their son Arvind Kumar on the ground that on 09.08.2020 at about 1:30 AM, he (deceased) along with his friend Pat Ram

was coming to their house at Keharwala and Bahia in a car bearing registration No.HR16-K-9688. Said car was being driven by Pat Ram and Arvind Kumar was sitting on front seat. At about 2:20 AM, when they reached near Delux Hotel, Jhajjar-Gurgaon Road, in the area of Village Norangpur, a Canter/Truck bearing registration No.HR46D-6855 was standing on white strip in the middle of the road without any dipper lights/back lights (red) or any type of indication. It was full dark and Pat Ram could not see said truck due to flash lights/reflexion and car struck behind one portion of the Canter. As a result of accident, Arvind Kumar received serious injuries. Respondent No.3-driver of Canter/truck alighted from the truck and stopped there for some time. Arvind Kumar was brought to G.H., Jhajjar, where he was declared dead due to injuries sustained by him in the accident. On the statement of Pat Ram, FIR No.248, dated 09.08.2020 under Sections 283, 304-A of IPC was registered at Police Station Sadar, Jhajjar.

2.1 Issues were framed and in support of their case, the claimants examined Rajbala, mother of the deceased as PW1; Pat Ram, eyewitness of the accident as PW2; Dinesh Prasad as PW3; Sandeep Khattar, Advocate, Investigator on behalf of Insurance Company as PW4; and Jagdeep Kumar, Investigation Officer as PW5, and after tendering documents, the claimants closed the evidence. The respondents did not lead any oral evidence but tendered documents only.

2.2 After appreciating the evidence on record, learned Tribunal held that the accident, in question, took place due to negligent act of truck

driver, who parked his vehicle on the road without any indicator, reflector, bushes etc. and as a result of which, Arvind Kumar lost his life. Moreover, truck driver could not prove that the driver of car in which deceased was travelling was negligent in any manner or contributed to the accident. As regard quantum of compensation, the claimants examined PW3-Dinesh Prashad, T.M. C/o Suzuki Motor Cycle, Gurugram, who revealed that Arvind Kumar was working as Technician in said Company and his salary was Rs.12,426/- per month. As per the certificate of Secondary Examination Ex.P5, his date of birth was 08.08.1996, so at the time of accident, he was 24 years of age. Deceased was taken as self-employed and 40% as future prospects were added to his income. The claim petition was filed by the parents of the deceased, and grandparents and brother and sister of the deceased were arrayed as proforma respondents. However, the Tribunal took only the mother as dependent upon deceased and the father was granted Rs.40,000/- as consortium only. Vide award dated 30.05.2023, the Tribunal assessed the amount of compensation, which is tabulated as under:-

Head	Compensation awarded in ₹
i) Loss of dependency, last rites and transportation of dead body of deceased and loss of estate	18,78,768.00 + ₹15,000.00 + ₹15,000.00 19,08,768.00
ii. Loss of Consortium: a) Parental consortium to claimants No.1 & 2 being parents of the deceased.	40,000.00 + 40,000.00 80,000.00
Total amount of compensation (i)+(ii)	19,88,768.00

The appellant-Insurance Company and respondents No.3 and 4-driver and owner were jointly and severally held liable to pay said amount of

compensation along with costs and interest @ 6% per annum from the date of institution of the petition till realization.

2.3 Aggrieved against the aspect of negligence and the quantum of compensation awarded by the Tribunal, the Insurance Company of the Canter/truck has approached this Court by way of present appeal.

3. Learned counsel for the appellant-Insurance Company has argued that in the claim petition, car driver, namely, Pat Ram was not impleaded as party and its application for impleading said car driver was dismissed by the Tribunal without any reason. From the entire evidence of PW2-Pat Ram and PW-5 Investigating Officer, Mr. Jagdeep Kumar, ASI, who admitted in cross-examination that truck was parked on the corner of the road which was kacha portion, as shown in the site plan Ex.P14 and Ex.R1, it is clear that the accident had taken place due to rash and negligent driving of Pat Ram, driver of the car himself, but the Tribunal has wrongly held the driver of Canter/truck liable for the accident. Mere registration of FIR and filing of charge-sheet does not prove negligence as the Tribunal is required to act upon the evidence so adduced before it. Reliance is placed on ***Rudramani Versus Kulbir Singh, 2016(2) Law Herald (P&H) 1446.*** The deceased had joined his job only two days prior to the date of accident and the learned Tribunal has wrongly took his income as Rs.12,426/- per month.

4. Learned counsel for the respondents No.1 and 2-claimants has argued that a well reasoned award has been passed by the learned Tribunal. It was due to the negligence of Canter/truck driver that he parked his

vehicle in the middle of road and that too without any indicator, the accident had taken place, which resulted in death of Arvind Kumar. In support of his arguments, he has relied upon ***Jumani Begam Versus Ram Narayan and others, 2020(5) SCC 807*** where Hon'ble Apex Court has held that once there is substantive evidence before the MACT to establish that truck trailer had been parked on road at night without any reflectors, there was no reason for MACT to proceed on the basis of conjecture in arriving at finding of contributory negligence. In the present case, the driver of Canter/truck did not appear in the witness-box to deny that he was not negligent. Reliance is placed on judgment in ***Laxmi Devi alias Lichhi and others Versus Mehboob Ali and others, 2023 ACJ 2386***, an authority of Hon'ble Supreme Court, to contend that when no explanation is coming forth on the part of the driver of offending vehicle with regard to the manner of accident, negligence is to be fastened upon the driver of said offending vehicle.

5. Learned counsel for respondents No.3 and 4 has argued that the accident had taken place due to the negligent driving of Car driver Pat Ram and as such, they are not liable to pay any compensation.

6. I have heard the submissions of learned counsel for the parties and have gone through the file.

7. The appellant-Insurance Company has assailed the award on two grounds (i) it was due to the negligence of Car driver, the accident had taken place; (ii) the income of the deceased is not assessed correctly.

7.1 The Tribunal held that the Canter/truck was found on the road without any indication and reflector and the car in which deceased was travelling hit from behind. The contention of learned counsel for the appellant-Insurance Company is that its insured vehicle was not parked on the road but it was parked on the corner of kacha portion of the road. He has relied upon site plan Ex.P14 where the place of truck at the time of occurrence was shown as standing in the corner of its own lane of the road. It was four-lane road and the width of one side of the road was 20 feet where two vehicles can pass easily. It was due to the negligent driving of Pat Ram-PW2, accident had taken place.

7.2 Stress was laid down on the issue of composite negligence by the learned counsel for the appellant. In case ***Khenyei Versus New India Assurance Company Limited and others, 2015 (9) SCC 273***, the Hon'ble Apex Court held that it is open for the claimant to sue one of the joint tortfeasors. But before this, it is to be seen whether it is a case of composite negligence or sole negligence. In the case in hand, except the mere statement of PW5, there is no documentary evidence to show that the truck was not in the middle of the road. If for the arguments sake, it is taken that the vehicle was standing on the side of the road, but the fact remains that there must be some indication or reflector. Had any reflector or parking lights been there, the accident would not have taken place. As per Section 109 of the Motor Vehicles Act, 1988, the front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road. There is nothing on the file that the Canter/truck was parked properly. If there was

any fault, then proper care was required to be taken by the driver for leaving the truck on the road. It amounts to negligence. A person, who was driving the car in which deceased was travelling, cannot expect such a big obstacle on the road, so, no negligence can be attributed to the car driver. The deceased was not driving the car but he was sitting on the front seat by the side of driver. No negligence can be attributed to deceased. Moreover, neither the driver nor the owner of Canter/truck stepped into the witness-box to deny their negligence.

7.3 The learned Tribunal assessed the income of the deceased on the basis of salary certificate Ex.P1 in which salary his salary was shown as Rs.12,426/- per month. Although deceased had joined the office as Technician in Suzuki Motor Cycle, Gurugram, which is well known Company having large number of employees, so there is no ground to disbelieve said certificate. Moreover, the income of the deceased to be assessed as per his capacity to earn. Since deceased got a job where he was to be given salary of Rs.12,426/- per month, so this Court is of the view that the learned Tribunal has rightly taken the income of the deceased. No other point has been raised.

8. In view of above, this Court does not find any merit in the appeal and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

31.05.2024
sanjeev

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No