

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **FAO-3679-2017 (O&M)**

The New India Assurance Company Ltd.
...Appellant

VERSUS

Sh.Ajit Singh and others
...Respondents

(ii) **FAO-5769-2017 (O&M)**

Sh.Ajit Singh through LRs and others
...Appellants

VERSUS

Sh.Harjinder Singh @ Rajinder Singh and others
...Respondents

Date of Decision: May 02, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vinod Gupta, Advocate
 for the appellant (in FAO-3679-2017) and
 for respondent No.3. (in FAO-5769-2017).

 Mr.Ashwani Arora, Advocate
 for appellants (in FAO-5769-2017) and
 for respondents No.1 to 5 (in FAO-3679-2017).

ARCHANA PURI, J.

These are two appeals filed to assail the Award dated
29.03.2017 passed by Motor Accident Claims Tribunal, whereby,
compensation was awarded to the claimants, on account of death of Preet
Kaur, in a motor vehicular accident, which took place on 06.12.2014.

FAO-3679-2017 has been filed by the insurance company, thereby, assailing factum and manner of taking place of the accident and also assailed rashness and negligence imputed upon Harjinder Singh @ Rajinder Singh, driver of the car bearing registration No.DL-3CM-6223 and consequently, fastening of liability upon the insurance company to pay the compensation, so worked upon.

FAO-5769-2017 has been filed by the appellants-claimants, thereby, seeking enhancement of the compensation awarded by learned Tribunal.

For the convenience of discussion, the parties are referred to, as making appearance before learned Tribunal.

The fact germane, to be noticed, are as follows:-

That, on 06.12.2014, at about 6.00 p.m., Preet Kaur was going from Rajshree Palace, Amarpura, Tehsil Abohar, District Fazilka to her house at Dashmesh Nagar, Gidderbaha, while sitting pillion on motorcycle, which was driven by Sh.Jit Kumar @ Ajit Ram, at slow speed, on left side of the road. Smt.Tarsem Kaur was the other pillion rider. They were being followed by Sh.Gora Singh and Sh.Ajit Singh-claimant No.1, on separate motorcycle. After crossing Dhindsa Vaish Singh Plant, village Seeton Guno, in area of PS Bahawala, at that time, a car bearing registration No.DL-3CM-6223, came at fast speed from the opposite direction and while coming on wrong side of the road, struck against the motorcycle of Jit Kumar, as a result whereof, all the occupants of the motorcycle fell down on the road and suffered serious injuries. They were taken to Civil Hospital, Abohar, where, Preet Kaur was declared brought dead. It was pleaded in the

claim petition that the accident had taken place due to rash and negligent driving of respondent No.1 Harjinder Singh @ Rajinder Singh. FIR was also got registered against Harjinder Singh @ Rajinder Singh, on the statement of Ajit Singh.

Furthermore, it was pleaded in the claim petition that deceased Preet Kaur was 37 years old, at the time of accident. She used to cook food in the marriage and other parties and was earning Rs.10,000/- per month from this source. Besides the same, Rs.12,000/- be assessed as value of domestic services, provided by the deceased to her family.

In pursuance of notice issued, respondent No.1-Harjinder Singh @ Rajinder Singh and respondent-insurance company had made appearance. However, respondent No.2-Ms.Navneet Sethi, owner of the offending car, did not make appearance and was proceeded against ex-parte. It is pertinent to mention that respondent No.1, in reply, had admitted about taking place of the accident, but had taken the plea that the same occurred, due to negligence of the deceased. Respondent-insurance company also filed its reply, thereby, asserting about there to be no cause of action having arisen, in favour of the claimants. Further, the driver of the car in question was not holding a valid and effective driving licence, valid registration certificate and fitness certificate, at the time of accident and the claim petition is bad for non-joinder and mis-joinder of necessary parties. As such, a prayer was made for dismissal of the claim petition.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the accident to have taken place due to rash and negligent driving of the offending car, driven by Harjinder Singh @

Rajinder Singh and the same resulted into death of Preet Kaur.

Also, it was further concluded by learned Tribunal that deceased Preet Kaur was 37 years old, at the relevant time. Though, she was asserted to be cooking food in marriages and other parties and earning Rs.10,000/- per month, but however, considering no satisfactory evidence, coming on record, the notional earnings of the deceased was taken as Rs.7000/- per month. Considering the age of the deceased, multiplier of '15' was applied and compensation was worked upon as $\text{Rs.7000} \times 12 \times 15 = \text{Rs.12,60,000/-}$ per annum. Besides the same, Rs.25,000/- was awarded for funeral and last rites. In total, the compensation, which was granted was to the extent of Rs.12,85,000/-.

While opening the arguments, learned counsel for the insurance company has assiduously submitted that in the FIR got registered against Harjinder Singh @ Rajinder Singh, acquittal was recorded by learned trial Court, precisely, on account of author of FIR, namely, Ajit Singh, who is husband of the deceased, not supporting the prosecution version and turned hostile. In this regard, learned counsel has submitted that judgment of acquittal has been proved as Ex.RA and the same has not been considered by learned Tribunal.

Learned counsel for the appellants-claimants has emphatically submitted that parameters of appraisal and the extent of evidence, to be brought on record, to establish a case, is entirely different in criminal proceedings, as compared to the tortious claims/proceedings in the motor accident claims. It is pointed out that no doubt, the judgment of acquittal was passed by learned trial Court, copy whereof, is Ex.RA, but however,

simply on the score of judgment of acquittal, coming forth, the malafide conduct, on the part of Ajit Singh, as now submitted, cannot be concluded. In fact, it is pointed out that testimony of Ajit Singh, when he stepped into witness box as PW-1, has to be appraised independently and learned Tribunal had rightly, so appraised and reached the conclusion about the rashness and negligence to be there, on the part of Harjinder Singh @ Rajinder Singh and that the deceased was not at all at fault.

It has been consistently held by the Courts that learned Tribunal is to adjudge the case, only on the basis of the evidence produced before it and not to rely solely on account of material put forth, before criminal Court, on the basis whereof judgment of acquittal is passed. Of course, fundamental facts, ought to be established. Basically, the test is whether a prudent man, under the peculiar circumstances of a case, assume the existence of certain facts, as true or disbelieve it.

In ***Municipal Committee, Jullundur v. Shri Romesh Saggi and others AIR 1970 P&H 137***, a Division Bench of this Court considered the question:

“Whether the judgment of a criminal court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is conclusive and binding upon the Motor Accident Claims Tribunal dealing with a claim petition under Section 110-C of the Motor Vehicles Act and if not, for what purposes and to what extent can such a judgment be availed of by the parties concerned?”

Answering the same, it was observed as under:-

33. To sum up in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nature of the onus may vary and the effect of evidence may not be the same. It will, therefore, be contrary to all fundamental concepts of natural justice to treat the findings of the Criminal Court as binding on the Motor

Accidents Claims Tribunal, assuming -- but not holding -- that such a Tribunal is not a Court as defined in Section 3 of the Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.

34. It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the Criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.

35. For the reasons recorded in OUT separate judgments, we answer the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance with law:--

"The Judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110-C of the Motor Vehicles Act, and its findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such judgment can however, be relevant only for the purpose and to the extent specified in Section 43 of the Evidence Act."

Reference is also made to ***Krishan S/o Mangiram v. Tarawati***

Widow and Others 2011 (3) PLR 29, wherein. it was held that a criminal Court's judgment acquitting a driver would have no relevance in a case before the Tribunal and the Tribunal will consider the issue of negligence on the basis of the evidence adduced before it, uninfluenced by the fact of the pendency of the criminal case or the acquittal therein. It was observed as herein given:-

"3. It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortuous claims for accident victims that are required to be established before the Tribunal and the Tribunal will

consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court. It cannot be used for any other purpose, unless it is a case of conviction rendered on admission before the criminal Court where the conviction by the criminal Court on an issue of negligence will have immense value before the Tribunal.”

In *The General Manager, Bihar Road Transport Corporation*

v. *Smt. Uma Rani Behura and others* 1998 WBLR 344, a Division Bench of the Calcutta High Court held that a judgment of acquittal in a criminal case is admissible in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. But the findings of the criminal Court are not binding on the civil case. It was observed as herein given:-

“7. A judgment of acquittal passed in a criminal case is admissible in evidence in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. It is now well settled principle of law that the findings of a criminal Court are not binding on the Civil Court although the converse is true.”

In *Hem Ram and Another v. Krishan Chand and Another*

2015(9) R.C.R (Civil) 311, it was held by the Himachal Pradesh High Court that it is settled position that while a conviction recorded by the Criminal Court is enough to hold that the driver had driven the vehicle rashly and negligently, but his acquittal would be no ground to dismiss the claim petitions. It was observed as herein given:-

“28. The question is - whether the findings recorded by the Criminal Court can be made basis for holding that the driver has not driven the vehicle rashly and negligently and the deceased/injured were gratuitous passengers?”

29. It is beaten law of land that if conviction is recorded by the

Criminal Court, that is the best ground to hold that the driver had driven the vehicle rashly and negligently, but, if the driver earns acquittal, that cannot be a ground for dismissal of the claim petitions”

It is indeed trite to state that while finding of a civil Court is binding on a criminal Court, the finding of a criminal court, could not and should not influence the decision of the Tribunal. The Tribunal is to adjudge the case, on the basis of the evidence produced before it and not on the basis of the findings, solely recorded by the criminal court, though the same may put Tribunal, on some caution for scrutiny purposes.

Thus, there is requirement of independent appraisal of the evidence, so coming forth, before the Tribunal. The mere acquittal of the driver of the offending vehicle in a criminal case, cannot weigh against the evidence and the manner of appreciation, made by the Tribunal, keeping in view that the standard of proof required, being different in the two proceedings.

Consequently, on the basis of the judgments passed by the criminal Courts, *ipso facto*, do not sustain the submission about false plantation of vehicle bearing registration No.DL-3CM-6223 or of the role assigned to Harjinder Singh @ Rajinder Singh.

Proceeding further, it is also pertinent to mention that Ajit Singh had stepped into witness box on 23.02.2017 and his affidavit is Ex.PW1/A. As per the pleaded case of the claimants, Ajit Singh had witnessed the accident in question, though, he was travelling on separate motorcycle. The judgment of acquittal, so relied upon by learned counsel for the insurance company, which is Ex.RA, was pronounced by the criminal Court on 23.12.2015, meaning thereby, the criminal case was already

decided, at the time, when cross-examination of Ajit Singh was conducted. Though, some cross-examination was conducted about said witness Ajit Singh, to have made appearance in the criminal trial also, as a witness and the copy of the judgment had come as Mark PX, but however, the manner of his having deposed before the criminal Court, as such, has not been put to this witness. He was never confronted with the statement got recorded in the criminal case. Even, investigating officer has not been examined.

In the given circumstances, simply on the score of judgment of acquittal Ex.RA, having come on record, will not ipso facto, reach to the conclusion about Ajit Singh, having not supported the version, as put forth, in the FIR. It was incumbent upon the insurance company, while conducting cross-examination of PW-1 Ajit Singh, in the present case, to have confronted him with the statement, so got recorded and thus, giving an opportunity to him to explain his statement, got recorded in the criminal case. But, no such statement was put forth to him.

Thus, the judgment of acquittal, solely does not ipso facto, lead to the conclusion about the false case, having planted upon driver Harjinder Singh @ Rajinder Singh, driver of the offending car.

It is pertinent to mention that while conducting cross-examination of PW-1 Ajit Singh, a suggestion had been given that the accident had taken place, due to negligence of Jit Kumar @ Ajit Ram. Furthermore, no attempt has been made by respondents to examine Jit Ram @ Ajit Ram, who was driving the ill-fated motorcycle, at the relevant time. In the light of testimony of Ajit Singh, who withstood the test of cross-examination satisfactorily, the rashness and negligence imputed upon

Harjinder Singh @ Rajinder Singh, as such, stands established and the fact of death of Preet Kaur, as a result of this accident, also stands established and thus, the findings on this count, are hereby affirmed.

Proceeding further, now let us consider the extent of compensation granted by learned Tribunal, on account of death of Preet Kaur.

The claimants are the husband and children of deceased Preet Kaur. Learned Tribunal had appropriately considered the deceased as 37 years old, at the relevant time. Though, she was pleaded to be working as Cook and earning Rs.10,000/- per month, but however, on account of no satisfactory evidence, coming on record, the notional earnings of the deceased as a homemaker, were taken as Rs.7,000/- per month. Considering the age of the deceased, multiplier of '15', which is appropriate and suitable, as per *Sarla Verma's case*, was applied. However, the compensation, so worked upon, calls for re-computation.

Learned counsel for the insurance company has assiduously submitted that the extent of earnings of the deceased to be Rs.7,000/- per month, is on higher side, more particularly, when the source of livelihood, as asserted by the claimants, does not stand established. However, the submission aforesaid, is not tenable. No doubt, there was no evidence, coming on record, about indulgence of the deceased in cooking in the parties and earning Rs.10,000/- per month and the same was, as such, appropriately not considered by learned Tribunal, but anyhow, the fact remains that the deceased was a homemaker.

In the given circumstances, value of services rendered by a homemaker, as such, has to be assessed, to work upon the compensation. At the relevant time of the accident, the minimum wages for unskilled worker as Rs.6647.75 and for semi-skilled, it was Rs.7427.75. There are numerous duties, which are performed by a homemaker, while looking after her house, as well as husband and children. It has to be seen that the contribution made by the wife to the house is invaluable and the same cannot be computed in terms of money. However, the Courts, as such, cannot overlook the gratuitous services rendered by the wife, with true love and affection, to her children and her husband and managing the household affairs, which in itself, cannot be equated with the services rendered by any other person. There cannot be any fixed approach to assess the notional income of a homemaker, but however, the Courts have to make approximate economic value for all the work that a homemaker, in routine do, while looking after the home and family. Thus, the facts and circumstances of each case, as such, has to be taken into consideration.

Considering the invaluable services, rendered by a homemaker, in the light of the minimum wages, as observed aforesaid, prevalent at the relevant time, the extent of earnings as Rs.7,000/- per month, so taken by learned Tribunal, as value of services, cannot be said to be on higher side. However, learned Tribunal had simply taken amount of Rs.7,000/- and without making any addition, on the count of 'future prospects' and further deduction, on the count of 'personal expenses', has erroneously worked upon the compensation, while applying the multiplier of '15' and concluded about the loss, on account of dependency to be Rs.12,60,000/-, to which

addition of Rs.25,000/- was made, on the count of 'funeral and last rites'.

However, addition ought to be made, on the count of 'future prospects'. Beneficial reference is made to ***Kirti and another vs. Oriental Insurance Company Ltd., 2021(2) SCC 166***, wherein, the Hon'ble Supreme Court, while considering the case of death of a homemaker, has 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. While 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.”

Now, advertent to the case in hand, while considering the age of the deceased to be 37 years, as per guidelines laid down in *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009, Sethi's case*, addition of 40%, ought to be made on the count of 'future prospects'. While making it be so, the earnings of the deceased comes to be Rs.7000+2800=Rs.9800/-. From the aforesaid earnings, 1/4th has to be deducted, on the count of 'personal expenses', which is to extent of Rs.2450/- and while making this deduction, the monthly dependency comes to be Rs.7350/- per month, annual whereof, comes to be Rs.88,200/- and after applying the appropriate and suitable multiplier of '15', as per *Sarla Verma's case*, the loss of dependency works out to be Rs.88200x15=Rs.13,23,000/-.

Besides the same, amounts are to be paid, amounts are to be paid under the conventional heads, namely, 'loss of consortium', 'loss of estate' and 'funeral expenses', as held in *Pranay Sethi's case (supra)*. As per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', whosoever are the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or 'filial' consortium, as required. Thus, the husband and children, are also entitled to 'spousal' and 'filial' compensation, on the count of 'loss of consortium, which shall be to the extent of Rs.48,400/-, for each of the claimants i.e. Rs.48400x5=Rs.2,42,000/-. On the similar pattern, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable to the claimants, at present, comes to be Rs.18,150/-, on each count.

Considering the same, the compensation payable to the

claimants, on account of death of Preet Kaur, is re-computed, as herein given:-

Loss of dependency	:	Rs.13,23,000/-
Loss of consortium	:	Rs.2,42,000/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.16,01,300/-

As such, the enhanced compensation, after the deduction of compensation awarded by the Tribunal comes to be **Rs.16,01,300-12,85,000=Rs.3,16,300/-**. On the aforesaid differential amount of Rs.3,16,300/-, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. The residue terms of the Award, shall remain the same.

In view of the aforesaid observations, the appeal filed by the insurance company i.e. **FAO-3679-2017** stands dismissed, whereas, appeal filed by the appellants-claimants i.e. **FAO-5769-2017**, stands allowed.

May 02, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No