

**IN THE COURT OF SHRI JAGDEEP SOOD,
MOTOR ACCIDENTAL CLAIM TRIBUNAL
MOGA (UID No.PB00169).**

CNR No.PBMO010068832017.

CIS filing No.MACP/128/2017.

Civil Appeal No.RT-24 of 3.11.2017/8.05.2018

Date of decision : 21.10.2019

1. Jasvir Kaur widow of deceased Tarsem Singh son of Buta Singh
 2. Charanjit Kaur daughter of deceased Tarsem Singh son of Buta Singh
 3. Sukhdeep Singh son of deceased Tarsem Singh son of Buta Singh
 4. Ms.Manpreet Kaur daughter of deceased Tarsem Singh son of Buta Singh
 5. Surjit Kaur widow of Buta Singh and mother of late Tarsem Singh
- residents of Village Kamal Patti, Village Daroli Bhai, District Moga.

-----Claimants.

Versus

1. Mahinderpal son of Mast Ram, resident of Village Kala Mary Colony, Tehsil Mukerian, District Hoshiarpur (Driver of Tipper bearing No.PB-07/AF-8960).
2. M/s.Ashwani Kumar situated at G.T. Road, Near Bhangala Octroi, Mukerian, District Hoshiarpur through its Manager/owner (Owner/Manager of Tipper bearing No.PB-07/AF-8960).
3. The New India Insurance Company Limited through its Manager, Moga (Insurer of Tipper bearing No.PB-07/AF-8960).

-----Respondents.

**Claim petition under Section 166 read with
Section 140 of Motor Vehicles Act.**

Present :- Shri Gurjant Singh Mann, Advocate, counsel for claimants.
Shri Lovelesh Gupta, Advocate, counsel for respondent No.1
Shri Navdeep Singh Gill, Advocate for respondent No.2
Shri Ajay Gulati, Advocate for respondent No.3.

AWARD

1. Tarsem Singh died in a motor vehicle accident. To seek compensation on account of death of Tarsem Singh, his widow Jasvir Kaur; children Charanjit Kaur, Sukhdeep Singh and Manpreet Kaur; and mother Surjit Kaur have approached this Tribunal by filing this claim petition under Section 166 of Motor Vehicle Act.

2. It has been averred that on 15.10.2017 at about 3.30 p.m. deceased Tarsem Singh was going on bicycle from agriculture fields to his house in Village Daroli Bhai. Sukhdeep Singh (claimant No.3) and Kartar Singh were following him on their separate bicycles. They reached near road leading to Gurdwra Kutia Sahib. A tipper bearing No.PB-07/AF-8960 came at fast speed from behind and after overtaking bicycles of Sukhdeep Singh and Kartar Singh struck against bicycle of Tarsem Singh. Resultantly deceased entangled with aforesaid tipper. Tipper dragged Tarsem Singh to a long distance. Tarsem Singh died at the spot due to injuries sustained in the accident. Tipper stopped only when Jagdev Singh raised hue and cry. Driver of tipper ran away from the spot after leaving tipper there. It has been averred that accident in question took place due to rash and negligent driving of tipper by Mahinderpal (respondent No.1). Deceased was not at all at fault. Offending tipper was owned by M/s.

Ashwani Kumar, respondent No.2 and was insured with respondent No.3.

3. Regarding this accident FIR No.110 dated 15.10.2017 under Sections 304-A,279 IPC was registered at Police Station Sadar Moga. It has been pleaded that deceased Tarsem Singh was 49 years old at the time of accident and he was labourer. He was earning ₹.15,000/- per month and claimants had suffered a huge loss due to his untimely death as they were dependent upon his income and it was prayed that compensation to the tune of ₹.75 lacs may be awarded.

4. In the written statement filed by respondents No.1 and 2 preliminary objections inter-alia on the grounds of non-maintainability of claim petition; claimants having not come to the court with clean hands and have concealed material facts from the court. On merit, it has been denied that no such accident took place with the vehicle of answering respondents. Claimants have filed present petition on the basis of false and baseless story. Hence a prayer has been made that claim petition against answering respondent may be dismissed .

5. . In separate written statement filed by respondent No.3 Insurance Company took preliminary objections inter-alia on the ground of non-maintainability of claim petition. It has been submitted that neither offending vehicle was driven by authorized person having valid and effective driving license nor offending vehicle was having valid permit, registration, fitness certificate etc. No accident as alleged has ever taken

place and claim petition has been filed on false, frivolous, vague and contradictory facts just to extort money from answering respondent. Plea of contributory and composite negligence has also been taken.

On merit all the contents of the claim petition were denied and it was prayed that claim petition may be dismissed.

6. The pleadings of the parties led to the striking-out of the following issues on 26.02.2018 :-

1. Whether death of Tarsem Singh took place in motor vehicular accident occurring due to rash and negligent driving of tipper bearing No.PB-07/F-8960 by respondent No.1 ? OPP
2. Whether the claimants are entitled to compensation, if so to what extent and from whom ? OPP
3. Whether respondent No.1 was not holding a valid and legal license, if so its effect ? OPR
4. Whether respondent No.2 has committed the breach of any condition of the insurance policy, if so its effect ? OPR.
5. Whether the application is bad for non-joinder of necessary parties ? OPR.
6. Relief.

7. To prove these issues, claimants examined Jasvir Kaur (claimant No.1) as CW-1 and Kartar Singh as CW-2) and thereafter learned counsel for claimants closed their evidence.

8. No oral evidence has been led by contesting respondents

9. I have heard learned counsel for the parties and have

carefully gone through the record. My issue-wise findings are as under :-

Issue No.1 Whether death of Tarsem Singh took place in motor vehicular accident occurring due to rash and negligent driving of tipper bearing No.PB-07/F-8960 by respondent No.1 ? OPP

10. Claimant No.1 Jasvir Kaur appeared as CW-1 and deposed that her husband Tarsem Singh has died on 15.10.2017 due to rash and negligent driving of tipper bearing No.PB-07/AF-8960 by respondent No.1. FIR No.110 dated 15.10.2017 under Sections 279,304-A of IPC registered at Police Station Sadar Moga (Ex.C1/Ex.P1). It was lodged by her son Sukhdeep Singh i.e. claimant No.3. CW-2 Kartar Singh eye-witness of impugned accident has deposed that on 15.10.2017 at about 3.30 p.m. deceased Tarsem Singh was going on bicycle from his fields towards his house after finishing the work in his fields. He along with Sukhdeep Singh (son of deceased) was following Tarsem Singh on their separate bicycles. They reached near road leading to Gurdwara Kutia Sahib. A tipper bearing No.PB-07/AF-8960 came at fast speed from behind and after overtaking them entangled against bicycle of Tarsem Singh and dragged him to a long distance. Tarsem Singh died at the spot due to injuries sustained in the accident. CW-2 has categorically deposed that said accident had occurred due to rash and negligent driving of tipper by respondent No.1 Mahinderpal. Said evidence of claimants remained

unrebutted after facing test of cross-examination. Respondent No.1 has not stepped into the witness box to controvert that his vehicle was not being driven in rash and negligent manner at the time of accident. Respondents have not led any other evidence to controvert said evidence. Copy of postmortem report Ex.P2 shows that Tarsem Singh died on account of injuries received in the accident. Ex.C1 and also exhibited as ExP1 is an FIR lodged with regard to impugned accident caused by respondent No.1. It is not denied that respondent No.1 is facing trial for causing death of Tarsem Singh.

11. Hon`ble Punjab & Haryana High Court in ***Girdhari Lal Versus Radhey Shyam and others, 1993(2) PLR 109*** and ***Lakhu Singh Versus Uday Singh, 2008(1) RCR (Civil) 805*** held that if the driver is being tried on account of the rash and negligent driving in a criminal case, it is prima-facie safe to hold that the accident occurred on account of his rash and negligent act. In FIR Ex.C1 the mode and manner of taking place of the accident, the number of offending bus and the name of its driver have been specifically mentioned. In case ***M/s.Swadesh Karyala (P) Limited Versus Bakshish Kaur and others, 2007(1) RCR (Civil) 532*** it was held that prompt lodging of FIR rules out every possibility of consultation and deliberation. So when FIR was lodged promptly, driver was facing criminal trial in relation to the accident. Then there was a strong presumption of his having caused the accident.

Thus testimony of CW-1 and CW-2, FIR Ex.C1, postmortem report Ex.C2 and in view of above said case law it is proved that Tarsem Singh has died in a motor vehicular accident caused due to rash and negligent driving of tipper bearing No.PB-07/AF-8960 by respondent No.1. Accordingly this issue stands decided in favour of claimants and against respondents.

Issues No.2. Whether the claimants are entitled to compensation, if so to what extent and from whom ? OPP

3. Whether respondent No.1 was not holding a valid and legal license, if so its effect ? OPR

4. Whether respondent No.2 has committed the breach of any condition of the insurance policy, if so its effect ? OPR.

5. Whether the application is bad for non-joinder of necessary parties ? OPR.

12. Since these issues are inter-connected, therefore, same are being taken-up together to avoid repetition of discussion.

13. CW-1 claimant Jasvir Kaur widow of deceased Tarsem Singh has deposed that at the time of accident her husband Tarsem Singh was hale and healthy person aged 49 years. Said evidence of CW-1 has remained unrebutted. Thus it is proved that age of deceased at the time of accident was 49 years. It is a case of claimants that Tarsem Singh was a daily wage labourer. CW-1 claimant Jasvir Kaur has deposed that her husband Tarsem Singh was a labourer and earning Rs.15,000/- per month. He used to give entire earning to her for meeting household

expenses after retaining some amount with him. There is no worthwhile evidence on record to conclude that Tarsem Singh had income of Rs.15,000/- from said pursuit. As per prevailing minimum wages a daily wager earns a sum of Rs.8,000/- per month. Thus monthly income of Tarsem Singh is held to be Rs.8,000/- per month. In view of testimony of CW-1 and CW-2 claimant No.1 being widow, claimants No.2 to 4 being children and claimant No.5 being widowed mother of deceased Tarsem Singh are held to be dependents left by deceased Tarsem Singh.

14. Ex.DD is driving license of respondent No.1 Mahinderpal Ex.DB. Ex.R1 is the policy schedule-cum-certificate of insurance for impugned vehicle involved in accident and causing death of Tarsem Singh. No evidence has been led by respondent to prove that respondent No.1 was not holding a valid driving license. There is no evidence on record that respondent No.1 and 2 has committed breach of any terms of insurance policy. Respondent No.3 has neither examined any witness nor there is any document on record to prove that driver was not holding a valid and legal driving license and that any breach of condition of insurance policy has been committed. There is no evidence on record that present claim petition is bad for non-joinder of necessary parties.

15. Deceased was aged 49 years at the time of his death. Accordingly in view of law laid-down by Hon`ble Supreme Court in *Sarla Verma and others Versus Delhi Transport Corporation and*

another, 2009 ACJ 1298 duly approved subsequently by Hon`ble Supreme Court in *National Insurance Company Versus Pranay Sethi, 2017(4) PLR 693* multiplier of 13 is required to be applied in this case. Hon`ble Supreme Court of India in case *National Insurance Company Versus Pranay Sethi (supra)* has held that enhancement of 25% of Established Income is permissible in case of self employed person aged between 40 to 50 years. Accordingly enhancement of 25% of Established Income is granted. Tarsem Singh deceased has left five dependents i.e. claimants No.1 to 5. In view of law laid-down in *Sarla Verma and others Versus Delhi Transport Corporation & another(supra)*, subsequently approved in *National Insurance Company Versus Pranay Sethi (supra)*, 1/4th deduction on account of personal and living expenses is being made from Established Income of deceased. Hon`ble Supreme Court in *Magma General Insurance Company Limited Versus Nanu Ram @ Chuhru, 2017 (16) SCC 680* and *Sarla Verma and others Versus Delhi Transport Corporation and another (supra)* has recognized Compensation Head of Spousal, Parental and filial consortium and has granted compensation to each of claimant in said case @ Rs.40,000/- towards the loss of consortium. Accordingly each of five claimants are entitled to compensation of Rs.40,000/- on loss of consortium. Claimants in view of law laid-down by Hon`ble Supreme Court in *National Insurance Company Versus Pranay Sethi, 2017(4)*

PLR 693 are also entitled to Rs.15,000/- towards the loss of estate and Rs.15,000/- towards the funeral expenses.

16. In view of above discussion, total compensation payable to claimants on account of death of deceased Tarsem Singh is being calculated as under :-

CALCULATION

Name of deceased	Tarsem Singh
Date of accident	15.10.2017
Date of death	15.10.2017
Age at the time of accident	49 years
Occupation	Labourer
Monthly income	Rs.8,000/-
Future increase @ 25% (NIC Vs.Praney Sethi, 2017(4) PLR 693 (SC))	Rs.2,000/-
Total income per month	Rs.10,000/-
Dependents	Five
Deduction 1/4th	Rs.2,500/-
Remaining amount	Rs.7,500/-
Multiplier	13
Total income	7,500 x 12 x 13 = Rs.11,70,000/-
Loss of consortium 40,000 x 5	Rs.2,00,000/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
Total :-	Rs.14,00,000/-

17. Impugned tipper is owned by respondent No.2. Respondent No.1 was driver of offending tipper bearing No.PB-07/AF-

8960. Whereas impugned tipper bearing No.PB-07/AF-8960 was insured with respondent No.3. It has been proved that Tarsem Singh had died in an accident caused in a rash and negligent driving of above said tipper by respondent No.1 Mahinderpal. Thus all the respondents being in capacity of owner, driver and insurer of offending tipper are jointly and severally liable to pay compensation amount of Rs.14,00,000/-. Accordingly issues No.2 to 5 are decided in favour of claimants and against respondents.

Issue No.5 (Relief)

18. In view of findings on the aforesaid issues, instant petition is allowed with costs and claimants are awarded Rs.14,00,000/- (Rupees fourteen lakhs only) as compensation on account of death of Tarsem Singh in Motor Vehicular Accident. Claimant No.1 will be entitled to get 60% share and claimants No.2 to 4 shall be entitled to get 10% each share out of total amount of compensation. The claimants will be entitled to get interest @ 6% per annum on the said amount from the date of filing of petition till payment thereof. Respondents No.1 to 3 shall be jointly and severally liable to pay the compensation. Cost of application is assessed Rs.3,100/-. File be compiled and consigned to record room.

Pronounced in open Court.
21.10.2019
Jagjit Singh Panesar, Stenographer-II

(Jagdeep Sood)
Motor Accident Claims Tribunal,
Moga (UID No.PB00169)

