

HRPL010004242019



Presented on : 28-01-2019
Registered on : 28-01-2019
Decided on : 28-08-2024
Duration : 5 years, 7 months, 0 days

IN THE COURT OF
Additional District and Sessions Judge AT Palwal,Palwal
Presided Over by Sh.Abhishek Phutela

MACP/39/2019

Case type	:	MACP
Institution No.	:	RBT-20- 28.01.2019/25.01.2024
CNR No.	:	HRPL01-000424-2019
CIS No.	:	MACP-39-2019
Date of Order	:	28.08.2024

1. Smt. Pooja widow of late Sh. Rohtash, aged about 29 years,
2. Nisha minor daughter of Late Sh. Rohtash, aged about 10 years,
3. Veer minor son of Late Sh. Rohtash, aged about 5 years,
4. Nirmal wife of Sh. Ram Saran,

The petitioners no. 2 and 3 are minors through their natural guardian/next friend/mother namely Smt. Pooja widow of late Sh. Rohtash, all residents of village Kalwaka, Tehsil & District Palwal
...Petitioners.

Versus

1. Mohit son of Sh. Naresh Chand, resident of village Kaliyaka, Tehsil Nuh, District Mewat

(Driver of the offending vehicle/Motor cycle bearing no. HR-26 AW-6491)
2. Owner of the offending vehicle, if any particulars to be furnished by the respondent no. 1

(Owner of the offending vehicle/Motor cycle bearing no. HR-26 AW- 6491)

3. Insurance company, if any, particulars to be furnished by the respondent no. 1

(Insurer of the offending vehicle/Motor cycle bearing no. HR-26 AW-6491)

...Respondents.

**CLAIM PETITION UNDER SECTION 166
OF THE MOTOR VEHICLES ACT, 1988.**

Argued by: Shri Dalel Singh, counsel for the petitioners.
Shri D.P Arya, counsel for respondents No.1

AWARD:

Petitioners have filed the petition under Sections 166 and 140 of the Motor Vehicle Act, 1988 for the grant of compensation to the tune of **Rs.50 lakhs** on account of the death of **Rohtash** (hereinafter referred to as the deceased) in a motor vehicle accident on **21.09.2018**, due to rash and negligent driving of **Motorcycle bearing Registration No. HR-26AW-6491** (hereinafter referred to as the offending vehicle), driven by respondent Mohit (hereinafter referred to as the driver).

Petitioner No. 1 is the widow, while petitioner No. 2 & 3 are minor children & petitioner No. 4 is the mother of the deceased.

2. The petitioners claim that on **21.09.2018** at about 6:30 PM the deceased was going to village Jaindapur on a motorcycle bearing registration number HR-29AF-5508 and when he reached near Delana Temple, suddenly the offending vehicle came driven from opposite side by driver at a high-speed without due care and caution, and hit the motorcycle of deceased due to which both driver and deceased fell down on the road.

The deceased suffered grievous fatal injuries whereas driver also suffered some injuries. Both deceased and driver were rushed to the General Hospital Palwal. Post-Mortem examination was conducted. **FIR No. 736 Dated 22.09.2018, PS Sadar Palwal** was registered.

It is claimed by the petitioners that deceased was aged about 30 years of age and was engaged as a milk vendor. He was earning Rs. 40,000 per month. It is pleaded that the petitioners were fully dependent upon the income of the deceased since he was the only bread earner and caretaker of the family.

3. Respondent (driver) contested the petition, by filing a written statement, wherein he has taken primary objection, inter alia, on the ground of maintainability, cause of action, locus-standi, and concealment of material facts.

4. **On merits**, it is pleaded that that the petitioners are not entitled to any amount of compensation, since the alleged accident did not occur due to the rash and negligent driving of driver. It has also been pleaded that the contents of the FIR are false. It has been pleaded that the petition has been filed by petitioners, in collusion with police and respondent has been falsely implicated since FIR has been lodged falsely. Denying all facts as regards age, employment and income of deceased and denying that petitioners are entitled to receive any amount of compensation from him, he prayed for dismissal of the petition.

5. From the pleadings of the parties the following issues were framed on 11.09.2019:

1.) Whether the accident in question resulting into the death of

Rohtash took place due to rash or negligent driving of
motorcycle bearing registration no. HR-26-AW-6491 by
respondent no.1 ? OPP

2). If issue no.1 is proved, whether the claimants are entitled to
compensation, if so how much are from whom ? OPP

3). Whether respondents no.1 & 2 violated the terms and
conditions of the insurance policy, if so to what effect? OPR3

4). Relief.

6. The parties were given opportunities to lead their respective
evidence. In their oral evidence, the petitioners have examined the
following witnesses: -

PW1	:	Manoj
PW2	:	Smt. Pooja (Petitioner no. 1)
PW3	:	Deepak, Criminal Ahlmad
PW4	:	Dr. Deep Kishore Sharma
PW5	:	ASI Krishan Kumar

7. The Counsel for the petitioners closed the evidence on behalf
of the petitioners on 29.06.2023 vide a separate recorded statement after
tendering the following documents:-

Ex.P1	:	Copy of FIR
Ex.P2	:	PMR
Ex.PW5/A	:	Copy of challan
Mark A	:	Death Certificate of deceased Rohtash

8. In response, learned counsel for respondents have examined
the following witnesses:

RW-1	:	Mohit (respondent no. 1)
RW-2	:	Sahi Ram

9. The counsel for the respondent closed the evidence on behalf of the respondent today i.e. on 28.08.2024 vide a separate recorded statement.

10. The counsel for the petitioner closed the rebuttal evidence today i.e. 28.08.2024 vide separate recorded statement.

11. I have heard the learned counsel for the parties and have gone through the file with due care and circumspection. The issue-wise findings with reasons thereof are as follows:

12. ISSUE No. 1

Whether the accident in question resulting into the death of Rohtash took place due to rash or negligent driving of motorcycle bearing registration no. HR-26-AW-6491 by respondent no.1 ? OPP

To prove this issue was regards accident and rashness/negligence on the part of driver of the offending vehicle.

In total five witnesses have been examined by the petitioners. PW1 Manoj happens to be the real brother of deceased. He has deposed through his affidavit Ex.PW1/A that upon receiving a telephonic information on the fateful day, he reached at the spot where he found that his brother was already admitted in the government hospital after the accident. The doctor informed him that his brother had suffered injuries in a roadside accident. The offending vehicle was lying at the place of occurrence. He denied a suggestion that the deceased suffered injuries in a hit-and-run case and that the respondent driver had been falsely implicated. PW2 is petitioner No. 1 Pooja , who was also stepped in as the witness from the side of petitioners. She has deposed through affidavit Ex.PW2/A to the effect that her brother-in-law Manoj had received telephone information as regards the accident of her husband. She also reached the

hospital where the doctor informed that her husband suffered injuries in a roadside accident. In her cross-examination, she as well denied a suggestion that her husband had received injuries in a hit and run case. PW3 Deepak Criminal Ahlmad has been examined by the petitioners , and he has testified that the report under section 173 Cr.P.C was filed in case FIR No. 736 Dated 22.9.2018 PS Sadar Palwal and in this file the photographs of the accidental motorcycle HR26AW-6491 and the other motorcycle, that is HR29AF5508 are attached. He further deposed that the case was at the stage of prosecution evidence. However, during his cross-examination, he stated that apart from ASI Tara Chand no other witness has been examined.

13. It is a contention coming from the side of respondent driver that since the investigating agency has failed to identify the owner of the offending vehicle that is the motorcycle recovered from the spot, the investigating agency had no evidence as against him as a driver of the offending vehicle found from the spot. On this basis. He claimed that he was falsely implicated by the investigating agency. He also contended that it is not a case where he being the driver of the offending vehicle was arrested from the spot. He contended that while the accident is alleged to have happened on 21.9.2018, respondent driver came up to be arrested/joined by the police investigation on 24.11.2019. With these facts it is contended that he has been falsely implicated and has no liability as driver of the offending vehicle. In this regard, a perusal of the record shows ample material available with the investigating agency in the form of statement of Rajbir @ Pappu, recorded under section 161 CRPC during

investigation. It comes up from his testimony that respondent Mohit , being the driver of the offending vehicle, after the accident, was admitted in the hospital along with deceased, on the same day, at the same time and a ruqa to this effect was also sent by the Dr to the police. A perusal of record shows that PW5 ASI Krishan Kumar has testified that he received a ruqa regarding a roadside accident. This ruqa is a part of challan Ex.PW5/A. It was sent by the Dr to SHO PS Sadar regarding the admission of two patients namely "Mohit son of Naresh" & "Rohtash son of Ram Sharan" with the history of a roadside accident at around 6 PM on 21-9-2018, near village Jaindapur. This ruqa as well as the photographs rule out the possibility of false implication. This also falsifies the version of RW1 Mohit and RW2 sahi Ram who maintain that no accident had taken place and that Mohit did not receive any injuries and was not medically treated. PW4 Dr. Deep Kishore Sharma proved the post-mortem report as Ex.P2 , showing the cause of death to be, or account of antemortem injuries received in a roadside accident. Ex.P2 shows that the deceased had suffered multiple injuries in the road-side accident including multiple fractures on his face, of nasal bones, zygoma and maxilla. PMR shows that the cause of death in the case to be of shock and haemorrhage as a result of the ante-mortem head injury.

14. The police investigated the case, and having found Mohit to be the driver of the offending vehicle, challaned him and now respondent Mohit is facing trial in the criminal case. It has been pointed out by honorable Punjab and Haryana High Court in Girdhari Lal v. Radhey Shyam & others PLR (1993) 104 P&H 109 that where the driver of

offending vehicle is tried on accusation of rash and negligent driving of offending vehicle, it can safely be concluded for the purposes of claim petition, that the accident occurred due to rash and negligent driving. In the instant case, as well, since a copy of challan has been filed, showing that driver is being tried on allegations of rash and negligent driving of the offending vehicle, on 21.9.2018, a finding as returned that accident took place on account of rash and negligent driving of respondent No. 1. Findings on issue number one are accordingly returned in favour of the petitioners.

15. ISSUE No. 2

If issue no.1 is proved, whether the claimants are entitled to compensation, if so how much are from whom ? OPP

Age of deceased

The onus was on the petitioners to prove the age of deceased. In this regard, petitioners have brought in Mark A Death Certificate of the deceased, as per which his age has been shown as 29 years. The copy of challan is available on record as challan Ex.PW5/A contains the Post-Mortem examination report Ex.P2 which mentions his age to be 30 years. Considering the death certificate of the deceased, he is taken to be 29 years of age at the time of his death.

16. Income of the deceased

Towards the income of deceased Rohtash, it has been specifically pleaded in Petition in para No. 4 that the deceased was engaged as a milk vendor. Para No. 6 mentions that deceased use to earn an amount of Rs. 40,000/- per month. Even Pooja (widow of deceased) appearing in as PW2 has deposed in this regard but apart from this bare

testimony of petitioner, there is no documentary material available on record to show any such engagement of the deceased or a fact that the deceased earned Rs. 40,000/- per month.

In *Govind Yadav versus The New India Assurance Company Limited (2011) 10 SCC 683* it has been held that in the absence of reliable evidence regarding income, minimum wages are to be considered and appropriate future prospects are to be added thereto. The accident in this case took place on 21.09.2018. As per Haryana Government Notification bearing No. **IR-2/2018/29294-395 dated 28.08.2018 (w.e.f. 1.7.2018)**, an unskilled labourer was fetching minimum wages of Rs. 8541.64/-. Therefore, income of the deceased is taken as **Rs. 8600/- per month.**

17. **Future prospects**

In *National Insurance Company Limited Versus Pranay Sethi 2018(1) Apex Court Judgments 183 (SC)*, Hon'ble Supreme Court, regarding self-employed or person on fixed salary has held in this regard that

“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% where 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.”

Since the deceased was 29 years of age at the time of accident, an addition of 40 % has to be made. After the said addition, which works out to be Rs.3440/-, the income of deceased works out to be Rs. 8600/- + Rs. 3440/- (40% of Rs.8600/-) = **Rs. 12040/-per month.**

18. Annual loss of dependency

The instant petition had been filed by widow and 2 minor children of the deceased and a mother who are 4 in number. In this regard following observations made by Hon'ble Supreme Court in **Smt. Sarla Verma v. Delhi Transport Corporation, (2009) 6 SCC 121** would be **relevant -**

“Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in *Trilok Chandra*, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependant family members is 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six.”

19. Taking the number of dependents in the instant case to be 4, this tribunal is inclined to make **a deduction of 1/4th i.e. Rs. 3010/-**, towards personal expenses of the deceased. After the said deduction, dependency of petitioners comes to Rs.12040 – Rs.3010= **Rs. 9030/- per month/**. The multiplier and therefore comes up to be Rs. 9030 x 12 = **Rs. 108360/- per annum.**

20. Total loss of dependency after applying multiplier

In regard to the multiplier to be applied, Hon'ble Supreme Court in **National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680** noted in para 59.6 that

“**59.6.** The selection of multiplier shall be as indicated in the Table in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] read with para 42 of that judgment.”

Para 42 of *Sarla Verma v. DTC*, (2009) 6 SCC 121 reads as:

“42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

21. Since the deceased was aged between 26 to 30 years, as per Sarla Verma's case (supra) **multiplier of 17** is to be applied. Therefore, the total loss of dependency comes to be **Rs. 108360/- x 17 = Rs. 18,42,120/-**

22. Compensation under conventional heads

Hon’ble Punjab and Haryana High Court in FAO No. 7592 of 2015 decided on 26.04.2022 observed that

“Hon’ble Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and Ors (supra) has quantified the amount in the sum of Rs. 15,000/- each for loss of estate and funeral expenses in addition to Rs. 40,000/- for loss of consortium. Still further, it has also been held that the aforesaid amount would be further subject to 10% enhancement after every three years. Therefore, the petitioners would be entitled to 10% enhancement with respect to the compensation under conventional heads as was also held by Hon’ble Supreme Court of India in Rasmita Biswal and others versus Divisional Manager, National Insurance Company Limited and another 2022(1) RCR (Civil) 344. Hence, the amount of compensation under the conventional heads stands modified to Rs. 18,150/- each for loss of estate and funeral expenses and Rs. 48400/- for loss of consortium”.

Hon’ble Apex Court in Shriram General Insurance Company Limited v. Bhagat Singh Rawat and others (judgment dated 27.03.2023 passed in Civil Appeal No. 2410-2412 of 2023), has clarified that the total

compensation of Rs. 40,000/- is to be awarded to all the claimants under the head of loss of consortium.

23. Thus, the petitioners are awarded a sum of **Rs. 18,150/- on account of funeral expenses** and another sum of **Rs. 18,150/- on account of loss of estate** and another sum of **Rs. 48,400/- towards loss of consortium**, is awarded to the petitioners.

24. Learned counsel for the respondent no.3 has argued that portion of compensation granted under the head of loss of future prospects should not be subjected to payment of any interest thereon. In this regard, he placed reliance upon **ICICI Lombard General Insurance Co. v. Smt. Seema devi & six others Neutral Citation No. 2024:AHC:104849**. He argued that future prospect are relatable to an income to be received in the future and as such, there could not be any loss to the claimants for the payment of future prospects at the time the deceased met with the accident.

25. The reason for awarding interest on the compensation amount, minus the future prospects, is due to the fact that, though the loss of dependency starts from the date of accident, the compensation amount is computed on the date of the award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time, such as the time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects are with regard to probable income to be received in the future and, as such, there is no requirement to compensate the claimant by way of future interest for the loss which is to occur in the future. Further, future prospects are given for the entire future and, as such, the claimant is getting compensation in a lumpsum under future prospects prior to the occurrence of future event(s).

Thus, with regard to future prospects, this Tribunal is of the view that there cannot be any interest on future prospects, as the same relates to an income to be given in the future. Reliance in this regard has been placed upon judgment by Hon’ble Jammu & Kashmir and Ladakh High Court in Mac App No.33/2022 decided on 14.07.2023 while placing reliance upon the view taken by the Gauhati High Court in cases reported as ‘2018 Supreme (Gau) 966’ and ‘2019 Supreme (Gau) 507’. Having regard to the above discussion and for the reasons stated herein above, the component of compensation under the head of loss of future prospects is not to be subjected to interest.

26. On account of above discussion, total compensation amount payable to claimants works out to be as under:

Sr. No.	Head of Compensation	Amount
1	Loss of dependency (actual)	Rs. 13,15,800/-
2.	Future Prospects (40% of loss of Total Dependency)	Rs.5,26,320/-
3.	Compensation on account of consortium	Rs. 48,400/-
4	Funeral Expenses	Rs. 18,150/-
5.	Compensation on account of loss of estate	Rs. 18,150/-
TOTAL AMOUNT		Rs. 19,26,820/-

27. ISSUE NO. 3

Whether respondents no.1 & 2 violated the terms and conditions of the insurance policy, if so to what effect? OPR3

As regards violation of the terms of insurance policy, has lost relevance as particulars of the owner/insurer of the offending vehicle were not brought on record, despite the fact that an application in this regard was moved by the petitioner seeking directions to respondent No. 1 driver of the offending vehicle to disclose such particulars. A perusal of record shows that the application was disposed of on 21-9-2021, with the observations that respondent No. 1 has washed of his hands from the responsibility to disclose the particulars of the owner and insurer of the offending vehicle. Hence, findings on issue No. 1 are insignificant and this issue is disposed of being not pressed.

RELIEF

28. As a sequel to my above discussion, present claim petition is **partly allowed with costs**. The petitioners are awarded in total a sum of **Rs. 19,26,820/-** as compensation on account of **death of Rohtash** in the accident. Out of the said amount of **Rs. 19,26,820/-** an amount of Rs.5,26,320/- has been awarded on account of Future Prospects. An interest of 7% per annum from the date of filing of the claim petition till realization shall be payable on the amount of compensation, excluding the amount of future prospects of Rs.5,26,320/- if payment is made within 90 days of award. Thereafter, future prospects shall also attract 7% per annum interest from date of award till realization.

29. It is further ordered that out of awarded amount 30% be paid to Petitioner no.1 (widow of deceased), 20% each be paid to Petitioners no. 2 & 3 (minor children of deceased) & 30% be paid to petitioner No. 4 (mother of the deceased).

30. It is further ordered that share of petitioner no. 1 & 4 shall be paid to them in their bank account. Since petitioner no. 2 & 3 are minor, therefore, the amount of their share shall be deposited in some nationalized bank in the shape of FDR fetching maximum rate of interest till they attain majority with a rider that no loan etc. shall be advanced against the said FDR.

31. Respondent no.1 being driver/user of the offending vehicle is held liable to pay the amount of compensation to petitioners.

32. Respondent No.1 will deposit the awarded amount by way of cheques in favour of petitioners according to their shares, within a period of two months from today. He may also deposit the awarded amount by RTGS or NEFT into the bank account of this Tribunal within a period of two months from today. Upon doing so, a separate information will be furnished by him to this Tribunal. The Ahlmad of this Court will intimate the counsel/parties once the amount is received in the account of M.A.C.T. The amount so deposited shall be released in favour of petitioners in terms of this award upon moving an application by them.

33. Counsel fee is assessed as Rs. 2200/-. Memo of costs be prepared accordingly. File be consigned to record room after due compliance.

**Announced in open Tribunal.
28.08.2024**

**(Abhishek Phutela)
Presiding Officer,
Motor Accident Claims Tribunal,
Palwal (UID No. HR0220)**

NOTE :- Certified that all the pages of this Award have been checked and signed by me.

**(Abhishek Phutela)
Presiding Officer,
Motor Accident Claims Tribunal,
Palwal (UID No.HR0220)
28.08.2024**