

MHNG010042242013



Presented on : 11-06-2013
Registered on : 30-08-2013
Decided on : 15-12-2018
Duration : 5 Y. 3 M. 15 D.

BEFORE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL-4, NAGPUR
(Presided by : S.R.Padwal)

Claim Petition No. : 1008/2013

Exh.41

- 1] Sheikh Sabir S/o Sk. Shabbir,
Aged about 42 years, Occ: Mechanic,
- 2] Parvin Aktar W/o Sheikh Sabbir,
Aged about 35 years, Occ: Housewife,

R/o Fawara Chowk, bearing market,
Near Sulabh Shauchalaya, Sham Talkies
Road, Gandhibag, Nagpur.

...PETITIONERS

VERSUS

- 1] Shahid Khan Munavar Khan,
Aged about Major, Occ: Owner,
R/o Satranjipura, near Badi Masjid,
Nagpur.
- 2] The Branch Manager,
IFFCO-TOKIO General Insurance Co. Ltd.,
8th Floor, 701-A, Shriramshyam Tower,
Besides NIT Complex, Kingsway, Sadar,
Nagpur.

...RESPONDENTS

PETITION UNDER SECTION 166 OF MOTOR VEHICLES ACT, 1988

<u>Advocate for the petitioners</u>	<u>:-</u> Shri Mirache
<u>Advocate for Respondent No. 1</u>	<u>:-</u> Shri Gore
<u>Advocate for Respondent No. 2</u>	<u>:-</u> Shri Pande

J U D G M E N T
(Delivered on 15th December, 2018)

1] This is a petition filed under section 166 of Motor Vehicles Act (in short M.V. Act) by petitioners who are parents of Sheikh Kasan Sheikh Sabir (in short deceased) who died in motor vehicular accident which took place on 19.05.2013 at about 14.00 hours on Chitra Talkies to Fawara Chowk road, in front of Sulabh Shauchalaya, Ganeshpeth, Nagpur within the jurisdiction of P.S. Ganeshpeth.

2] The facts which gave rise to the present petition are as under :

On 19.05.2013 at about 14.00 hours deceased was standing at the side of the road along with his father. At the relevant time, rider of Pulsar motorcycle (in short offending motorcycle) came at high speed in rash and negligent manner. The rider of offending motorcycle had lost control over his vehicle and gave dash to deceased. As a result, he sustained grievous injury and carried to Mayo hospital and then Suretech Hospital, Nagpur where unfortunately he succumbed to the injury.

3] An offence punishable under section 279, 337 and 304-A of Indian Penal Code has registered vide Crime No.103/2013 with P.S. Ganeshpeth against the driver of offending motorcycle.

4] The deceased was 14 years old at the time of accident. He was student and clever in study. The petitioners have calculated their claim to the tune of Rs. 20,50,000/-. The offending motorcycle is owned by

respondent No.1 and insured with respondent No.2. Accordingly, petitioners have claimed compensation jointly and severally from them.

5] The petition has proceeded without written statement against respondent no.1 vide order dated 05.02.2016.

6] The respondent No. 2 has filed written statement at Exh. 18 and contested the claim of petitioners. The ownership and insurance of offending motorcycle is not denied. The rider of offending motorcycle was riding the same without holding valid and effective licence and prayed to dismiss the petition.

7] In view of rival contentions of the parties, Ld. Predecessor has framed issues at Exh. 20. I reproduced those issues with My findings and reasons to follow as under :

<u>S.No.</u>	<u>I S S U E S</u>	<u>F I N D I N G S</u>
1]	Whether the petitioners prove that death of Sheikh Kasan S/o Sheikh Sabir was caused as a result of injury sustained by him in an accident that has taken place on 19.05.2013 at 14.00 hours in front of Sulabha Shauchalaya, Ganeshpeth, within the jurisdiction of P.S. Ganeshpeth, Nagpur and it has arisen out of use of motorcycle having No.MH-49-A-9530?	Yes.
2]	Whether the petitioners prove that said accident occurred due to rash and negligent driving of aforesaid vehicle by its driver?	Yes.
3]	Whether respondent No.2 proves that respondent No.1 has committed breach of terms and conditions of policy?	No.
4]	Whether the petitioners are entitled to get compensation? If yes, what is the quantum	As per final order.

and from whom?

5] What award?

As per final order.

REASONS

8] On behalf of petitioners, petitioner No.1 Sheikh Sabir Sk. Shabbir has filed his evidence on affidavit at Exh. 21. They have placed reliance upon police papers. The petitioners have closed their evidence by filing pursis at Exh. 29. The respondent No. 2 has examined two witnesses they are RW 1 Priti Gulhane at Exh. 33 and RW 2 Ashish Dhote at Exh. 34. The evidence of respondent No.2 is closed vider order dt. 15.12.2018.

9] Perused the whole record. Heard, Ld. Advocate of the petitioners and respondents.

AS TO ISSUE NO. 1 & 2 :-

10] In view of the submissions of Ld. Advocate of the petitioners, it is necessary to evaluate the evidence led on record on behalf of the petitioners. It is deposed by petitioner No.1 Sheikh Sabir that on 19.05.2013 he along with his son Kasan were standing at the side of the road and at the relevant time offending motorcycle came at high speed and in rash and negligent manner and therefore, driver of it lost control over it and gave dash to them. He further deposed that his son sustained grievous injury to head and he was immediately carried to Mayo Hospital, Nagpur and thereafter shifted to Suretech Hospital Nagpur though unfortunately he succumbed to the injuries during the treatment.

11] The petitioners have relied on the F.I.R. at Exh. 23 and panchanama of spot at Exh. 24. The perusal of F.I.R. at Exh. 23 shows that it is lodged by petitioner No.1 Sk. Sabir stating therein that when he was standing along with his son near the Sulabh Shauchhalaya at that time

driver of offending motorcycle came in high speed by driving it rash and negligently in zigzag manner and gave dash to them, therefore, he has sustained injury to left thumb and his son sustained injury to head. The F.I.R. further reveals that driver of offending motorcycle was Shahanwaj Khan who is residing in Ganeshpeth near Urdu School. The panchanama of spot at Exh. 24 also supported to the same. It also shows that accident took place in front of Sulabh Shauchhalaya on the road which goes from Chitra Talkies to Fawara Chowk. It is also not disputed that Crime No. 103/13 under section 279 & 337 came to be lodged against the driver of offending motorcycle namely Shahanawaj to the P.S. Ganeshpeth Nagpur. It shows that driver of offending motorcycle drove it in rash and negligent manner and by giving dash to petitioner No.1 and his son Kasan and caused the accident.

12] Thus, ocular evidence of petitioner No.1 Sk. Sabir coupled with F.I.R. at Exh. 23 and panchanama of spot at Exh. 24 indicate that petitioner's son Kasan met with an accident while he was standing along with his father petitioner No.1 Sabir on the road which goes from Chitra Talkies to Fawara Chowk near Sulabha Shauchhalaya, the rider of offending motorcycle gave dash to them. In view of the facts and circumstances on record I hold that accident took place due to the rash and negligent driving on the part of rider of offending motorcycle and responsible to the death of Kasan. Hence, I answer issue No. 1 & 2 accordingly.

AS TO ISSUE NO. 3 :-

13] It is argued by Ld. Advocate of respondent No.2 insurance company that rider of offending motorcycle drove it without having any licence. To prove the same, insurance company has examined RW 1 Priti

Someshwar Gulhane serving as Jr. Clerk in Licence Section of RTO Office, Nagpur. She deposed that as per their record no driving licence came to be issued on the name of Mohd. Shahanawaz Raza s/o Mohd. Ishad Raza. She further deposed that Ganeshpeth area comes within the RTO office of East. Therefore, insurance company also examined RW2 Ashish Govindrao Dhote Jr. Clerk working in Licence Section of RTO East Office who stated that area of Nagpur City to the East of Railway station, Bhaldarpura and Ganeshpeth police station area comes within the jurisdiction of their office. He further stated that he has searched on the basis of licence holder Mohd. Shahanawaz Raza s/o Mohd. Ishad Raza in their computer system of office and as per their record no driving licence has issued in the said name. The cross-examination has brought nothing on record. Thus, evidence of these witnesses clearly shows that no driving licence of motorcycle came to be issued on the name of driver of offending motorcycle namely Mohd. Shahanawaz Raza s/o Ishad Raza. It clearly shows that there is a breach of terms and condition on the part of the respondent No.1 owner of offending motorcycle. Hence, I answer issue No. 3 in the affirmative.

AS TO ISSUE NO. 4: -

14] It is deposed by petitioner No.1 Sk. Sabir that his son Kasan was 14 years of age at the time of accident and he was student. He was clever in study. He would become Class-I officer and in future would be getting income of Rs. 40,000/- per month. His untimely death suffered petitioners from mental and financial loss. Every parents have certainly love and affection with their beloved child and every child is precious to his parents. In the instant case the age of Kasan is of 14 years. It means he was certainly making help to his parents. The death of child as such age is a great loss to the parents.

15] In the case of **Kishan Gopal & Another Vs. Lala & Others** decided on **26/08/2013**, the Hon'ble Apex Court after considering principle laid down in **Lata Wadhwa's** case and prevailing circumstances on record fixed Notional Income at Rs.30,000/- per annum in respect of deceased boy of 10 years old i.e. non earning persons. Further, followed the multiplier which has been already fixed in **Sarla Verma** case. Therefore, in the present case multiplier of 16 is required to be applied.

16] In the present case, the age of deceased child was 14 years at the time of accident. Considering observations in the aforesaid citations the notional income of deceased child would be fixed at Rs. 30,000/- per annum. Thus, Rs. 30,000 x 16 = 4,80,000/- would be the pecuniary loss of claimants.

17] In view of the direction of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi** as held in para No.54 an amount of Rs.15,000/- is required to be awarded towards funeral expenses and Rs.15,000/- towards loss of estate. Further, in the authority of **Magma General Insurance Co. Ltd., Vs. Nanu Ram Alias Churu Ram** decided in **Civil Appeal No. 9581/2018 on 18.8.2018**, the Hon'ble Apex Court in Para No. 8.7 held as under.

'8.7 A Constitution Bench of this Court in **Pranay Sethi**(supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation."

Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child’s consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

A few High Courts have awarded compensation on this count⁵. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under ‘Loss of Consortium’ as laid down in Pranay Sethi (supra).

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs. 40,000 each for loss of Filial Consortium.'

18] Therefore, petitioners being parents are entitled to Rs. 40,000/- each for the loss of filial consortium.

19] Therefore, petitioners are entitled for compensation of Rs.4,80,000/- towards pecuniary loss, Rs.15,000/- towards funeral expenses, Rs. 15,000/- for loss of estate and Rs. 80,000/- towards loss of filial consortium, total amounting to Rs. 5,90,000/-.

20] Now the question arises who is liable to pay the compensation. It is come on record that offending motorcycle is owned by respondent No. 1 and insured with respondent No. 2 and it has also come on record that driver of the offending motorcycle drove it high speed and in rash and negligent manner and thereby responsible to the death of petitioner's son Kasan. It is further come on record that respondent No.1 i.e. insured has committed breach of terms and conditions of policy of offending motorcycle as driver was not holding valid and effective driving licence on the date of accident.

21] In the citation of **National Insurance Co. Ltd., Vs. Kusum Rai and others reported in 2006 (2) T.A.C. 1 (S.C.)**, in which driver was not holding valid licence and Hon'ble Apex Court held that insurance company is entitled to recover the amount from the owner of the vehicle. Further, in the citation of **Pappu and others Vs. Vinodkumar Lamba and another 2018(1) T.A.C. 360 (SC)** wherein Hon'ble Apex court has directed insurance company to pay in first instance with liberty to recover the compensation amount from owner of the vehicle wherein it is established that offending vehicle was driven by person who did not have valid driving licence at the relevant time. In the pronouncement of **Shamanna and another Vs. The Divisional Manager, The Oriental Insurance Co. Ltd., and Ors. Decided in Civil Appeal No. 8144/2018** on 8/8/2018 Hon'ble Apex Court held in Para-12 that "the Award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut Cases".

22] In the present case in view of the facts and circumstances

bring on record observations of the Hon'ble Apex Court in the citation of **Pappu and others Vs. Vinodkumar Lamba and another 2018(1) T.A.C. 360 (SC)** it is unfair to direct to petitioner to execute the award against the owner of the offending motorcycle. Therefore, I hold that insurer i.e. respondent No.2 is liable to pay the compensation on the principle of pay first and then recover. Thus, all the respondents are jointly and severally liable to pay the compensation to the petitioner. Hence, I answer issue No. 4 accordingly.

23] In light of above discussion, petition deserves to be partly allowed with proportionate costs. In the result, I pass following order.

ORDER

(1) The petition is partly allowed with proportionate costs.

(2) The petitioner is entitled to total compensation of Rs. 5,90,000/- (Rs. Five Lakhs Ninety Thousand) inclusive of N.F.L. if any amount under section 166 of M.V. Act.

(3) The respondent No. 1 & 2 do pay jointly and severally compensation of Rs. 5,90,000/- (Rs. Five Lakhs Ninety Thousand) inclusive of N.F.L. if any amount towards compensation under section 166 of the M.V. Act. with interest @ 7.5% per annum from the date of petition till the realization of the amount of compensation to the petitioner.

3A] The respondent No. 2 shall first deposit compensation amount and then recover from respondent No.1 without filing separate proceeding, as if dispute between them has been decided.

3B] Before release of amount in favour of petitioner, a notice has to be issued to respondent No.1 to furnish security within 15 days thereof. On failure, executing court to decide about release of compensation

amount in favour of petitioners.

- 4) Compensation amount be paid to petitioners equally.
- 5) Out of compensation payable to the petitioners, 20% each amount be invested in fixed deposit, in their name, in any nationalised bank of their choice, for the period of 3 years. Balance amount be paid to them by an account payee cheque/NEFT, on due identification and verification.
- 6) The petitioner has to affix the requisite court fees on the valuation of the petition, before disbursement of amount towards compensation, if not already affixed.
- 7) An award be drawn up accordingly.

Dated : 15/12/2018

(S.R.Padwal)
Member,
Motor Accident Claims Tribunal-4,
Nagpur.

Last Argued on :15/12/2018
Dictated on :15/12/2018
Checked and signed on: 15/12/2018

CERTIFICATE

I affirm that the contents of this PDF file of judgment are word to word as per original judgment.

Sanjay T. Selokar
Stenographer