

**Harbansi Devi and ors. Vs. Rakesh Kumar Alias Kala and ors.**

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**Court :** Himachal Pradesh

**Decided On :** Dec-24-1997

**Reported in :** I(1998)ACC448,1999ACJ202

**Judge :** A.L. Vaidya and; A.L. Khurana, JJ.

**Appeal No. :** F.A.O. Nos. 163 to 165 of 1990 and Cross-objection Nos. 51 to 53 of 1992

**Appellant :** Harbansi Devi and ors.

**Respondent :** Rakesh Kumar Alias Kala and ors.

**Advocate for Def. :** K.D. Sood,; G.C. Gupta,; Ramesh Sharma and;

**Advocate for Pet/Ap. :** H.K. Bhardwaj, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**R.L. Khurana, J.**

1. The above noted tree appeals and three cross-objections arising out of three separate awards of the learned Motor Accidents Claims Tribunal Una, (for short 'the Tribunal') in M.A.C. Petition Nos. 44, 46 and 47 of 1988 are being disposed of by this single judgment since the same involve common questions of facts and

law.

2. The facts leading to the present appeals and cross-objections, briefly, may be stated thus. On 22.9.1988 at about 8.30 p.m. near Civil Hospital, Una, on Una-Hamirpur road an accident involving a scooter No. HIU 629 and truck No. HPG 1545 had taken place resulting into the death of Roshan Lal and Raj Kumar, and grievous injuries to Baldev Raj.

3. The scooter at the relevant time was being driven by the deceased Roshan Lal while the deceased Raj Kumar and the injured Baldev Raj were the pillion riders. The scooter at the relevant time was proceeding towards Una town from the side of Civil Hospital. Truck bearing No. HPG 1545 belonging to respondent No. 2 and being driven by respondent No. 1 in a rash and negligent manner while coming from the opposite direction dashed into the scooter on the wrong side of the road.

4. Respondent No. 3 is the insurer of the truck No. HPG 1545 while respondent No. 4 is alleged to be the transferee of the said truck.

5. The injured Baldev Raj preferred a petition before the learned Tribunal under Section 110-A, Motor Vehicles Act, 1939, being M.A.C. Petition No. 44 of 1988, claiming compensation to the tune of Rs. 2,00,000 for the bodily injuries sustained by him in such accident.

6. The legal heirs, i.e., widow, mother and minor daughter of the deceased Roshan Lal also preferred a petition being M.A.C. Petition No. 46 of 1988 claiming compensation to the tune of Rs. 10,00,000 for the death of deceased Roshan Lal.

7. The parents of the deceased Raj Kumar, a young boy of about 16 years of age, vide M.A.C. Petition No. 47 of 1988 claimed compensation of Rs. 4,00,000 for the death of their son.

8. The three petitions were resisted and contested by the respondents. Respondent No. 1 denied the accident and the fact that at the relevant time he was driving the ill-fated truck.

9. Respondent No. 2 pleaded that he had sold the truck to respondent No. 4 vide agreement dated 27.6.1987 and since he was not the owner of the truck as on the date of accident, he was not liable.

10. Respondent No. 3, the insurer of the truck, denied its liability under the insurance policy on the ground that in view of the sale of the truck by respondent No. 2 to respondent No. 4, its liability came to an end. It was further pleaded that the driver of the truck was not holding a valid driving licence at the relevant time and that the accident was as a result of contributory negligence of the driver of the scooter. Alternatively, it was pleaded that its liability was limited to the extent of Rs. 1,50,000.

11. Respondent No. 4 averred that the truck was purchased by him only on 3.10.1988, i.e., after the accident. Respondent No. 2 was the owner of the truck as on the relevant date.

12. The learned Tribunal on consideration of the material placed before it came to the conclusion that respondent No. 1 was driving the truck in question at the relevant time and that the accident was as a result of rash and negligent driving on his part. The learned Tribunal also held that the respondent No. 1 was holding a valid driving licence at the relevant time. The learned Tribunal,, therefore, allowed all the three claim petitions and awarded compensation to the three sets of claimants as under:

(1) Petition No. 44 of 1988 Rs. 5,680 (2) Petition No. 46 of 1988 Rs. 1,47,500 (3) Petition No. 47 of 1988 Rs. 38,500

13. Respondent Nos. 1 to 3 being the driver, owner and insurer respectively of the truck in question were held to be jointly and severally liable to pay the amount of compensation. Respondent No. 4 was absolved from the liability on the ground that the truck was purchased by him only after the accident and that at the time of accident respondent No. 2 was the owner thereof.

14. Feeling aggrieved by the quantum of compensation awarded in their favour, the three sets of claimants have approached this Court by way of three separate

appeals being F.A.O. Nos. 163, 164 and 165 of 1990.

15. Respondent No. 2 has by way of the three cross-objections, being CO. Nos. 51,52 and 53 of 1992 assailed the findings of the learned Tribunal holding him to be liable along with respondent Nos. 1 and 3 and absolving respondent No. 4 from the liability. He also assailed the findings of the learned Tribunal as to rash and negligent driving on the part of respondent No. 1. It has been contended that at the most it was a case of contributory negligence on the part of deceased Roshan Lal, driver of the scooter. The quantum of compensation as awarded by the learned Tribunal was also assailed and it was contended that on the facts and in the circumstances of the case the compensation awarded is on a higher side.

16. The first question which falls for determination is whether the accident was as a result of rash and negligent driving on the part of respondent No. 1 ?

17. Be it stated that respondent No. 1 in his written statement as well as while appearing in court as RW 1 has denied that he was the driver of the truck at the relevant time.

18. Admittedly, respondent No. 1 stands charged for the offences under Sections 279, 337, 338 and 304-A, Indian Penal Code in respect of the present accident. ASI Kishan Chand, R-4 W5, was the investigation officer of the case. He has categorically stated that his investigation revealed that respondent No. 1 was driving the truck at the relevant time. The documents-of the truck, during the course of investigation, were taken into possession on having been produced by the respondent No. 1. This witness was never cross-examined by the respondent No. 1 on this aspect of the case. Therefore, the only presumption is that this part of the statement of R-4 W5 has been admitted by respondent No. 1.

19. The original record pertaining to criminal case against respondent No. 1 was summoned during the examination of Kashmir Singh, respondent No. 4, R-4 W6. A perusal of the same revealed that the application for the release of the truck taken into custody by the police was also made by respondent No. 1. If respondent No. 1 had nothing to do with the said truck, why he sought its release in his favour by moving the application before the court?

20. Further, Om Parkash, R-2 W3, the brother and general attorney of respondent No. 2, has categorically admitted that the respondent No. 1 was the driver of the truck in question at the relevant time.

21. Thus, on the basis of evidence coming on record the learned Tribunal has rightly held that respondent No. 1 was the driver of the truck in question at the time of accident.

22. Exh. R-4 W5/A is the copy of the site plan prepared by R-4 W5 during the investigation of the case. Admittedly, the scooter was proceeding towards Una, while the truck was coming from Una. The place of impact has been denoted by point 'C' in the site plan Exh. R-4 W5/A. This place falls on the right side of the road while one is coming from Una. Therefore, the truck had hit the scooter while going to wrong side of the road and dragged the scooter up to a distance of 15/20 yards towards the left side of the road. This fact also stands corroborated by claimant Baldev Raj and one Roshan Lal, an eyewitness of the accident.

23. As stated above, respondent No. 1 has merely denied himself to be driver of the truck. Such defence put forth by him has been found to be false. The accident has not been denied by respondent No. 2, the owner of the truck. Therefore, the mere fact that respondent No. 1 has come forward with a false defence is sufficient to infer rash and negligent driving on his part.

24. Respondent No. 2 has come up with the plea that the accident was as a result of contributory negligence on the part of deceased Roshan Lal, the driver of the scooter since two pillion riders were travelling with him in contravention of the provisions of the Motor Vehicles Act and the Rules framed thereunder.

25. Merely because scooter carried passengers/pillion riders beyond the permissible limit, the scooter driver cannot be held guilty of contributory negligence unless there is evidence to show that the scooter driver had one way or the other contributed to the accident. Solely because of breach of a rule, it cannot be inferred that such breach had culminated into contributory negligence. On this point we are supported by the ratio of Gujarat High Court in S.M. Vyas v. Sudhaben Sukethu Sutaria 1980 ACJ 178 (Gujarat) and that of Punjab and

Haryana High Court in *Agya Kaur v. General Manager, Pepsu Road Trans. Corporation, Patiala* 1980 ACJ 306 (P&H;).

26. The learned Tribunal on the facts and in the circumstances of the case, has rightly held that accident was due to rash and negligent driving on the part of respondent No. 1, the driver of the truck.

27. The second question falling for determination is whether the truck stood sold by respondent No. 2 in favour of respondent No. 4 prior to the accident and as such, respondent No. 2 is not liable.

28. It may be stated that respondent No. 3, the insurer of the truck, has not assailed the findings of the learned Tribunal holding it liable jointly and severally along with respondent Nos. 1 and 2.

29. Evidence coming on record establishes beyond doubt that the truck in question was transferred to respondent No. 4 by way of sale on 3.10.88 after the accident. The registration certificate in respect of the truck was transferred in favour of respondent No. 4 on 14.2.1989 while the insurance policy was so transferred on 1.3.1989.

30. Much reliance has been placed by respondent No. 2 on the agreement dated 27.6.1987, Exh. R-2 WI/B to show that the truck stood transferred to respondent No. 4 on 27.6.1987 much before the accident.

31. In our opinion, the learned Tribunal rightly did not place any reliance on this agreement. Respondent No 2, who is alleged to be a signatory of the agreement has not cared to step into the witness-box. Respondent No. 4 has categorically denied the agreement dated 27.6.87, Om Parkash, R-2 W 3, the brother and general attorney of respondent No. 2, has admitted that he got the truck transferred in the name of respondent No. 4 on 3,10.1988, on which date respondent No. 2 had also sworn an affidavit regarding transfer of truck.

32. There is yet another circumstance appearing in the present case against respondent No. 2. Copy of insurance policy, Exh. RA, shows that the truck was got insured for the period 23.4.1988 to 22.4.89 by respondent No. 2 himself. Though

R-2 W3 has deposed that premium for the insurance was paid by defendant No. 4, no evidence in this regard is forthcoming. So much so that even respondent No. 4 while appearing as R-4 W6 was not confronted with the suggestion that the insurance premium was paid by him. Had the truck been sold on 27.6.1987 as alleged, there was no occasion and necessity for respondent No. 2 to get the insurance renewed for the period 23.4.1988 to 22.4.1989.

33. The learned Tribunal, therefore, has rightly held respondent No. 2 to be the owner of the truck in question as on the date of accident.

34. Having dealt with the common questions involved in the three appeals and the cross-objections, we now proceed to take up each case individually in order to determine whether just and equitable compensation stands awarded in favour of each set of claimants.

F.A.O. No. 163 of 1990 and Cross-objection No. 51 of 1992.

35. The claimants in this case are the legal heirs, namely, widow, mother and minor daughter of the deceased Roshan Lal, the driver of the scooter.

36. The deceased at the relevant time was working as Branch Manager of Kangra Central Cooperative Bank at Rajpur Madan. He was of about 39 years of age at the time of death. As per Raj Singh, PW 2, Sub-Accountant of the bank, the deceased was drawing gross emoluments of Rs. 3,936 per month at the time of death, which apart from other allowances included house rent of Rs. 250 and medical allowance of Rs. 50 per month.

37. The learned Tribunal after allowing deductions towards the house rent being paid by the deceased for the house taken on rent by him at the place of posting and also the medical allowance, came to the conclusion that the net monthly income of the deceased was Rs. 2,709. Out of this amount a sum of Rs. 110 per month towards income-tax and a sum of Rs. 200 per month for maintenance of scooter-were further deducted. Thus, on the basis of monthly income of Rs. 2,399 the dependency of the claimants was assessed at Rs. 1,000 per month, i.e., Rs. 12,000 per annum.

38. The learned Tribunal applied the multiplier of 12 and assessed the compensation at Rs. 1,44,000. To this amount, a sum of Rs. 3,000 as conventional amount for loss of expectancy of life was added. A sum of Rs. 500 was also awarded towards medical expenses. Thus, total compensation assessed comes to Rs. 1,47,500.

39. Admittedly, the deceased was residing separately at the place of his posting. Therefore, he was maintaining a separate kitchen. He must have taken some rented accommodation for his residence. He was also maintaining a scooter. Taking into consideration all these facts and the net monthly income of the deceased, it would be reasonable to presume that the deceased must have been spending at least half of his monthly income on himself.

40. As stated above, the gross income by way of monthly salary of the deceased was Rs. 3,936. Deducting the income-tax of Rs. 110 per month there from, the net salary would come to Rs. 3,826 per month. Half of which comes to Rs. 1,913 rounded off to Rs. 1,900. Therefore, the dependency of the claimants would be Rs. 1,900 per month or say Rs. 22,800 per annum.

41. On the basis of the age of the deceased and the period during which the claimants are likely to remain dependent on the deceased, a multiplier of 12 has been correctly applied by the learned Tribunal. Applying the said multiplier the compensation payable comes to Rs. 22,800 x 12 = Rs. 2,73,600. Adding Rs. 3,000 as the conventional amount for loss of life expectancy and Rs. 500 as medical expenses, total compensation to which the claimants are entitled comes to Rs. 2,77,100. All the claimants would be entitled to this amount in equal share. The award of the learned Tribunal shall stand modified and amount of compensation awarded shall stand enhanced to that extent.

F.A.O. No. 164 of 1990 and Cross-objection No. 52 of 1992.

42. The claimants in this case are the parents of the deceased Raj Kumar, a young boy of about 16 years of age who at the relevant time was a student of Class VIII.

43. The learned Tribunal after observing that after finishing his education the deceased, had he not died in the accident, in due course of time would have started earning and contributing towards the family, assessed the dependency of the claimants at Rs. 150 per month and after applying a multiplier of 20 assessed compensation of Rs. 36,000. To this amount was added medical expenses of Rs. 2,000 and transport charges of Rs. 500. Total compensation thus awarded to the claimants is to the tune of Rs. 38,500.

44. Considering the minimum wages as prevalent in the year 1988, we are of the opinion that the learned Claims Tribunal has erred in determining the dependency of the claimants. According to the minimum rate of wages prevailing at the relevant time, it can be reasonably expected that had the life of the deceased not been cut short in the accident, in due course of time he would have started earning at least Rs. 750 per month as an unskilled labourer. Fact cannot be also lost sight of that the deceased, had he remained alive, would have got married and raised a family of his own. Considering all these facts it would be reasonable to take the dependency of the claimants at 1/3rd of his monthly income. Calculating at such rate, the dependency of the two claimants comes to Rs. 250 per month or say, Rs. 3,000 per annum.

45. The learned Tribunal while determining the compensation has applied the multiplier of 20. This multiplier on the face of it is on a higher side. The Apex Court has held that the maximum multiplier should not exceed 16. Applying the said multiplier, the amount of compensation comes to Rs. 3,000 x 16 = Rs. 48,000. To this amount are added the following amounts:

(i) Conventional amount for loss of expectancy, love and affection Rs. 3,000  
(ii) Medical expenses Rs. 2,000  
(iii) Conveyance charges Rs. 500-----Total Rs. 5,500-----

46. The two claimants are thus entitled to total compensation of Rs. 53,500 in equal shares. The award of the learned Tribunal shall stand modified and amount of compensation awarded shall stand enhanced accordingly.

F.A.O. No. 165 of 1990 and

Cross-objection No. 53 of 1992.

47. The claimant in this case is the injured Baldev Raj, one of the pillion riders of the scooter being driven by deceased Roshan Lal.

48. The learned Tribunal has awarded total compensation of Rs. 5,680 in favour of the claimant as under:

(i) Loss of actual earnings for a period of three months at the rate of Rs. 1,000 per month Rs. 3,000(ii) Medical expenses Rs. 2,680-----Total Rs. 5,680-----

49. The claimant had sustained a fracture of his right forearm as is evident from the medico-legal certificate Exh. PW-3/A. According to the claimant though the fracture has united, he has suffered permanent disability since the movement of the right arm is restricted. Dr. S.K. Nanda, PW 2, has assessed such disability at 30 per cent vide certificate Exh. P 20.

50. Suffice to say that the claimant was never treated by PW 2. Besides, the disability, if any, has not been linked with the injury alleged to have been sustained by him in the accident.

51. Though, on the facts and in the circumstances of the case, the learned Tribunal has rightly awarded the compensation of Rs. 5,680 under the head 'pecuniary loss' to the claimant, it has committed an error in not awarding any compensation under the head 'non-pecuniary loss', that is, for pain and suffering.

52. It has come in evidence that the claimant remained under treatment and was unable to attend to his daily chores for a period of three months. His arm remained under plaster. He must have suffered a lot of pain and mental agony during this period for which he has to be compensated.

53. On the facts and in the circumstances of the case, we are of the opinion that the claimant is entitled to further compensation of Rs. 5,000 for the pain and mental agony suffered by him. We, therefore, hold that the claimant is entitled to total compensation of Rs. 10,680. The award of the learned Tribunal shall stand modified and amount of compensation shall stand enhanced accordingly.

54. Each of the three sets of claimants shall also be entitled to interest on the .amount of compensation as allowed by the learned Tribunal.

55. Respondent Nos. 1 to 3 shall be jointly and severally liable to pay the amount of compensation to the claimants.

56. Resultantly, the three appeals are allowed and awards of the learned Tribunal made in M.A.C. Petition Nos. 44, 46 and 47 of 1988 are modified to the extent indicated above. The three cross-objections filed by respondent No. 2 are dismissed. Parties to bear their own costs.

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