**Phool Kumar and ors. Vs. Mr. Gurdial Singh and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/692834

**Court** : Delhi

**Decided On :** Aug-31-1998

**Reported in** : 2001ACJ24; 1998VIAD(Delhi)536; 1998(47)DRJ618

**Judge** : Usha Mehra, J.

**Acts** : Motor Vehicles Act, 1939 - Sections II-1 and 95

**Appeal No.** : F.A.O. 50 of 1983 With F.A.O. 24 of 1983

**Appellant** : Phool Kumar and ors.

**Respondent** : Mr. Gurdial Singh and ors.

**Advocate for Def.** : Mr. Ajay Laroia and ; Mr. K.L. Nandwani, Advs.

**Advocate for Pet/Ap.** : Mr. O.P. Goyal, Adv

**Judgement** :

**Usha Mehra, J.**

1. These two appeals arise from a common judgment delivered by the Motor Accident Claims Tribunal (in short the Tribunal) touching the same facts, cause of action and question of law. Hence taken up together and disposed of by this order.

2. In order to appreciate the challenge to the impugned judgment by the owner of the truck in FAO 24 of 1983 and by the legal heirs of the deceased in FAO 50 of

1983 we must have a look at the facts of this case.

3. The deceased, Ishwar Singh, aged about 32 years was a Sub-Inspector in Police. On 5th June, 1976 at about 8.45 p.m. he was going on a two wheeler scooter, hardly had he reached near Railway Bridge, Rani Bagh, Delhi, a truck bearing No.DLL-5885 driven rashly and negligently by respondent Gurdial Singh, came from behind and hit his scooter. As a result of this impact created by the said truck, Ishwar Singh fell down and sustained grievous injuries. He was removed to Irwin Hospital where he succumbed to his injuries. At the time of his death, he was drawing a salary of Rs.1,000/- (Rupees one thousand). He left behind his widow, two minor sons and two minor daughters, an unborn child and his mother. His legal heirs filed a claim petition under the Motor Vehicle Act, 1939 (for short 'the Act') which was listed as Suit No. 344 of 1976 wherein they claimed compensation to the tune of Rs. 5,00,000/-.

4. The claim petition was contested by the owner of the truck, Mr. Madan Lal, as well as by the driver of the truck, Mr.Gurdial Singh. The United India Fire and General Insurance Company contested the petition on two grounds, namely, limited liability and that the driver of the truck was not holding a valid driving licence. The owner took the plea that his truck was not involved in the accident.

5. The Tribunal after considering the oral and documentary evidence placed before it, held that Mr.Gurdial Singh, driver of the truck, was negligent and that the accident was caused with the truck bearing No. DLL-5885 driven by Mr.Gurdial Singh. The Tribunal assessed the dependency loss to the family of the deceased at the rate of Rs.654/- per month. It applied the multiplier of 16 years and awarded a sum of Rs.1,25,570/-. Out of this amount, the Tribunal deducted Rs.41,000/- on account of family pension and ordered further deduction at the rate of 15 per cent on account of lump-sum payment. After deducting the deductions ordered by the Tribunal, the net compensation worked out to Rs.71,545/-. The Insurance Company's liability was fixed at Rs.50,000/- and the balance was to be paid by the truck owner and the driver. It was further stipulated in the impugned order that if the awarded amount was not paid within three months, then the claimants would be entitled to interest at the rate of 9 per cent.

6. Aggrieved by this order, the claimants have filed the appeal listed as FAO 50 of 1983, asking for enhancement of compensation. The owner of the truck, Mr. Madan Lal, also felt aggrieved by the decision of the Tribunal because he alleges his truck was not involved in the accident. He has filed the appeal which is listed as FAO 24 of 1983. He has prayed for quashing of the award against him.

FAO. No .24/83 :

7. The point raised in the appeal filed by the owner of the truck is; whether on the basis of the evidence available on record could the Tribunal hold that the truck was involved in the accident? Submission of the appellant that there is no evidence to connect his truck with the accident, to my mind, is unfounded. Perusal of the record shows that Tribunal on the basis of the evidence of eye-witnesses and the letter written by this appellant Exhibit PW-1/D concluded that the accident was caused by the truck bearing No. DLL-5885 which was driven by Gurdial Singh, the respondent. In this regard reference can be made to the testimony of Sub-Inspector, Om Dutt, the Investigating Officer of the case. Perusal of his testimony show that after having removed the injured to the hospital, he came back to the spot. It was after his return from the hospital that he prepared the site plan and recorded the statement of the eye-witnesses, namely, Shri Sri Prakash, PW-7 and of Mr.Nar Singh, PW-9. PW-9 disclosed the number of the truck involved in the accident. Similarly, Shri Sri Prakash, PW-7 testified as to how the accident took place. Both of them inspire of being subjected to lengthy cross-examination withstood the test rather reiterated that accident was caused by the appellant's truck which hit the scooterist from behind and that the said truck was driven by Gurdial Singh, the respondent. Their presence at the spot at the time of accident has not been discredited inspire of lengthy cross-examination. PW-7 saw the accident when he was going on his bicycle. He had to ascend from the bicycle at the Railway Bridge, Rani Bagh, thereforee, he could see the accident clearly. Shri Nar Singh, PW-9 not only saw the accident caused but also noted the truck number i.e. DLL-5885. He described that the said truck hit against the scooterist from behind. And that the truck driver instead of stopping the truck drove it away. The truck driver in order to find out what he did, peeped out of the window of the truck. It was at that stage he saw the face of the driver. The fact of peeping out his

case by Gurdial Singh has been corroborated by the testimony of Shri Sri Prakash. From their testimony it becomes clear that they witnessed the accident. They saw the face of the driver. Their statements were also recorded by the police immediately after removing the injured to the hospital. Their statement could not be dislodged or discredited in the cross-examination.

8. The contention of Mr. Laroia appearing for the appellant that there was material contradiction in the testimony of Shri Sri Prakash, PW-7 and Shri Nar Singh, PW-9, namely, the place where their statements were recorded had been given differently by Shri Sri Prakash and Shri Nar Singh. Shri Sri Prakash, PW-7 stated that his statement was recorded at the spot whereas according to Mr.Nar Singh, PW-9 the statement was recorded in the police station. To my mind, the Tribunal rightly concluded that this was not a very material contradiction which would be fatal for this case. Nor by this contradiction inference can be drawn that truck bearing No. DLL-5885 was not involved in the accident. The accident took place in the year 1976 whereas the statements of these witnesses was recorded almost after about six years. In natural course, a witness is bound to forget the details after a lapse of time. It is only the tutored witness who can remember in precise manner the details. Natural variation after lapse of 6 years in the testimony of natural and truthful witness can come up but that cannot effect the merits of the case. The Tribunal rightly concluded that there was no material contradictions on the basis of which the testimony of these eye witnesses could be discarded or it could be said that they had not witnessed the accident. The fact that they witnessed the accident and the involvement of the truck bearing No.DLL-5885 and the driver has not been rebutted because the owner of the truck did not step into the witness box nor Shri Gurdial Singh stated that this truck was not involved. thereforee, I see no reason to discard their testimonies. It was PW-9 who gave the number of the truck. He saw the face of the driver and so did Sri Prakash, PW-7. PW-8, Dr.Sube Singh, is another eye witness of the accident. He also saw the truck bearing No. DLL-5885 hitting the scooterist from behind. Admittedly, his statement was not recorded by the police either at the spot or in the police station. He, however, clarified that he did inform the 'Thanadar Sahab' that he had witnessed the accident but his statement by the police was not recorded. He, however, informed about this accident to Mr.Mangat Ram. Mr.Mangat Ram in turn

informed the L.Rs. that PW-8 witnessed the accident. That is how he was summoned as a witness in the Court. Although his statement in the criminal case was not recorded, but that by itself cannot lead to the conclusion that he was a planted witness. Merely because the statement of Dr. Sube Singh, PW-8, was not recorded by police, cannot itself be a ground to throw away his testimony. For arriving at this conclusion support can be had from the decision of Mysore High Court, namely, Varadamma v. H.H. Mallappa Gowda & Others reported in 1972 ACJ 375 wherein it was held that merely because witness was not examined by the police or that he was not examined in the connected criminal case, it cannot be said that his evidence should not be relied upon. We have to see whether the testimonies of the eye-witnesses inspires confidence and have spoken truth. If they have then there is no reason not to rely on their statements. But if their statement appears to be unreliable then those can be discarded irrespective of the fact whether their statement was recorded by the police or not or whether those were recorded at the police station or at the spot. Hence everything hinges on the credibility of the statement of PW-7, PW-8 and of PW-9. As already discussed above, the statements of Shri Nar Sigh, PW-9 and Shri Sri Prakash, PW-7 corroborate each other. In cross-examination their evidence could not be discredited. From the suggestions given in the cross-examination to PW-7 it is clear that the appellant accepted the presence of the truck at the site and of causing the accident. Not a single suggestion was given to this witness that the truck No.DLL-5885 did not cause accident or was not involved in this accident. Nar Singh, PW-9 stated that he informed the police at the spot that he had seen the accident and so did PW-7. The suggestion given to PW-9 was that he was at a distance of one furlong at the time of accident. This suggestion itself support that appellant accepted the presence of PW-9 at the spot at the time of accident. Second suggestion given was that he had not seen the scooter before the accident. This suggestion falsify the argument of the appellant that PW-9 was not present at the spot at the time of accident. Not only that, even the suggestion that at the time of accident it was dark and, thereforee, could not have noted truck number goes to show that the appellant admitted the presence of this witness at the spot. All these suggestions are a clear pointer to the fact that the witness was present at the spot when the accident took place. He in no uncertain words stated

that he read the truck number from the rear plate when the truck speeded away after hitting the scooterist. He denied any relationship with the deceased. The appellant had not been able to prove that PW-9 was related to deceased and, thereforee, made the statement in order to favor the claimants. The suggestion to this witness that scooterist was carrying 'Rori' on his scooter and since he could not balance hence fell down. This suggestion, of course, was denied by this witness, it however, proves that the appellant accepted the presence of PW-9 at the spot on the fateful day and time when accident took place. Except a mere suggestion, nothing was put to this witness wherefrom it could be inferred that this truck was not involved in the accident.

9. Perusal of the testimony of Dr. Sube Singh (PW-8) who was not related to the deceased also inspires confidence. The same shows that he had, in fact, witnessed the accident and noted the number of the truck i.e. DLL-5885 which hit the scooterist from behind. He had seen the accident when the truck was hardly 22-25 paces behind the scooter and the scooterist was driving on the correct side of his road. This witness belongs to Shahpur Village. He was not known to the deceased from before. His statement was not recorded by police though he says he narrated the incident to the 'Thanadar Sahab'. He also narrated the accident to Mangat Ram. He had given his name in the police. Mangat Ram noted his ;name. Since he had disclosed the details of the accident hence he was summoned as a witness in the Court. There is no reason to doubt his testimony. His presence at the spot can be presumed from various circumstances having come on record. For example, his presence can be inferred because the accident took place hardly half-a-kilometer from the his residence. While he was coming on foot to his factory he witnessed the accident. The accident took place somewhere between his home and his factory and at that time i.e. 8.45 AM when he was coming to work. There cannot be any motive for this witness to depose falsely or to favor the claimants who are not known to him from before.

10. I find no reason to discard the testimonies of eye-witnesses either on account of some contradictions regarding place of recording their statement by police or that PW-8's statement was not recorded by the police. The Tribunal was not trying a criminal case, where the guilt has to be proved beyond any doubt. Not only the

testimonies of PW-7, PW-8 and PW-9 inspire confidence but their statements in a way are corroborated by the stand taken by the respondent Gurdial Singh, in the written statement as well from the reply sent by this appellant to the police (Ex.PW-6/D). Mr.Gurdial Singh took the defense that he was bed-ridden hence did not drive the truck on that day. Some one else drove the truck. The defense taken by Gurdial Singh was contradicted by this appellant when he in his reply exhibit PW-6/D stated that on 5th June,1976 his truck DLL-5885 was being driven by Gurdial Singh, Driver. If this truck had not been driven on that day by Mr.Gurdial Singh the owner would have said so, instead he admitted that the truck was driven on that day by Mr. Gurdial Singh. Similarly, the defense taken by this appellant was contradicted by Mr. Gurdial Singh when he stated that truck was driven but by some one else. This appellant had taken the plea that on the day of accident his truck had not come on the road. These contradictory stands of the driver and the owner clearly show that they were hiding the truck. They built up sham defense in order to defeat the claim of the claimants.

11. From the reading of Ex.PW-6/D and the reply filed by the driver, Gurdial Singh, an inference can be drawn that they were trying to save themselves from the liability. From the reply Exhibit PW-6/D it can be seen that Gurdial Singh was not bed-ridden on that day and that he, in fact, was driving the truck. The appellant did not step into the witness box nor produced the log book of the truck. thereforee, adverse inference can be drawn against him. No reliance can be placed on the testimony of Gurdial Singh, driver of the truck who in order to save himself tried to mislead the Court. The Tribunal rightly concluded that the truck No. DLL-5885 driven by Gurdial Singh was involved in the accident. It ultimately killed the deceased, Ishwar Singh. Mr.Gurdial Singh in his statement except saying that he was confined to bed nowhere denied the accident. On the contrary, he took the plea that someone else was driving the truck on that date. Neither the name of that person was disclosed nor produced him in evidence. It is apparent from the present appellant's reply (PW-6/D) that Gurdial Singh was driving the truck in question and that truck was on the road and caused the accident.

12. The contention of Mr.Ajay Laroia that PW-8, Dr.Sube Singh, was a planted witness, his name did not figure in the police diary or in police record nor his

statement was recorded, I have already dealt with this aspect of the argument of the appellant and find no substance in the same. There is no material contradiction in the testimony of the Investigating Officer, Mr. Om Dutt, PW-6 and of Nar Singh, PW-9 or of Sri Prakash, PW-7. From the evidence which has come on record, presence of PW-7, PW-8 and PW-9 stood established. As already pointed out by me above, it is only a tutored witness who would repeat the version verbatim; otherwise, in natural course of business if two persons see an incident they are going to describe it in their own way. Thus so far as the cause of the accident and the involvement of the truck No.DLL-5885 is concerned, that is fully established. Hence, I find no merit in the appeal of Madan Lal, owner of the truck. The same is accordingly dismissed.

F.A.O. 50 OF 1983:

13. Having established that Ishwar Singh died because of the accident caused by truck No.DLL-5885 driven rashly and negligently by Gurdial Singh, we are now left to determine whether the Tribunal correctly awarded the amount and the liability of the Insurance Company.

14. Before I deal with the merits of this appeal, I would like to take up the question of limited liability raised by the Insurance Company. Mr.O.P.Goyal, appearing for the appellants/claimants and Mr.Ajay Laroia for the respondent truck owner, contended that the liability of the Insurance Company in this case was unlimited. Mr.Goyal drew my attention to the insurance policy Exhibit RW-2/1. The perusal of the same shows that the truck owner paid a premium of Rs.1,911/- as against the basic premium of Rs.84/-. This according to Mr.Goyal and Mr.Laroia was additional premium charged by the Insurance Company to cover the risk comprehensively. Mr.Goyal contended that since the truck was comprehensively insured. This fact was admitted by the Insurance Company in its reply to para 16 of the petition. Being a comprehensive policy, higher risk was covered. The Insurance Company by the testimony of Mr. O.P.Seth, RW-2, failed to explain why the premium of Rs.1,911/- was charged if its liability was limited or act only policy. Contention of Mr.K.L.Nandwani, counsel for the Insurance Company on the other hand is that on the policy Exhibit RW-2/1 itself it was made clear that liability would

be as per Section 95(2)(b)(ii). In this regard he drew my attention to the expression 'such sum as is necessary to meet the requirement of the Act' scribed on the policy. It was a policy carrying limited liability. The Insurance Company under Section 95(2)(b)(ii) was liable only to the extent of Rs.50,000/-. It is the term of the policy which has to prevail. The limited liability cannot be made unlimited by interpreting the terms of the policy contrary to the provisions of the Act. I am afraid, this arguments of Mr.Nandwani in the facts of this case has no force. Admittedly, the policy Exhibit RW-2/1 is a comprehensive policy. Reading of the Tariff issued by the Insurance Company show that the basic premium chargeable for such like vehicle at the relevant time was Rs.84/-. It is an admitted fact on record that Insurance Company charged Rs.1,911/- as basic premium in this case. Mr.Ajay Laroia and Mr.O.P.Goyal were justified in contending that this extra premium was charged by the Insurance Company in order to cover extra risk, that is why Insurance Company issued a comprehensive policy in this case covering wider risk to third party. The additional amount was charged to make the liability of the Insurance Company unlimited. The argument of Mr.K.L.Nandwani that extra premium was charged in order to cover higher damages for the vehicle cannot be accepted nor appreciated. This argument has been built-up for the first time in this appeal. This was not the case set up by the Insurance Company either before the Tribunal or in its pleadings before this Court. Even when Mr.O.P.Seth, Senior Assistant appeared on behalf of the Insurance Company as RW-2 nowhere stated that the extra premium was charged to cover higher risk of the truck. In the absence of pleadings and proof this oral submission cannot be accepted. RW-2's statement on this aspect is completely silent. He did not explain under what circumstances extra premium was charged. In the absence of the same it can be presumed that Rs.1,911/- was charged as extra premium in order to cover extra risk. That is why comprehensive policy was issued instead of act only policy. Unlimited risk was covered. This conclusion can also be drawn from the reading of the clause 'limit of liability' appearing in the policy Exhibit RW-2/1, which does not mention any amount under Section II-1(i) of the Act. Against Section II-1(i) it is mentioned 'such amount as is necessary to meet the requirement of Motor Vehicle Act,1939'. It is only against the liability under Section II-1(ii) i.e. in respect of any one claim or series of claims pertaining to the damage to the property that an

amount fixing liability up to Rs.50,000/- has been mentioned. We are, thereforee, left to interpret as to what does 'such amount as is necessary to meet the requirement of the Act' means. Such a clause came up for interpretation before a Division Bench of the Madhya Pradesh High Court in the case of National Insurance Company Limited v. Kamla Devi and Others, 1995 ACJ, 546. Madhya Pradesh High Court after considering the provisions of the Act and the clause stipulated in the Insurance Policy itself and as referred to above concluded that such a clause in the policy cannot be read as requirement of Section 95 only but that expression would cover the entire liability of the owner under the Act, 'legal liability' would mean whatever legal liability is incurred to the injured by the owner of the vehicle insured. In that case the passenger qua whom the liability was to be considered, the Court concluded that taking the passenger to be a third party, Insurance Company's liability was unlimited. In the present case also, to my mind, the expression 'such amount as is necessary to meet the requirement of Motor Vehicles Act' would not mean nor can be construed that the liability of the Insurance Company was limited to Rs.50,000/-. There are two reasons for not accepting the question of limited liability raised by Mr.K.L.Nandwani, firstly (i) extra premium was charged from the owner of the truck covering comprehensive risk and secondly (ii) no amount of liability was mentioned against the column under Section II-1(i) of the policy. The requirement of Motor Vehicle Act,1939 cannot be read as requirement of Section 95 only. thereforee, it would not be correct on the part of the Insurance Company to contend that by urging this expression in the policy the liability became limited. On the contrary, the liability of the Insurance Company to indemnify the total compensation can be inferred from this expression. The Rajasthan High Court in similar circumstances in the case of Chand Kanwar v. Manna Ram, 1986 ACJ 269 had gone to the extent of saying that the expression 'such amount as is necessary to meet the requirement of the Motor Vehicle Act' has to be interpreted keeping in view that the policy issued was a comprehensive policy. That would lead to the inference that the Insurance Company would be liable to pay the claimant whatever amount is claimed by the claimant. Thus the liability becomes unlimited because the Insurance Company had accepted extra premium and issued a comprehensive policy. Keeping these factors into consideration and applying the same to the facts of this case, it can

safely be said that the liability of the Insurance Company was unlimited. The Tribunal fell in error in restricting the liability to Rs.50,000/-. Punjab & Haryana High Court in a recent judgment in National Insurance Company Vs . Pooja Roller Flour Mills P.Ltd., also held that the expression 'such amount as is necessary to meet the requirement of Motor Vehicles Act' makes the Insurance Company liable totally.

15. Mr.Nandwani on the other hand in order to contend that the liability was limited has placed reliance on the decision of Kerala High Court in the case of National Insurance Co.Ltd. v. Annamma Abraham & ors., 1998 Vol.92 page 556. Kerala High Court while interpreting the clause in the policy 'such amount as is necessary to meet the requirements of Motor Vehicles Act' came to the conclusion that the liability of the Insurance Company was limited. I am afraid these observations of Kerala High Court do not help Mr.Nandwani because in that case no additional premium was paid to make the liability unlimited. But in the case in hand additional premium was charged and accordingly extra risk was covered by issuing a comprehensive policy. thereforee, on facts the case of Kerala High Court is distinguishable. The observations of the Division Bench of Madhya Pradesh High Court in the case of Kamla Devi (supra) and of Punjab & Haryana High Court in the case of Pooja Roller Flour Mills P.Ltd. (supra) on all force apply to the facts of this case.

For the reasons stated above, I hold that the liability of the Insurance Company in this case was unlimited. The Tribunal did not discuss nor gave any reason as to why the Insurance Company's liability was up to Rs.50,000/-. In this view of the matter, the decision of the Tribunal restricting the liability of the Insurance Company limited to Rs.50,000/- is set aside. The liability of the Insurance Company was unlimited.

16. Before dealing with the question of quantum of compensation, I must say that the order of the Tribunal allowing deductions of Rs.41,400/- on account of family pension and 15% on account of lumpsum payment cannot be sustained. This practice has been deprecated by the Apex Court in umpteen number of cases. thereforee, order of deduction on account of family pension and lumpsum

payment, as ordered by the Tribunal, is hereby set aside.

17. Turning to the question as to what should have been the quantum of family loss and multiplier, we can look to the evidence brought on record. It has come in the testimony of Smt.Phool Kaur, PW-4, widow of deceased Ishwar Singh that her husband left beside her, two minor sons and three minor daughters, one of whom was born after three months of her husband's death. Beside deceased left his widowed mother. He used to give her a sum of Rs.1,000/- per month for running household expenses. He used to spend about Rs.200/- as his expenses. On this part of her testimony there is no cross examination. Rather her testimony regarding the earning of deceased Ishwar Singh, we have the evidence of Sher Singh, A.S.I., PW-3 who brought the service record of the deceased in connection with his pay and allowances. As per the last pay certificate Exhibit PW-3/A, the deceased was drawing his basic pay of Rs.500/- and the total emoluments were Rs.980.90 paise. He also testified that if the deceased had been alive, he would have retired on 31st January,2002. The deceased would have earned the emoluments and rise in the salary in due course. Till his retirement he would have earned Rs.3,68,533.45 paise. The age of retirement was taken to be 58 years. That is how he calculated the amount which the deceased would have earned. He also testified that the deceased's salary would have increased with the announcement of various Pay Commission Reports.

18. Taking these factors into consideration, to my mind, the Tribunal wrongly concluded the dependency loss of the deceased at Rs.654/- per month. Admittedly the monthly income of the deceased at the time of his death was approx. Rs.1,000/-. Even if deductions were allowed at the rate of Rs.200/- per month on account of his personal expenses still dependency loss would have been more than what was arrived at by the Tribunal. But taking into consideration future prospects, to my mind, dependency loss to the family would be Rs.12,000/- per annum. Had the deceased been alive, he would have continued his job till the year 2002. The multiplier in his case ought to have been 18 years instead of 16 years. thereforee, applying the multiplier of 18 years to the dependency loss of Rs.12,000/- per annum, the net amount of compensation comes to Rs.2,16,000/- on which the appellants would also be entitled to interest at the rate of 12% per

annum from the date of filing the petition till realisation. The interest, of course, will be calculated on diminishing basis. Out of the enhanced compensation and after calculating the amount of interest, 60% of the same shall be paid to the widow of the deceased Ishwar Singh. Out of balance 40%, a sum of Rs.25,000/- will be given to the mother of the deceased and the remaining amount shall be distributed among all the other appellants in equal shares.

19. With these observations, the appeal stands disposed of.