IN THE COURT OF SHRI PUSHVINDER SINGH, MOTOR ACCIDENT CLAIMS TRIBUNAL, PATIALA

MACP/0000284/2013

Date of Institution: 7.4.2012 Decided on: 01.07.2014

Ramesh Kumar son of Hira Chand, aged 60 years, resident of House no.73, Motia Bazar, Samana, Tehsil Samana, District Patiala.

...Claimant

Versus

- 1. Jasvir Singh son of Sher Singh, resident of Village Kalka, P.S. Dirba, District Sangrur (Driver of Bus No.PB-011AN-9940);
- 2. Ram Dhall son of Baldev Singh Dhall, resident of village Raipur, Tehsil & District Patiala (Owner of Bus No.PB-011AN-9940);
- Shri Ram General Insurance Company Ltd., through its 3. Manager, E-8, EPIP-RIIC), Industrial Area Sitapura Jaipur (Insurer of Bus No.PB-011AN-9940).

...Respondents

- Krishan Kumar son of Ramesh Kumar, aged 42 years; 4.
- Pawan Kumar son of Ramesh Kumar, aged 38 years; 5.
- Gulshan Kumar son of Ramesh Kumar, aged 35 years; 6.
- Neeraj Kumar son of Ramesh Kumar, aged 32 years, all 7. residents of House no.73, Motia Bazar, Samana, Tehsil Samana, District Patiala

...Proforma Respondents

Claim petition U/s. 166 of the Motor Vehicles Act.

Shri Surinder Gupta, Advocate for claimant Present:

> Shri Amit Gupta, Advocate for respondent no.3. Respondents No.1, 2, & 4 to 7 exparte.

AWARD

- 1. The present claim petition has been filed by the claimants for grant of compensation to the tune of $\angle 20,00,000$ /- ($\angle 20$ lacs), on account of death of Dayawanti, deceased due to road side accident.
- 2. Briefly stated the facts in the claim petition are that on 16.1.2012 at 8.30 PM, the deceased was going with a marriage party and when the marriage party reached near Gill Palace, Samana, a Bus bearing

registration no. PB-11AN-9940 which was being driven by respondent no.1 at fast speed and in a rash and negligent manner, came from Samana side and struck against all the members of the marriage party, as a result of which, twenty persons including ladies, men and children suffered injuries and three persons died in the accident. The deceased was firstly taken to Rajindera Hospital, Patiala and thereafter she was referred to PGI, Chandigarh where she succumbed to the injuries suffered by her in the accident. The accident took place on account of sole rash and negligent driving of Bus bearing registration no. PB-11AN-9940 by respondent no.1. An FIR bearing No. 6 dated 17.1.2012 under Sections 279/337/304-A IPC was registered against respondent no.1 on the statement of Ram Lal son of Lachhman Dass.

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- 3. It is further pleaded that the deceased was 60 years of age and was hale and hearty. She was earning ∇ 8000/- per month i.e. ∇ 5000/- by doing the work of stitching and embroidery and ∇ 3000/- per month by rendering services to family. The claimant has spent ∇ 50,000/- on her treatment and medicines etc. and ∇ 50,000/- funeral, last rites, Bhog ceremony and transportation of the deceased. The accident had taken place because of rash and negligent driving of respondent No.1, hence the respondents i.e. Respondent No.1 being driver; respondents No.2 and 3 being owner and insurer of the tanker are liable to pay compensation jointly and severally.
- 4. Upon notice, respondents no. 1 & 3 put in appearance. However, respondents no.2 and 4 to 7 failed to appear despite having been duly served and as such they were proceeded against exparte. During the

proceedings of this case, none appeared on behalf of respondent no.1 and as such he was also proceeded against exparte vide order dated 26.4.2014.

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- Respondent No. 3, in its reply raised preliminary objections that respondent no.1 was not having valid and effective driving license at the time of alleged accident and the same was being plied without valid route permit and fitness certificate. On merits, the factum of accident in question has been denied. Rest of the averments have also been denied and prayer has been made for the dismissal of the claim petition.
- 6. From the pleadings of the parties, the following issues were framed: -
 - 1. Whether Dayawanti wife of Ramesh Kumar died in a motor vehicle accident with offending vehicle no.PB-11AN-9940 being driven by respondent no.1 rashly and negligently?OPP
 - 2. If issue no.1 is proved, whether the claimant is entitled to the compensation, if so to what extent and from whom?OPP
 - 3. Whether the respondent no.1 was not holding a valid driving licence at the time of accident?OPR-3
 - 4. Relief
- 7. To prove his case, claimant Ramesh Kumar himself stepped into the witness box as PW1 and thereafter learned counsel for the claimant tendered into evidence documents Ex.P1 to Ex.P12 and closed evidence on behalf of the claimant.
- 8. To rebut the aforesaid evidence, respondent no. 3 did not lead any oral evidence. However, learned counsel for respondent no. 3 tendered into evidence copy of insurance policy Ex. R1 and closed the evidence on behalf of the respondent no.3.
- 9. I have heard the learned counsel for the parties and perused the evidence brought on record. My issue-wise findings are as under: -

ISSUES NO. 1 AND 2

10. These issues have been taken up together being interlinked. Onus to prove both these issues was upon the claimant. In order to prove these issues, the claimant Ramesh Kumar himself stepped into the witness box as PW1 and he deposed reiterating the facts contained in the claim petition by way of affidavit Ex. PW1/A. This witness has further deposed that the the accident took place due to the negligence on the part of respondent no.1 who was driving the offending bus rashly and negligently and on high speed struck against all the members of the marriage party as a result of which injuries were caused to 20 persons including his wife Dayawanti. The accident was caused due to rash and negligent driving of the driver of the bus and FIR No. 6 dated 17.1.2012 was registered against Jasbir Singh driver at Police Station City Samana and he has been convicted by the Court for causing the accident. ladies, men and children and three persons died in the accident. His wife was immediately taken to Rajindra Hospital, Patiala, from where she was referred to PGI, Chandigarh and remained under treatment there for a long period and died during her treatment. Postmortem examination on the dead body of deceased was conducted at PGI, Chandigarh. He spent ₹ 1 lac on her treatment and ₹ 50,000/- were spent on the last rites of the deceased. He deposed that proforma respondent no. 4 to 7 are his sons born out of his wedlock with the deceased Dayawanti. The proforma-respondents have lost the love and affection of their mother while he(this witness) has lost the company of his wife and now nobody is there to look after him.

- 11. Learned counsel for claimant tendered into evidence documents Ex. P1 to Ex. P12 and closed the evidence on behalf of the claimants.
- 12. In order to rebut the evidence of the claimant, contesting respondent no. 3 failed to produce any oral or documentary evidence on record. However learned counsel for respondent no. 3 tendered into evidence copy of insurance policy Ex. R1 and closed the evidence on behalf of contesting respondent no. 3 was closed by order, while the remaining respondents were already proceeded against exparte.
- The claimant has filed the present claim petition for compensation on the ground that on 16.1.2012 at about 8.30 PM, the respondent No.1 while driving the above offending bus No. PB-11-AN-9940, in a rash and negligent manner struck against all the members of marriage party of which this witness was also one of the members, as a result of which as many as 20 persons including ladies, men and children were injured and three persons died in the accident. His wife Daya Wanti aged about 60 years also received injuries in the said motor vehicular accident. She was initially admitted to Rajindra Hospital, Patiala and after that she was referred to PGI, Chandigarh, where she died due to the injuries suffered by her in this accident.
- 14. A criminal case was got registered against respondent No.1 with regard to the said accident on the statement of Ram Lal son of Lachhman Dass. Copy of FIR has been proved on record as Ex. P12, which shows that the case has been registered against the driver of offending vehicle. Moreover, the respondent No.1 has himself not stepped into the witness to

deny the factum of accident or rashness and negligence on his part in causing the accident.

- 15. So I find that there is sufficient evidence on the file to prove that the respondent No.1 was driving the offending vehicle in a rash and negligent manner and he hit the members of marriage party as a result which as many as 20 persons sustained injuries and three persons died including Daya Wanti wife of the claimant and mother of proformarespondents no. 4 to 7 on account of the injuries sustained by her in the said accident.
- 16. It is settled proposition of law that if a driver does not come to the witness box to depose on oath regarding the accident then adverse inference can be drawn against him. Our own Hon'ble High Court in case titled as *Bhagwani Devi Vs. Krishan Kumar Saini and others*1986 ACJ page 331, has held that

"the cause of accident can be best explained by the drivers concerned and if they are kept away from the witness box without sound reasons, it must indeed be construed as a telling circumstance against the respondents."

Similar view has been taken by our own Hon'ble Punjab & Haryana High Court in case titled as <u>Raju and others Vs.</u>

<u>Sukhwinder Singh and others, 2006(4) RCR(Civil) page 82</u>

that:-

"Negligence of the driver, adverse inference, if the driver of the offending vehicle does not come forward to deny his negligence, then adverse inference is to be drawn in favour of the claimants and he is presumed to be negligent"

17. Admittedly respondent No.1 has been facing trial of criminal case registered under section 279/304/338/337 IPC and has

already been convicted under Sections 304-A,338,337 and 279 IPC and sentenced accordingly thereunder vide judgment and order of sentence dated 13.5.2013 by the court of learned Additional Sessions Judge, Patiala and copy of judgment and order of sentence dated 135.2013 has been proved on the file as Ex. P11 and that of FIR has been proved as Ex.P12.

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Our own Hon'ble High Court has held in case titled as

National Insurance Company Ltd. Vs. Sanjay Kumar &

Others II (2011) ACC 756 that.

"Rash and negligent driving when driver of offending vehicle is facing criminal trial, prima facie it can be presumed that he was responsible for accident".

Similarly, our own Hon'ble High Court also held in case titled as **Girdhari Lal Vs. Radhey Sham and others, 1993(2) PLR**109 that:

"Driver was being tried on account of rash and negligent driving, then it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of the driver."

18. In these all circumstances and under the guidance of pronouncements of Hon'ble High Court I find that it has been established on the file that respondent No.1 was driving the offending bus in a rash and negligent manner and struck against all the members of marriage party, resulting which various persons received injuries and three persons including Daya Wanti wife of claimant and mother of proformarespondents died. The insurance company has also not produced any oral evidence on the record, but in its written statement respondent no. 3 fairly admitted that the Bus No. PB-11-AN-9940 was covered at the material time under the policy of insurance issued by respondent no. 3 for the

period from 5.10.2011 to 4.10.2012. Learned counsel for respondent no. 3 has also produced on record copy of insurance policy as Ex.R1, showing that the offending bus was insured with respondent no. 3 at the time of accident in question. and as such I find that the claimant and proforma-respondents no. 4 to 7 are entitled to claim compensation from the respondents No. 1 to 3.

- 19. Respondent No. 1 is admittedly the driver, respondent no. 2 is the owner while respondent no. 3 is the insurer of the offending vehicle and as such they are jointly and severally liable to pay the compensation to the claimants.
- 20. So far as amount of compensation is concerned, the claimant has claimed the amount of ₹20 lac as compensation, which has been opposed by the respondents. The claimant has alleged that monthly income of deceased Dayawanti was ₹ 8000/- per month i.e. ₹ 5000/- per month by doing the work of stitching and embroidery and ₹ 3000/- by rendering services to the family. The claimant has failed to produce any evidence to prove that the deceased Dayawanti was earning ₹ 5000/from the work of stitching and embroider. However, keeping in view the age of deceased Dayawanti i.e. about 65 years, her income can be assessed as ₹ 3000/- per month towards the services rendered by her to the family and also towards love and affection. The claimant has alleged the age of deceased as 60 years at the time of her death but as per certified copy of postmortem report deceased Dayawanti which is Ex. P10 the age of deceased Dayawanti is mentioned as 65 years at the time of her death. The claimant has proved the identity car d of Dayawanti deceased issued by Election Commissioner of India as Ex.P2, in which

the age of deceased Dayawanti is mentioned as 63 years as on 1.1.2006. So, I find that as per evidence available on the file the age of deceased Dayawanti was more than 65 years at the time of her death. The annual income of deceased Dayawanti was ₹36000/- per month and after deducting 1/3rd personal and living expenses amount of dependency comes to ₹24,000/- and after applying the multiplier of 5, the amount of compensation comes to $\overline{1,20,000}$. The claimant has claimed that for the treatment of deceased he has spent ₹50,000/- but in order to prove the same, the claimant has produced bills as Ex. P3, Ex.P4 and Ex. P7 of total amount of ₹5529/- only. The deceased Dayawanti was taken to Civil Hospital, Samana from where she was referred to Rajindra Hospital, Patiala and then to P.G.I., Chandigarh,, where she died on 17.1.2012. For two days amount of ₹2000/- can be awarded for attendant and an amount of ₹10,000/- can be awarded for transportation to which the claimant is entitled to recover along with amount of compensation. In these circumstance, I find that claimant is entitled to ₹1,20,000/compensation. Apart from this amount of compensation, the claimant is entitled to recover ₹1,00,000/- as consortium and claimant and proformarespondents are entitled to ₹25,000/- as funeral expenses and total amount recoverable from the respondents comes to ₹1,20,000/-+ ₹5529/-+ 72000/-+ 710,000/-+ 71,00,000/-+ 725,000/-=2,62,529/-, which the respondents no. 1, 2 and 3 being driver, owner and insurer of the offending vehicle are liable to pay to the claimant jointly and severally. Accordingly, issues no. 1 and 2 are decided in favour of the claimant and against the respondents.

ISSUE NO. 3

Onus to prove this issue was upon respondent no. 3, however, respondent no.3 did not lead any evidence. By filing written statement itself, respondent no. 3 pleaded that respondent no. 1 was not having any valid and effective driving licence at the time of accident. Respondent no. 1 preferred to remain exparte. Respondent no. 2 owner of offending vehicle also did not come forward to contest the petition. So, when the Insurance Company has alleged that the driver of offending vehicle was not having valid and effective driving licence, the driving licence should have been produced by respondent no. 1 to show that at the time of accident he was having valid and effective driving licence, but he failed to produce the same. Even he has not come forward with the plea that he was having valid and effective driving licence at the time of accident. I, therefore, decide this issue in favour of respondent no. 3 Insurance Company accordingly.

<u>RELIEF</u>

22. In view of my findings on the aforementioned issues, the claim petition succeeds and the same is allowed with costs accordingly and the claimant and proforma-respondents are held entitled to compensation to the tune of $\stackrel{?}{\sim}$ 2,62,529/- as detailed below:-

Sr.	Heads	Calculation
No		
1.	Income assessed	₹ 3000/- P.M.
2.	After deducting 1/3rd of (i)	₹3000/ ₹1000/- = ₹2000/-
	as personal living	x12=24000/-
	expenses of the deceased	
	total annual income =	
3.	Compensation after	₹ 24000 x5 = ₹ 1,20,000/-
	applying multiplier of 05	
4.	Consortium	₹ 1,00,000/-

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5.	Amount spent on medical	₹ 5529/-
	treatment of deceased	
	before her death	
6.	Funeral expenses	₹ 25,000/-
7.	For Attendant	₹ 2000/-
8.	For Transportation	₹ 10000/-
9.	Total (iii) to (viii)	₹ 1,20,000/- + ₹ 5529/- + ₹
		1,00,000/- + ₹25,000/- ₹ 2000/-
		+ ₹10000/-= ₹ 2,62,529/-

The respondents are directed to pay a sum of ₹2,62,529/- as compensation to the claimants. The liability to pay compensation by the respondents shall be joint and several. Keeping-in-view the age, rights, status and liabilities, the share of the claimants should not be equal and accordingly, the claimant i.e. husband of the deceased Dayawanti shall be entitled to receive 40% amount out of the amount of ₹1,62,529/- apart from ₹1,00,000/- awarded as consortium while proforma-respondents no. 4 to 7 sons of deceased Dayawanti shall be entitled to receive 15% each out of the compensation amount of ₹1,62,529/-. The claimant and proforma-respondents are also held entitled to interest @ 6% per annum from the date of filing of the petition till actual payment, on the above mentioned amount of compensation.

23. In view of my findings on issue no. 3, the respondent no.3 shall have liberty to recover the amount of compensation from respondents no. 1 and 2 after making the payment to the claimant and proformarespondents. The cost is assessed at ₹1100/-.Memo of costs be prepared. File be consigned to the record room.

Pronounced July 1, 2014

(Pushvinder Singh)
Motor Accident Claims Tribunal,
Patiala.