

**In the court of Sh.Jagdeep Singh Marok,
Motor Accident Claims Tribunal,Sangrur.
(Unique Identification No. PB-0074)**

MACT Case No. 18 of 15.04.2017.

Computer ID No. 79/2017.

CNR No.PBSG01003612-2017.

Decided On..... 13.09.2018.

- 1.Parwinder Kaur aged about 34 years wife of late Shri Lakhbir Singh,
2. Rajdavinder Singh aged about 15 years minor adopted son of late Shri Lakhbir Singh, minor under the guardianship of his mother Parwinder Kaur;
3. Dalbara Singh aged about 64 years son of Mukand Singh, all residents of H.No. 23-A,Ward no.8, village Cheema, Tehsil Sunam, District Sangrur.

..... Claimants.

Versus

1. Hardeep Singh son of Dhandher Singh, resident of village Shahpur, Tehsil Samana,District Patiala (Driver of Bus bearing No.PB-11BA-3895);
2. Shiv Motor Company, Patiala- Samana Road, Near Shiv Palace, Patran, District Patiala (owner of Bus bearing No. PB-11BA-3895).
3. United India Insurance Company Limited, Sunam Tehsil Sunam, District Sangrur, through its Branch Manager (Insurer of Bus bearing registration No. PB-11BA-3895).

..... Respondents

**Claim petition for the grant of Compensation under
Section 166 of Motor Vehicles Act.**

Present: Sh. Sumir Fatta, Advocate, counsel for the claimants
Sh.S.S.Ratol, Advocate, counsel for respondent no.1 and 2.
Sh. Sat Paul Sharma Advocate, counsel for the respondent no.3.

AWARD:-

1. Claimants, Parwinder Kaur, Rajdavinder Singh and Dalbara Singh have filed this claim petition under Sections 166 of the Motor Vehicles Act (hereafter to be referred as Act) claiming compensation to the tune of ₹ 50,00,000/- on account of the death of Lakhbir Singh son of Dalbara Singh, resident of village Cheema, Tehsil and District Sangrur, who died in the motor vehicular accident.
2. Briefly stating the facts as alleged by the petitioners/claimants are that on 17.02.2017, Lakhbir Singh (since deceased) along with Malkiat Singh son of Darshan Singh was going to Dirba for domestic work in an Innova Car bearing no. PB-44B-2257 being driven by Malkiat Singh. The deceased was followed by Gurmail Singh son of Babu Singh in his separate car. At about 2.40p.m. a bus bearing registration no. PB-11BA-3895 came from the opposite side being driven in a rash and negligent manner by its driver and it struck the car of Lakhbir Singh, due to which, Lakhbir Singh and Malkiat Singh suffered multiple grievous injuries. Ultimately, said Lakhbir Singh and Malkiat Singh succumbed to the injuries. The

car was also badly damaged. So, on the statement of said Gurmail singh a case FIR no. 15 of 17.2.2017 under sections 304-A,427,279 IPC was registered at Police Station Chhajli. So, the claimants, who are the legal heirs of said deceased Lakhbir Singh had laid their claim against the respondent No.1, who was the driver of the offending vehicle and respondent No.2 is the owner of the same, whereas respondent No.3 is insurer. The claim of the claimants is that the prosecution was launched against the respondent No.1 on account of rash and negligent act of driving which had ultimately led towards the accident of Bus in dispute thereby hitting the car of the deceased.

3. Pursuant to the notice given to the respondents, the respondents No.1 and 2 filed joint reply thereby denying the claim of the claimants with the plea that deceased was earning ₹ 50,000/- per month as claimed by the claimants. The occurrence of the accident allegedly having taken place on 17.02.2017 between the vehicles has been denied with further plea that the FIR has been falsely registered against respondent No.1 by the police in connivance with the claimants. The suffering of multiple injuries by the deceased has also been denied. It has been further claimed that the bus bearing registration No. PB-11BA-3895 was insured with respondent No.3 vide cover note No. 1117023117N100019551 Ex.P1, which was valid for 24.01.2017 to 23.01.2018. The driver of the alleged offending bus was not involved in any accident. It has

been admitted that respondent No.1 was employed as driver by the respondent No.2 and he was competent driver and further claim of both the respondents is that since the vehicle was insured with respondent No.3, so they are not liable for the said accident to pay the compensation to the claimants. The respondents No.1 and 2 also took the objections regarding the maintainability of the present petition with further plea that this petition is bad for mis-joinder and non-joinder of necessary parties and claimants have not come to the Court with clean hands.

4. Separate reply on behalf of respondent No.3 was filed with the plea that FIR No.15 dated 17.02.2017, under Sections 304-A/427/279 IPC, Police Station Chhajli having been registered against the respondent No.1 is wrong and it is on account of connivance with the claimants as the said claimants after having conspired with respondents No.1 and 2 intend to grab the huge amount from respondent No.3 under the garb of the said accident. It is admitted that the said vehicle i. e. bus bearing registration No. PB-11BA-3895 was insured with respondent No.3 w.e.f. 24.01.2017 to mid-night 23.01.2018 and it was got insured by respondent No.2. The respondent no.3 has denied for want of knowledge that claimants are the legal heirs of deceased Lakhvir Singh and sought the strict proof in this regard. The respondent No.3 has also taken the legal objections that liability, if any, of the respondent No.3 is subject to the verification of the factum of holding of valid and effective

driving licence by the offending driver at the time of the alleged accident. It has also been claimed that the bus was being plied in contravention of the terms and conditions of the insurance policy as well as Motor Vehicles Act. So,ultimate plea for dismissal of the claim petition was made.

5. From the pleadings of the parties, the following issues were framed:-

1. Whether Lakhbir Singh son of Dalbara Singh expired in a motor vehicle accident dated 17.02.2017 caused by respondent No.1 while driving an offending vehicle Bus bearing registration no. PB-11BA-3895 in a rash and negligent manner?OPA
2. Whether the claimants are legal heirs/dependents of deceased Lakhbir Singh son of Dalbara Singh?OPA
3. If issues No.1 and 2 are proved, whether the claimants are entitled to the compensation, if so to what extent and from whom?OPA
4. Whether the claim petition is not maintainable?OPR
5. Whether the respondent No.1 i.e. driver of offending vehicle Bus bearing registration no. PB-11BA-3895 was not holding a valid driving license at the time of alleged accident?OPR-3
6. Whether the respondent no.1 was not having valid RC/Fitness certificate and route permit of offending vehicle Bus bearing bearing registration no. PB-11BA-3895 ?OPR-3

7. Relief.

6. In support of their case, claimant no1. Parwinder Kaur herself stepped into the witness box as as PW1 and examined Gurmail Singh as PW-2, Dalbara Singh as PW3, Pargat Singh as PW4 and Jagroop Singh as PW5 and closed the evidence after tendering into documents.
7. On the other hand, respondent no.1, 2 and 3 tendered into evidence certain documents and closed their evidence.
8. I have heard the learned counsel for the parties and carefully gone through the documents on the file. My findings on the above said issues are as under:-

Issues No.1 to3:-

9. Onus to prove these issues was on the claimants. Both these issues are taken up together for the sake of convenience being inter-linked and interconnected. The learned counsel for the claimants argued that in this case, Lakhbir Singh son of Dalbara Singh expired in the accident caused by the offending bus bearing registration No. PB-11BA-3895, which has hit the vehicle i.e. Innova car being driven by Malkit Singh. Lakhbir Singh was accompanying said Malkit Singh. Both have expired in the said accident, but in the present claim petition, the claim qua deceased Lakhbir Singh has been claimed by the legal heirs of said deceased. He further argued that it is evident on record by way of testimony of the witnesses having appeared to substantiate on record the claim of the claimants that

the accident in this case had taken place in which said Lakhbir Singh had expired. FIR No. 15 dated 17.02.2017, under Sections 279/304-A/427 IPC registered in Police Station, Chhajli, has been proved on record as Ex.C1 and under these circumstances, when there is no specific denial by the respondents regarding the occurrence having been taken place, then it has been proved on record in a sufficient manner that Lakhbir Singh on account of the accident of the vehicle i.e. Innova car, which was being plied by Malkiat Singh, with the offending bus bearing registration No. PB-11-BA-3895, had suffered multiple injuries and ultimately, he had succumbed to the said injuries. He was 38 years of age at the time of his death and was an agriculturist and cultivating eight acres of land and is claimed to be a prominent person being activist of Akali Dal earning Rs. 50,000/- per month. It has also been claimed that claimants are fully dependent upon deceased and due to the untimely demise of the deceased, there is no other person to look after the claimants. Claimant no.3 is the father of the said deceased and claimant no.1 had lost her life partner and claimant no.2 is the adopted son of the deceased. Earlier claimant no.1 was married with Ajaib Singh, brother of the deceased and out of their wed-lock, claimant no.2 was born but after the sudden demise of Ajaib Singh, claimant no.1 performed marriage with Lakhbir Singh who also expired on account of the accident having been subsequently occurred in this case. It has also been claimed that claimant no.2 is

adopted son of deceased Lakhvir Singh. So, in this way, the claimants are laying their claim for the recovery of the amount of ₹ 50 lakhs as compensation. In support of her claim, Parwinder Kaur claimant herself appeared as CW1 and tendered into evidence her affidavit Ex.CW1/A, wherein she reiterated her version. She has also described about the dependency of the other claimants in addition to her upon deceased Lakhbir Singh. CW2 Gurmail Singh has proved the FIR thereby substantiating the occurrence of the accident at the spot on 17.02.2017. CW3 Dalbara Singh, father of the deceased and CW-4 Pargat Singh, father of Parwinder Kaur have proved on record the matrimonial cohabitation of Parwinder Kaur with deceased Lakhbir Singh after the death of Ajaib Singh previous husband of said Parwinder Kaur. These witnesses have also testified regarding the claim of the claimants that claimant no.2 is the adopted son of deceased Lakhbir Singh. CW-5 Jagroop Singh Namberdar of village Cheema during the course of leading evidence on behalf of the claimants has also corroborated the version of the claimants in this regard. So much stress has been laid by Shri Sumir Fatta, ld. counsel for the claimant that it has been substantiated on record through the testimony of CW-1 to CW-5 that Parwinder Kaur was living in matrimonial relationship with Lakhbir Singh after the death of her previous husband namely Ajaib Singh and claimant no.2 namely Rajdevinder Singh was also adopted by Lakhbir Singh after entering into matrimonial alliance

by Lakhbir Singh with mother of Rajdevinder Singh. So ultimate plea is that due to the death of Lakhbir Singh, the claimants no. 1 and 2 being wife and adopted son coupled with claimant no.3 being father of deceased Lakhbir Singh are entitled to compensation on account of the death of deceased Lakhbir Singh having been caused by the offending vehicle which was being driven by respondent no.1 and respondent no.2 is the owner of the said vehicle i.e. offending bus and respondent no.3 is the insurer and all these respondents are jointly and severally liable to pay the compensation due to the above said accident.

10. Controverting these averments, Shri S.P.Sharma, learned counsel for respondent No.3 assailed the version of the claimants with the plea that the claimants have failed to substantiate their case in a cogent and convincing manner. It was the bounden duty of the claimants to prove that the driver of the alleged offending bus was involved in the commission of the accident. He also argued that the criminal liability of the said respondent No.1 has not yet been fastened by the learned trial Court, where the criminal proceedings are pending and there is every probability that the said respondent No.1 may be exonerated from his liability and under these circumstances, respondent No.3 is not liable at all. He further argued that even if respondent No.1 is fastened with the criminal liability, in that eventuality, the respondent No.3 would not be liable as the respondent No.1 by offending norms of the traffic rules had

indulged himself in the occurrence of the said accident and under the said circumstances, the grant of compensation by the respondent No.3, which is the Insurance company is not permissible. Respondent No.3 is liable to pay the amount of compensation only as per the terms and conditions and when those conditions have been violated by the driver of the offending bus, then there is no reason to seek the relief of compensation from respondent No.3. Moreso, as per the documents i.e. Ex.R1 Aadhar Card of Parwinder Kaur, and Aadhar card of Rajdevinder Singh, Ajaib Singh was the husband of said Parwinder Kaur and the father's name of Rajdevinder Singh was also described as Ajaib Singh. So from these documents, it can be inferred that claimant no.1 had not reentered into matrimonial alliance with Lakhbir Singh who is claimed to be the brother of Ajaib Singh deceased husband of Parwinder Kaur and it ;has also not been proved on record that claimant no.2 is the adopted son of deceased Lakhbir Singh. So, ultimate plea is that the liability, if any, is of the respondents No.1 and 2, as respondent No.1 was the driver of the offending bus and respondent No.2 is the owner of the same and both are jointly and severally liable for the payment of the compensation to the claimants. Thus the plea of learned counsel for the respondent No.3 is that the said respondent No.3 in the given set of circumstances, is not liable at all and the claim petition deserves dismissal against said respondent No.3.

11. Shri S.S. Ratol, Advocate, learned counsel for the respondent No.1 and 2 submitted that the vehicle was insured with the Insurance Company i.e. respondent No.3. The respondent No.1 is having valid driving licence and respondent No.2 is the owner of the offending vehicle. He further submitted that respondent No.1 was not rash and negligent in driving the vehicle. Moreover, the accident of the vehicle of the deceased had not taken place with the vehicle bearing registration No. PB-11BA-3895 i.e. bus owned by respondent No.2 and due to this reason, there is no liability on the part of the respondents No.1 and 2 especially when claimants have failed to establish the probability of the presence of the respondent No.1 at the spot while driving the alleged offending bus bearing registration No. PB-11BA-3895. He also argued that there is not even an iota of evidence on record that respondent has violated the norms of the traffic Rules and the vehicle i.e. said bus was having valid registration certificate as well as fitness certificate along with route permit to ply it on the highway. So, ultimate plea is that there is no liability of the respondents No.1 and 2 and the liability, even if arises, that would be on the part of the respondent No.3, as the said respondent No.3 is having contractual liability in terms of the insurance policy to pay the compensation in such eventuality.
12. I have given thoughtful consideration the respective submissions of both sides and gone through the documents on the file.
13. In this case, it has been substantially proved on record that accident

of the vehicle borne by the deceased had taken place with the offending bus bearing registration No. PB-11BA-3895. Deceased was travelling in Innova car bearing registration No. PB-44B-2257. The eyewitness account of the occurrence has been given by CW2 Gurmail Singh, at whose instance, the FIR No.15 dated 17.02.2017, under Sections 279, 304-A, 427 IPC in Police Station Chhajli, which is Ex.C1, has been lodged against respondent No.1. The facing of criminal litigation by the respondent No.1 on account of the above said accident, which is claimed to have taken place on 17.02.2017 itself substantiates that there are allegations levelled against respondent No.1 regarding his indulgence in causing the accident of the offending bus with the vehicle, which was borne by deceased and the said bus was claimed to have been driven in a rash and negligent manner. So, the testimony on behalf of the claimants to this effect is itself sufficient to support the claim of the claimants for the purpose of seeking relief regarding compensation in this case against respondent No.1, who was employee of the respondent No.2 and said respondent No.1 was employed by respondent No.2 as driver. Through their categorical testimony, the witnesses on behalf of the claimants have described about the accident having taken place and thereby suffering the injuries by deceased Lakhbir Singh son of Dalbara Singh, who ultimately succumbed to the injuries and in this way, death of Lakhbir Singh is established in the roadside accident. Mere plea of the respondents that CW2 Gurmail

Singh was not present at the spot to give the eyewitness account of the occurrence would not suffice especially when said Gurmail Singh has categorically deposed regarding the accident having been taken place at the spot with the offending bus and he has established his presence there through his testimony by submitting that he had seen the said occurrence having taken place on the said date i.e. 17.02.2017. So, respondent No.1 is having tortuous liability and respondent No.2 is having vicarious liability, whereas respondent No.3 is having contractual liability, as the said offending vehicle was insured with respondent No.3 and respondent No.2 is the employer of the respondent No.1. The claim of the respondent no3 to the effect that claimants no.1 to 3 were not dependent upon the deceased would not suffice as it has been testified on behalf of the claimants that they were having dependancy upon the deceased who was the earning hand in their family since Lakhbir Singh deceased's brother namely Ajaib Singh who was previous husband of claimant no.1 and father of claimant no. 2 had already expired and due to which, Lakhbir Singh during his life time was instrumental to cater the basic needs of the claimants being siblings of Lakhbir Singh's brother and in this eventuality the claimants were fully dependent upon the deceased. Reliance can be place don the observations made in para no.39 in case titled as **National Insurance Company Ltd. Vs. Pranay Sethi and ors SLP (Civil) No. 25590 of 2014** wherein it has

been laid down as under:-

“Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.”

14. So at this stage, even if it is assumed that for lack of evidence as claimed by respondent no.3 the deceased Lakhbir Singh had not entered into matrimonial alliance with claimant no.1 and had not adopted claimant no.2 as his son even then Lakhbir Singh after the death of his brother namely Ajaib Singh had survived by his father and siblings of his brother. Applying these considerations and in view of the above said observations, by considering these persons as dependents upon deceased Lakhbir Singh since those dependents were non earning during the life time of Lakhbir Singh, the personal and living expenses of Lakhbir Singh may be restricted to 1/3rd and contribution to the family will be taken as 2/3rd.

15. The claim of the claimants is that the deceased was an agriculturist and cultivating eight acres of land. So assuming that deceased while

engaged in agriculture pursuits might not be earning more than Rs. 7,000/- (Rs. Seven thousand only) per month. The addition of the 40% for future prospect is taken into consideration as deceased was self employed in agriculture pursuits and he was less than 40 years of age at the time of his death. The deduction of 1/3rd on account of personal expenses of deceased is to be made from the total income of the deceased plus addition of 40% in the said income for the future prospects. The loss of estate to the tune of Rs. 15,000/- and funeral expenses to the tune of Rs. 15,000/- are also awarded in the above said calculations. So the break up of the compensation under the the conventional heads in the chart is re-produced as under:-

Sr.No.	Heads	Calculations
1.	Income	₹7,000/- per month
2.	Addition of 40% for future prospects	₹ 2800/- per month
3.	Total Income	₹ 9800/- per month
4.	Deduction of 1/3rd for personal expenses	₹ 2940/-
5.	Annual dependency	₹ 6860x15 x 12 = ₹ 12,34,800/-
6.	Loss of Estate	₹15,000/-
7.	Funeral Expenses	₹15,000/-
8.	Total compensation	₹ 12,64,800/-

16. Thus the total payable income comes to be Rs. 12,64,800/- which the respondent no.1, 2 and 3 are liable to pay jointly and severally to

the claimants hence these issues are decided to this extent in favour of the claimants.

Issue No.4:-

17. As discussed above, the claimants have fully established that they being dependents of deceased Lakhbir Singh have preferred the present claim petition against respondents No.1 to 3. Through consistent, coherent, cogent and convincing evidence, the claimants are able to establish their claim against the respondents. They being dependents are entitled to the amount of compensation on account of death of deceased Lakhbir Singh in this case. Thus the claim petition is maintainable. Hence this issue is held against the respondents .

Issue No.5 and 6:-

18. The onus to prove these issues was upon the respondent No.3. Both these issues are taken up together being inter-connected for the sake of convenience. In support of these issues, respondent No.1 Hardeep Singh has produced on record Ex.R2, his driving licence, which shows that respondent No.1 was holding valid and effective driving licence at the time of alleged accident on record. From this document, it is duly proved that the driver of the offending vehicle was holding valid driving licence at the time of the alleged accident, whereas documents i.e. registration certificate Ex.R4, fitness certificate Ex.R5 and route permit Ex.R6 and R14 of the offending vehicle No. PB-11-BA-3895 produced on record

reveal that respondent No.2 owner of the bus was holding a valid registration certificate, fitness certificate and route permit at the time of alleged accident. Hence, these issues are decided against respondent No.3.

Issue No.7 (Relief) : -

19. In view of my findings given on the above issues, the claim petition is hereby partly allowed with costs against the respondents and the award of the amount of ₹/-12,64,800/- (Twelve Lakhs, sixty four Thousands eight hundred only) is passed in favour of the claimants and against the respondents, who are jointly and severally liable to pay the said amount of compensation to the claimants. Claimants shall be entitled to the said amount of compensation in equal shares each. The claim amount of minor i.e. claimant No.2 be deposited in some National Bank, which will be released to him at the time, when he attains the age of majority. The claimants are also entitled to receive interest at the rate of 7.5% per annum on the amount from the date of filing of the present claim petition till the realization of award amount, in case, the said amount is not paid within three months from today. Counsel's fee is assessed at ₹5500/-. Memo of costs be prepared and file be consigned to record room.

**Pronounced.
September 13, 2018.**

**(Jagdeep Singh Marok),
Motor Accident claims Tribunal,
Sangrur.
(Unique Identification No.PB0074)**

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Stenographer-II

Present: Sh. Sumir Fatta, Advocate, counsel for the claimants
Sh.S.S.Ratol, Advocate, counsel for respondent no.1 and 2.
Sh. Sat Paul Sharma Advocate, counsel for the respondent no.3.

Learned counsel for respondent No.3 closed the evidence.

Arguments heard. Vide my separate award of even date, the claim petition is allowed partly, as stated therein. Memo of costs be prepared and file be consigned to the record room.

Pronounced.
September 13, 2018.

(Jagdeep Singh Marok),
Motor Accident claims Tribunal,
Sangrur.