

Deepa Rani and others Vs. 1 Gurvinder Singh MACP No.205 of 2017

IN THE COURT OF HEM RAJ,
MOTOR ACCIDENT CLAIMS TRIBUNAL,
KURUKSHETRA UID NO.HR0167

Case Type	MACP
Case No.	205 Registration Date: 19.04.2017.
Case Code	HRKU01-00-2039-2017
Date of Decision	19.11.2024

1.	Deepa Rani wife of Late Anil Kumar, whose date of birth is 18.07.1981.
2.	Miss.Manya (Minor) d/o late Anil Kumar, whose date of brith is 02.06.2006.
3.	Master Kushagr (minor) s/o Late Anil Kumar, whose date of birth is 26.04.2008.
4.	Mohini Devi w/o Rattan Lal, aged about 68 years,
5.	Rattan Lal son of Thakur Deen, aged about 73 years,
	The claimants No.2 and 3 are minors, the claim petition is being filed through their mother Smt.Deepa Rani, as a claimant no.1, who is the natural guardian and next friend All residents of House No.154, Mohan Nagar, Police Station Paday District Ambala.

Versus

1.	Gurvinder Singh son of Tajinder Singh, r/o V & PO Shalimar Colony Saha, Tehsil Barara, District Ambala. (Owner cum-driver of the offending Car XUV, Mahindra bearing No.HR-06AA-0080).
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THIS IS A DEATH CASE

Claim petition under section 166 and 140 of Motor Vehicle Act 1988.

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Argued by:- Mr. Rohit Bansal, counsel for petitioners No.1 to 3.
Mr. Subhash Sachdeva, counsel for petitioners No.4& 5.
Mr. Neeraj Nain, counsel for respondent No.1.
Vehicle is stated to be not insured.

AWARD

Through the present claim petition, the claimants are seeking compensation under section **166 and 140** of the Motor Vehicle Act 1988 (hereinafter referred to as 'the Act') **regarding death of Anil Kumar** occurred in a motor vehicular accident, which took place on **10.01.2017 in the area of Police Station Shahabad, District Kurukshetra.**

2. Brief facts of the claimants's case is that on 10.01.2017 at about 7.10 A.M. deceased Anil Kumar alongwith Ravi Bhushan Pandey and Amarjeet Singh were waiting for a conveyance near Bus stand Ambala, to go to Panipat. In the meantime, the offending vehicle bearing No.HR-06-AA-0080, which was being driven by the respondent, reached there. Anil Kumar, Ravi Bhushan Pandey and Amarjeet Singh asked for a lift. All three of them boarded the offending vehicle. The offending driver (respondent) started driving the offending vehicle in a rash and negligent manner and without observing the traffic rules. The passengers asked the offending driver to be careful and not to be negligent and rash. However, the offending driver kept on driving the offending vehicle in a rash and negligent manner and when the offending vehicle had just crossed Saha Fly over, it went out of control and turned turtle and due to fast speed, the

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offending vehicle crossed the intersection and hit an eicher canter, that was parked in kacha portion on the other side of the road. All the passengers received serious, grievous and multiple injuries on their vital parts. All of them were rushed to General Hospital, where the doctors declared Anil Kumar brought dead and Shiv Kumar and Amarjeet were referred to PGI MER Chandigarh. The accident took place solely due to rash and negligent driving of the respondent.

At the time of death, deceased Anil Kumar was of the age of 41 years and he was Area Sales Manager, with Laborate Pharmaceuticals India Ltd. having its registered office at E-11, Industrial Area Panipat. The deceased was having annual income of Rs.five lacs. He was income tax payee. A criminal case bearing FIR No.20 was registered with police Station Shahabad against the offending driver for the commission of offences punishable under Sections 279, 337, 338 and 304-A of the Indian Penal Code. All the claimants were dependent upon him. They had spent Rs.two lacs on the funeral and last rites of the deceased.

3. Claimant No.1 is the wife and claimants No.2 and 3 are the minor children and claimants No.4 and 5 are the parents of deceased. They all were dependent upon the deceased. Therefore, they be given compensation to the tune of Rs.Sixty lacs alongwith interest @ 24 % per annum from the date of filing of petition till its realization.

4. The claim petition has been resisted by the respondent by

raising preliminary objections of maintainability and estoppels. It has been further pleaded that claim petition is false, frivolous and vexatious. Moreover, he has been duly acquitted by the Trial court in the criminal case registered against him vide judgment dated 16.04.2018. It has been further pleaded that a false FIR was registered against him in collusion with the local police just to grab money from him.

5. **On merits**, all the paragraphs of the claim petition have been disputed and denied for want of knowledge. It has been further pleaded that he was having a valid driving licence and a valid registration certificate. He is not liable to pay any compensation to anyone. No such accident ever took place and the claim petition is a bundle of concoction and lies. His car has been falsely involved in the alleged FIR. **With this broad defence dismissal of the claim petition with costs was prayed for.**

6. **It was the duty of the respondent**, being driver and registered owner of the offending vehicle, to declare about the particulars of the Insurance Company but no such declaration was made at trial.

7. **Ultimately, from the pleadings of the parties**, following issues were framed vide order dated **24.09.2018:-**

1. Whether the accident in question took place due to rash and negligent driving of car Mahindra XUV bearing registration No. HR06AA-0080 by respondent No.1 and it resulted in death of Anil Kumar? OPP
2. If issue No.1 is proved to what amount of compensation and from whom the petitioners are

entitled? OPP

3. Relief.

8. In endeavour to establish their case, claimants examined the following witnesses:-

SR. NO.	WITNESS NAME	PARTICULARS
PW-1	Deepa Rani	Claimant No.1
PW-2	Devender Singh	Head Constable
PW-3	Dr.Balraj Kumar	Medical Officer
PW-4	Sonu Sisodiya	HR Executive to Laborate

9. In the name of the documentary evidence, the claimants relied upon the following documents : -

SR. NO	PARTICULARS	EXHIBITS NO.
1.	Copy of police information	Ex.P1
2.	Copy of FIR	Ex.P2
3.	Copy of PMR of Anil Kumar	Ex.P3
4.	Copy of report u/s 173 Cr.P.C.	Ex.P4
5.	Copy of Site plan	Ex.P5
6.	Copy of Mechanical report	Ex.P6
7.	Copy of charge shee	Ex.P7
8	Copy of salary/wages slip	Ex.P8
9.	Letter of Director to Anil Kumar	Ex.P9

10.	Letter of Director to Anil Kumar	Ex.P10
11.	Copy of order dated 16.04.2018	Ex.P11
12.	Form No.25.35	Ex.P12
13.	Copy of statement of Ravi Bhushan Pandey	Ex.P13
14.	Copy of FIR	Ex.PW2/A
15.	Copy of PMR of Anil Kumar	Ex.PW3/A
16.	Copy of Authorizatio letter	Ex.PW4/A
17.	Copy of pages of attendance regiser	Ex.PW4/B
18.	Copy of pge of regiser of salary	Ex.PW4/C
19.	Copy of Salary slip	Ex.PW4/D

10. Per contra, the respondent did not examine even a single witness rather he produced the following documents:-

SR. NO.	PARTICULARS	EXHIBITS NO.
1.	Statement of Rattan Lal	Ex.R1
2.	Statement of Rajinder Kumar	Ex.R2
3.	Statement of Shiv Kumar	Ex.R3
4.	Statement of Ravi Bhushan	Ex.R4
5.	Copy of Judgment dated 16.04.2018	Ex.R5
6.	Copy of order dated 12.09.2019	Ex.R6
7.	Copy of Registration	Ex.R7

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	Certificate	
8.	Copy of Driving Licence	Ex.R8

11. I have heard the learned counsel for the parties and perused the evidence brought on record very carefully with their assistance. My issue-wise findings are as under :-

ISSUE NO. 1 :-

1. Whether the accident in question took place due to rash and negligent driving of car Mahindra XUV bearing registration No. HR06AA-0080 by respondent No.1 and it resulted in death of Anil Kumar? OPP
12. Learned counsel for the claimants while referring to copy of FIR has vehemently argued that an FIR was registered against the respondent for the commission of offences under Section 279, 337 and 304-A of Indian Penal Code for causing simple and grievous injuries to Shiv Kumar and Amarjeet and for causing death of Anil Kumar. A perusal of the statement of complainant would reveal that it was the respondent who drove his offending vehicle in a rash and negligent manner, as a result of which, the offending vehicle went out of control and crossed the intersection and dashed into a canter parked in the kacha side of the opposite road and Shiv Kumar and Ravi Bhushan Pandey received simple and grievous injuries and Anil Kumar died on the spot. Therefore, it can be safely assumed that the accident in question was caused due to rash and negligent driving of the respondent. Therefore, he is liable to

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compensate the claimants who are wife, minor children and parents of the deceased. The deceased was having an income of Rs.five lacs per annum and he was working as Area Sales Manager in a private company. The deceased was income tax payee, therefore, claimants be given a compensation to the tune of Rs.sixty lacs.

Learned counsel relied upon the law laid down by Hon'ble Supreme Court of India in case **Ramesh Kumar Vs. National Insurance Co.Ltd. 2001 (4) RCR (Civil) 680** wherein Hon'ble Supreme Court has held that *even the Gratuitous passengers are liable to be compensated by the owner and driver of the offending vehicle.*

Learned counsel further relied upon law laid down by Bombay High Court in case **Narmadabai Vs. State of Maharashtra and others 2005 (2) RCR (Civil) 808** wherein Hon'ble Bombay High Court has held that *it makes no difference in Motor Accident Claims Petition, even if the driver of the offending vehicle is tried for negligent driving and is acquitted in criminal case. Criminal case has no relevancy in the case for compensation.*

13. On the other hand, learned counsel for the respondent has vehemently argued that the claimants have miserably failed to prove negligence of the respondent. While referring to Ex.P6, copy of mechanical report, learned counsel has vehemently argued that infact the respondent was not negligent and the accident took place due to sudden

bursting of front tyres. While referring to Ex.R3, certified copy of statement of Shiv Kumar in criminal case bearing FIR No.20 dated 10.01.2017 P.S.Shahabad; learned counsel for the respondent has further argued that a perusal of testimonies even of the eye witnesses, who were sitting in the offending car, would make it clear that the accident in question took place due to bursting of tyres of the offending car. Shiv Kumar has categorically testified before the criminal court that the accident did not take place due to rash and negligent driving of respondent. Likewise, Ravi Bhushan Pandey had also stated before the criminal court that the accident took place due to bursting of tyres and the respondent was not driving the offending vehicle in a rash and negligent manner.

14. Therefore, it is ample clear that the accident in question was caused due to sudden bursting of tyres of the offending vehicle and not due to rash and negligent driving of the respondent. No any claim petition was filed by any of the survivors of the accident or by the alleged canter against respondent. Therefore, claimants have miserably failed to prove the negligence of the respondent. Learned counsel has placed reliance upon the law laid down in case titled **Jeetu Ram and another Vs. Surender** **Law Finder DOC ID # 1090728** wherein the Hon'ble High Court has held that *the claimants failed to prove involvement of Auto rickshaw in the accident. Onus of the claimants to prove involvement of the offending*

vehicle in the accident and that offending vehicle was being driven rashly and negligently. Merely because driver of the alleged offending vehicle was facing trial under Section 279, 304-A of Indian Penal Code, in itself would not be sufficient to hold that he was the driver of the offending vehicle and that the offending vehicle was involved in the accident. Learned counsel has also relied upon the law laid down in case titled as **Lilam Kumari Devi and another Vs. Rohtash and others** Law Finder Doc Id # 2201761 wherein it has been held that *the registration of FIR or even the judgment of acquittal or conviction, are of no relevancy in Motor Vehicular Accident case and Tribunal is required to decide such cases on the basis of material placed before it.* The FIR alone does not prove the negligence on the part of driver. The claimants have failed to lead any defence to prove negligence of the driver. **With these submissions, learned counsel has prayed as dismissal of the claim petition with costs.**

15. In the instant case, claimant Deepa Rani wife of the deceased has been examined as PW1. However, she was not an eye witness of the accident. HC Devender Singh has been examined as PW2. He has proved the copy of FIR as Ex.PW2/A. It is worth to mention here that the FIR was registered on the basis of statement of complainant recorded by some police officials. However, the complainant when examine at trial, had not only disowned his alleged statement recorded by the police but he had testified stated that the accident in question took place due to sudden

bursting of the tyres and not due to rash and negligent driving of the respondent. PW3 Dr. Balraj Kumar, carried out autopsy on the dead body of Anil Kumar. PW4 Sonu Sisodiya, is an employee of employer of the deceased. Therefore, it is ample clear that neither any eye witness has been examined at trial nor the negligence of the respondent has been proved on record.

16. A perusal of copy of mechanical report of the offending vehicle would prove that both the front tyres as well as one of the rear tyre were damaged and both the eye witnesses of the accident in dispute had also categorically testified at criminal trial that the accident in dispute was not caused due to rash and negligent driving of the respondent and the accident in question took place due to sudden burst of the tyres.

17. This court is of the considered view that the negligence of the offending driver was to be proved by the claimants by leading cogent and clinching evidence. However, they have miserably failed to discharge their onus. On the other hand, the respondent has fairly discharged his onus of proving that the accident in question was not caused due to his rash and negligent, act by placing on record certified copies of statement of both the eye witnesses in criminal trial and also by relying upon copy of the mechanical report. It is submitted that the mechanical report has been relied upon by the claimants themselves. Mere registration of FIR is of no consequences in the Motor Accident Claims Petitions and the

negligence of the offending driver has to be proved by the claimants by leading cogent and clinching evidence, which in this case, claimants have miserably failed to prove.

18. When the case was fixed for claimants's evidence, they filed an application for appointing a local commissioner for recording the testimony of Amarjeet Singh. However, the said application was dismissed. But the claimants went in the Revision before the Hon'ble High Court and the same was allowed in terms of order dated 19.04.2022. However, this witness Amarjeet Singh was not examined due to his death as reflected in the order dated 08.09.2022.

19. Resultantly, keeping in view of the above discussion, it is held that accident in question **had not taken place** due to rash and negligent driving of **vehicle bearing registration No. HR-06-AA-0080**, being driven by **the respondent** and that being so, issue No.1 is hereby decided accordingly against the claimants and in favour of **respondent No.1**.

ISSUE NO. 2

2. If issue No.1 is proved to what amount of compensation and from whom the petitioners are entitled? OPP

20. In view of the finding rendered on issue No.1, the issue no.2 has become infructious. Thus, this issue is decided accordingly.

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RELIEF :-

21. As an upshot of my above discussion, the present **claim** petition is hereby dismissed with no order as to cost. Parties are left to bear their own cost. Memo of cost be prepared. File be consigned to record room after due compliance.

Pronounced in open Court.
Dated: 19.11.2024.

(Hem Raj),
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Note : All the **13** pages of the Award have
been checked and signed by me.

(Hem Raj),
Motor Accident Claims Tribunal,
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Mukesh Kumar
Stenographer G-II

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