

**IN THE COURT OF MUNISH SINGAL,
MOTOR ACCIDENT CLAIMS TRIBUNAL,
MOGA.**

(UID No.PB0053)

CIS No.MACP/1/2018

CNR No.PBMO-01000053-2018

MACT RBT No. 30 dated 02.01.2019

Date of Institution :-04.01.2018

Date of Decision :-**15.11.2019**

Kuljeet Kaur @ Kamaljit Kaur wife of Amarjit Singh, resident of near Baba Jiwan Singh Gurudwara Bhogu Patti Bilaspur, District Moga.

----Claimant.

Versus

1. Paramjit Singh son of Karnail Singh, resident of Mohanpur Japti, P.S. Puranpur District Pilibhit (Driver of Tipper No.PB35Q-1484).
2. J.S.Grover Cosntructions, Opposite SDM Courts, Pathankot Punjab (Owner of Tipper No.PB35Q-1484).
3. National Insurance Company Dalhosie Road Pathankot (owner of Tipper No.PB35Q-1484).

----Respondents.

Claim petition under Section 166 read with Section 140 of the Motor Vehicle Act, for grant of compensation.

Present :- Shri Amanpreet Grewal, Advocate for claimant.
Ms. Harpreet Kaur, Advocate for respondent no.1.
Respondent no.2 exparte.
Shri Ketan Sood, Advocate for respondent no.3.

A W A R D

Parminder Singh died in a motor vehicular accident. His mother Kuljeet Kaur @ Kamaljit Kaur has brought the present petition under Section 166 of Motor Vehicle Act seeking compensation to the tune of ₹ 40 lacs on the averments that on 19.07.2017, deceased Parminder Singh along with his friend Bhalwinder Singh were going from Bilaspur to Moga on a motorcycle bearing no.PB-69B-0856, which was being driven by

deceased Parminder Singh and Bhalwinder Singh was the pillion rider. It was alleged that when they reached near Bus Stand Lohara at about 4 p.m, a tipper bearing registration no.PB-25Q-1484 driven by respondent no.1 came from the opposite side rashly and negligently and struck with the motorcycle of the deceased, due to which Parminder Singh fell on the right side of road and was crushed under the front tyre of the Tipper and he died at the spot. It was averred that Bhalwinder Singh also received injuries and their motorcycle also got damaged. It was alleged that the accident occurred due to rash and negligent driving of above said Tipper by respondent no.1 and in this matter, FIR No.107 dated 19.07.2017, under Sections 304-A,279,337,427 IPC was registered at P.S.Nihal Singh Wala against respondent no.1 on the statement of Bhalwinder Singh.

It was further averred that at the time of his death the deceased was aged 25 years and was a brilliant student and he had passed 10+2 with 60% marks and was to take admission in BA in Guru Gobind Singh College Sangera but due to his untimely death the future of the claimant/mother had become dark as he was the only hope of the claimant and loss suffered by the claimant could not be compensated in money. It was prayed that a compensation to tune of ₹ 40 lacs be awarded to the claimant on account of death of her son.

2. Upon notice, the respondent no.1 appeared through his counsel and filed written statement taking preliminary objections regarding maintainability of the petition and locus-standi to file the same with a further reply that the respondents had been dragged unnecessarily into litigation. On

merits all the contents of the claim petition were denied for want of knowledge and strict proof with a further reply that no such accident had ever taken place and the story put forth by the claimant was false and concocted. It was prayed that the claim petition filed by the claimant be dismissed.

3. Notice was also issued to respondent no.2 and firstly he appeared in court through counsel Shri Gobind Rai Advocate but later on he stopped appearing and, thus he was proceeded against ex parte vide order dated 02.08.2018.

4. In his separate written statement respondent no.3 Insurance Company raised preliminary objections that the claim petition was not maintainable; the claim petition was bad for non joinder and mis joinder of necessary parties; the driver of Tipper was not holding effective and valid license; the offending vehicle did not have a valid registration certificate, permit, fitness certificate etc. and it was not being driven by any authorized person. The accident in question was denied and it was averred that the petition was filed wrongly in connivance with the owner of the offending Tipper just to extort money from the answering respondent and the offending vehicle was not covered under the insurance policy taken from the answering respondent. Plea of contributory negligence was also taken. On merits, all the averments were denied as wrong and false and also for want of strict proof. Prayer was made for dismissal of the claim petition being devoid of any merits.

5. From the pleadings of the parties, following issues were

framed on 20.02.2019:-

1. Whether Parminder Singh had died in a motor vehicular accident on 19.07.2017 in the area of Moga Barnala road, Village Lohara caused by respondent no.1 while driving Tipper No.PB-35Q-1484 in a rash and negligent manner? OPP
2. Whether the claimants are entitled to compensation. If so, to what amount and from whom? OPP.
3. Whether the claimant has no locus-standi to file the present claim petition? OPR
4. Relief.

6. To prove these issues, the claimant herself stepped into the witness box as CW1. The claimant also examined Bhalwinder Singh as CW2, who narrated an eye witness account of the accident. Thereafter, Ld. Counsel for the claimant closed her evidence by making a separate statement on 04.10.2019 after tendering into evidence certain documents viz: copy of judgment dated 04.06.2019 passed by Ms. Amandeep Kaur, SDJM, Nihal Singh Wala Ex.PX, copy of BPL card issued by Food Processing and Civil Supply Department Ex. C1, copy of 10+2 certificate of deceased Parminder Singh Ex.C2, copy of 10th standard of deceased Parminder Singh Ex.C3, copy of entrance form for enrollment in BA 1st year in Guru Gobind Singh College Ex.C4, copy of enrollment number of SSC examination Ex.C5, copy of merit certificate issued by Sports department Ex.C6 to C10, copy of certificate of participation issued by Punjab Yoga Association Ex.C11, copy of merit certificate issued by Punjab Yoga and Culture Association Ex.C12.

7. In defence, no oral evidence was led by the respondents. However, evidence on behalf of respondent no.1 was closed by his counsel by making statement on 08.11.2019 by tendering into evidence copy of

driving licence of respondent no.1 Ex.R2, certified copy of RC Ex.R3, certified copy of fitness certificate Ex.R4, uncertified copy of route permit mark X and Ld. Counsel for respondent no.3 also closed his evidence on the same day by tendering into evidence copy of insurance policy Ex.R1.

8. I have heard Ld. counsel for the parties. My issue-wise findings are as under:-

Issues no.1

9. Onus to prove this issue was on the claimant. It has been pleaded that on 19.07.2017, deceased Parminder Singh along with his friend Bhalwinder Singh were going from Bilaspur to Moga on a motorcycle bearing no.PB-69B-0856, which was being driven by deceased Parminder Singh and Bhalwinder Singh was sitting on the pillion seat of the motorcycle and when they reached near Bus Stand Lohara at about 4.00 p.m, a tipper bearing registration no.PB-25Q-1484 driven by respondent no.1 rashly and negligently came from the opposite side and it struck against the motorcycle of the deceased, due to which Parminder Singh fell on the right side of road and he was crushed under the front tyre of the Tipper and died at the spot. It has further been pleaded that the accident occurred due to rash and negligent driving of above said Tipper by respondent no.1.

To prove the accident, Kuljeet Kaur, mother of deceased Parminder Singh, examined eye witness Bhalwinder Singh. In his statement Bhalwinder Singh narrated an eye witness account of the accident, alleging negligence on the part of Tipper driver Paramjit Singh which led to a fatal accident.

10. Ld. Counsel for the claimant argued that the accident was caused due to rash and negligence act of the driver of Tipper No.PB-35Q-1484 belonging to J.S.Grover Constructions, which hit the motorcycle of deceased when he along with Bhalwinder Singh were going from Bilaspur to Moga. Though, the respondent no.1 refuted all the allegations by alleging that no such accident ever took place with the offending Tipper and he had been wrongly dragged in this case but he has not stepped into the witness box to depose in his favour and despite being summoned the owner of Tipper has preferred not to contest the present petition. Ld. Counsel for the claimant argued that after the accident, FIR No.107 dated 19.07.2017, under Sections 304-A,279,337,427 IPC was registered against the driver of the offending Tipper on the statement of Bhalwinder Singh and respondent no.1 had already been convicted by the Court of Ms. Amandeep Kaur, Sub Divisional Judicial Magistrate, Nihal Singh Wala vide judgment dated 04.06.2019 Ex.PX. I have considered this submission made by Ld. Counsel for the claimant and I am of the opinion that the accident was caused due to the rash and negligent driving of offending Tipper by respondent no.1 Paramjit Singh, who struck his Tipper against the motorcycle of deceased Parminder Singh when he along with Bhalwinder Singh were going from Bilaspur to Moga. CW2 Balwinder Singh has also stated that the accident was caused due to rash and negligent driving of Paramjit Singh. There is no reason to disbelieve the eye witness account of CW2. He has been cross- examined at length by counsel for respondent No.1 and 3 but nothing fruitful could be elicited to prove that the accident did not occur due to negligence of

respondent no.1. No previous enmity of the claimant with the driver of the offending Tipper has been proved which could be reason for his false implication in the case. CW2 Balwinder Singh has specifically deposed that on the basis of his statement the FIR was registered against the driver of offending Tipper and he proved copy of the FIR as Ex.C3.

Hon'ble Supreme Court in *Girdhari Lal Versus Radhey Shyam and Others 1993 (2) P.L.R 109*, has laid down that registration of criminal case against the driver of the offending vehicle for causing the accident is a prima-facie proof that the accident was the result of rashness and negligence on his part. In the case of *Jacob Mathew Vs. State of Punjab reported in 2005(3) RCR (Crl.), 837*, it has been held that while in criminal cases negligence has to be proved beyond reasonable doubt, but in civil cases, the negligence has to be proved on preponderance of probabilities. Since, the respondent no.1 has already been convicted by the court of Ld. SDJM, Nihal Singh Wala in the above said criminal case by holding him guilty in causing the above said accident, therefore, rash and negligent driving on the part of respondent no.1 is held to be the sole cause of accident.

In view of my above discussion, it is held that accident took place due to rash and negligent driving of respondent no.1 Paramjit Singh by driving the offending Tipper, which caused the death of Parminder Singh.

Hence, this issue is decided in favour of claimant and against the respondents.

Issue no.2

11. Onus to prove this issue was on the claimant. Ld. Counsel for the claimant argued that the deceased was hale and hearty prior to the accident and he was young man of 25 years of age and he had passed 10+2 and was to take admission in BA 1st year in Shri Guru Gobind Singh College, Sanghera, District Barnala. He argued that the deceased was a brilliant student and after completion of his examination he would have joined some reputed Financial Institution and he would have earned good income. Besides this, he was looking after and taking care of the claimant and the claimant suffered a great set back, mental pain and agony on account of the untimely death of deceased. He argued that the claimant has been left in lurch in her old age and she had lost all charms of life as she was totally dependent upon the deceased.

On the other hand Ld. counsels for the respondents argued that the claimant was not entitled to any compensation because deceased Parminder Singh was not an earning member of the family. I have considered this argument and I am of the opinion that even if deceased Parminder Singh was a student and was not an earning member of the family, but he was sure to start earning after completion of his studies. He was young man of 25 years and was healthy and fit to take any job of a casual labour. Therefore by working as at least a casual labourer, Parminder could have earned more than ₹ 300/- per day and as per minimum rates of daily wages prescribed by the Punjab Government, an unskilled labourer can earn ₹ 291.51 per day, which comes to ₹ 7568.52/- per month. i.e.

₹ 90,822/- per annum.

Hon'ble Supreme Court in *Amrit Bhanu and others vs National Insurance Company Limited and others, 2012(4) RCR (Civil) 343* has laid down that when a deceased is bachelor and his family comprises of only his parents, deduction of 50% towards personal expenses and living expenses is proper. Thus, after deducting ½ of the income, which deceased would have spent upon himself, had he remained alive, dependency of the claimant works out at ₹ 45,411/- per annum.

It has further been laid down that in case of bachelor victim, the selection of multiplier shall be based upon the age of the deceased and not on the basis of ages of dependents. The claimant has proved on record the postmortem report of deceased Ex.C.1, as per which the deceased was 21 years old at the time of his death. However, in merit certificate Ex.C6 his date of birth is mentioned as 10.05.1996, therefore for the purpose of assessing compensation, he is considered to be aged 25 years at the time of accident. As per law laid down in *Smt.Sarla Verma vs Delhi Transport Corporation and another, 2009(3), Punjab Law Reporter 22*, a multiplier of 18 is to be applied where the age of the deceased victim is between 21 to 25 years. Hence by applying the multiplier of 18 the annual income comes out to be ₹ 45,411 x 18 = ₹ 8,17,398/-.

12. Although Ld. counsel for the claimants quoted the law laid down in *Rajesh and others vs. Rajbir Singh and others, 2013 ACJ 1403(SC)* wherein future prospectus at the rate of 50% were allowed especially when the deceased is below 40 years of age but Hon'ble Apex

Court in *National Insurance Company Limited Versus Pranay Sethi and Ors*, *Special Leave petition (Civil) No.25590 of 2014 decided on 31.10.2017* while re-visiting the law pertaining to grant of 'future prospects' concluded that *Rajesh and Others case (Supra)* does not lay down a binding precedent by observing that :-

“In view of the aforesaid analysis, we proceeded to record our conclusions:-

- (i) The two- Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate bench.
- (ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.
- (iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.
- (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% were the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
- (v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts should be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.
- (vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.
- (vii) The age of the deceased should be the basis for applying the multiplier.
- (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40000/-, and ₹15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

As such future prospects at the rate of 40% are to be allowed especially when the deceased is below 40 years of age. Hence by adding 40% of future prospects this figure comes out to be ₹ 11,44,357/-

(₹8,17,398+₹3,26,959).

As per law laid down in *Pranay Sethi’ case (supra)* a sum of ₹15,000/- is to be paid to the claimant on account of ‘loss of estate’ while a sum of ₹15,000/- is granted to the claimant on account of ‘funeral expenses’ as she incurred the funeral expenses.

As regards loss of consortium, Hon’ble Supreme Court has held in case of *Magma General Insurance Co. Ltd. Vs Nanu Ram alias Chuhru 2017 (16) SCC 680* that the Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. It has further held that where claimants have 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. In this case Hon’ble Supreme Court awarded the father and the sister of the deceased, an amount of ₹ 40,000 each for loss of Filial Consortium. Relying upon the law settled in case titled *Magma General Insurance Co. Ltd. Vs Nanu Ram's (Supra)*, I am of the opinion that claimant is entitled to ₹ 40,000/- for loss of filial consortium.

13. Consequent to the aforesaid discussion, it is held to be fair, just and reasonable to award compensation of ₹ 12,14,357/- to the claimant under the following heads:-

Sr.No.	Head of compensation	Amount
1.	Loss of Dependency to claimant Kuljeet Kaur @ Kamaljit Kaur	₹ 11,44,357/-
2.	Funeral Expenses to claimant Kuljeet Kaur @ Kamaljit Kaur	₹ 15,000/-

3.	Loss of estate to claimant Kuljeet Kaur @ Kamaljit Kaur	₹ 15,000/-
4.	Loss of Filial Constortium to claimant Kuljeet Kaur @ Kamaljit Kaur	₹ 40,000/-
6.	Total	₹ 12,14,357/-

As already discussed, death of Parminder occurred due to rash and negligent driving of Tipper bearing registration no. PB-03Q-1484 by its driver Paramjit Singh respondent no.1 and the above said vehicle was owned by respondents no.2 J.S.Grover Constructions and it was insured with respondent no.3 National Insurance Company. Consequently, I hold that all the respondents are liable to make the payment of compensation jointly and severally. Consequently I decide issue no.2 as well in favour of the claimants and against the respondents.

Issues No.3

14. The onus to prove this issue was upon the respondents, but no evidence has been led to prove these issues. Hence, this issue is decided in favour of the claimant and against the respondents.

Issue no.4 RELIEF

15. Consequent to the findings on all the issues as above, this claim petition is accepted and compensation of ₹ 12,14,357/- is allowed to claimant no.1, payable by all the respondents jointly and severally with costs and interest at the rate of 6% per annum from the date of institution of the petition till realization. A period of two months is granted to the respondents and if the payment is not made within a period of two months from the date of passing of award, the claimant shall be entitled to claim

interest @ 7.5% on the awarded amount from the date of institution of claim petition till its realization. Counsel fee is assessed as ₹1000/-. Memo of costs be prepared and file be consigned to the record room.

Pronounced: 15.11.2019
Jaswant Kaur
Stenographer Gr. II

(Munish Singal)
Motor Accident Claims Tribunal, Moga
UID No.PB0053

