

Before Mahabir Singh Sindhu, J.

SANTOSH AND OTHERS—Appellants

versus

SHAMSHER SINGH AND OTHERS—Respondents

FAO No.1305 of 2010

August 31, 2018

Motor Vehicle Act, 1988—S. 173—Rash and negligent driving of school bus—Hit motorcycle of deceased—Fatal head injury—Died after 5 months—Claim—Not a criminal trial, preponderance of probabilities to be seen—No post mortem examination—Inconsequential—Tribunal—To be practical and humane.

Held, that in a claim petition under the Act, it is not to be treated like a criminal trial, where evidence is required to prove the charge beyond reasonable doubt, rather in these cases, preponderance of probabilities is to be seen. In the present case, as discussed above, the deceased suffered various injuries including the head injury and he continuously undergoing treatment without any lapse for almost five months and ultimately, died then the death can be safely co-related with the accidental injuries because in a claim petition, the wrong doer is not to be inflicted the conviction by the Tribunal. The observation of learned Tribunal that no Post Mortem Examination was conducted in this case is also not a ground the reject the claim petition as the facts of this case reveal that deceased was merely a Chowkidar, maintaining a large family and thus, was a very poor man and keeping in view the social background of the appellants, they cannot be expected to visualize the consequences of non-conducting any Post Mortem Examination for the purpose of claim petition. More particularly, when after undergoing a trauma of five months' treatment of deceased, they lost the only bread-earner in the family. Therefore, merely that Post Mortem Examination was not conducted cannot be a ground to discard the cause and effect of accidental injuries, resulting into the death of deceased.

(Para 29)

Further, Held that no doubt, the award of compensation should not be taken as a windfall, but at the same time, a practical and humane approach ought to be adopted while adjudicating the claim petitions under the Act. To keep a balance, a little bit more sensitivity is

expected from the Tribunals while dealing with these cases, where the victim has suffered serious injuries resulting into loss of limb(s) of the body or loss of life and technicalities may be not allowed to overshadow the beneficial legislation in a welfare state, otherwise, the very purpose of the valuable piece of legislation will be rendered as otiose.

(Para 30)

Ashwani Gaur, Advocate, *for the appellants.*

Service of respondent Nos.1 and 2 stands exempted, vide order dated 18.02.2014.

None for respondent No.3/Insurance Company.

MAHABIR SINGH SINDHU, J.

(1) Present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 (*for short 'Act'*) against the impugned award dated 24.07.2009, passed by learned Motor Accident Claims Tribunal, Sonapat (*for short 'Tribunal'*), vide which, a total compensation of Rs.37,400/- has been awarded to the claimants/appellants (*for short 'appellants'*) in respect of the injuries suffered by Ramesh Kumar (*hereinafter referred as 'deceased'*) in a motor-vehicular accident on 16.07.2007, who later on died on 16.12.2007.

(2) Appellants are widow; four daughters and one minor son. Respondent No.1-Shamsher Singh is the driver; respondent No.2-owner and respondent No.3 is the Insurance Company.

(3) Brief facts of the case are that on 16.07.2007, deceased was going on his Motor-Cycle bearing registration No.HR-9SL-4973 for attending death ceremony of his relative at Village Bidhlan. His cousin-Bijender was also following the deceased in a Car and when they crossed Village Sehri and approached the road leading to Village Bidhlan, a yellow coloured School Bus bearing registration No.HR-69-3112 (*hereinafter referred as 'offending Bus'*), driven by respondent No.1 in a very rash and negligent manner, came from the opposite direction and hit the motor-cycle of deceased. Resultantly, he fell down along with his motor-cycle on the road and suffered injuries with right leg, right hand, head injury and on other parts of the body. Thereafter, he was taken to Civil Hospital, Sonapat by his cousin-Bijender in his Car and given first aid. Keeping in view the seriousness of injuries, doctor of Civil Hospital, Sonapat referred him to Post Graduate Institute of Medical Sciences (*for short 'PGIMS'*), Rohtak, but he was admitted in Paschami Hospital, Delhi and remained admitted up to

19.07.2007. During this period, he was operated and interlocking nail was injected in his leg due to crush injury, but head injury proved fatal and ultimately died on 16.12.2007.

(4) It is averred that till his death, deceased remained as an outdoor patient continuously and during this period, an amount of Rs.2,00,000/- (Two Lakh) was spent on his treatment, transportation, medicines, attendant, special diet and doctor fees etc. At first instance, he became permanent disabled and later on, died on account of the injuries suffered by him in the accident in question, caused due to rash and negligent driving by respondent No.1- Shamsher Singh and thus, all the respondents were alleged to be liable for compensation.

(5) Upon notice, respondent Nos.1 and 2 filed joint written statement and denied the contents of the claim petition while raising preliminary objections that Ramesh Kumar (deceased) did not die due to roadside accident as alleged by the appellants. On merits, it was submitted that respondent No.1 was driving the offending Bus at a moderate speed and deceased himself was responsible for the accident in question as he could not control his motorcycle on the turn of the road. Income, age and occupation are also denied and ultimately submitted that offending Bus is insured with respondent No.3 and thus, respondent Nos.1 and 2 are not liable for any compensation.

(6) Respondent No.3 filed separate reply and opposed the claim petition while raising preliminary objections including violation of the terms and conditions of the Insurance Policy, mis-joinder/non-joinder of the parties as well as factum of accident with the offending Bus. Also denied that respondent No.1 was holding a valid driving licence as well as route permit at the time of accident. On merits, respondent No.3 denied the contents of claim petition including age, income of deceased or that appellants have spent an amount of Rs.2,50,000/- on various counts including treatment, medicines etc.

(7) On the basis of pleadings of both sides, the following issues were framed by learned Tribunal:-

1. Whether the accident in question resulting into the death of Ramesh Kumar took place on account of rash and negligent driving of Bus bearing No.HR-69-3112 by respondent No.1, as alleged? OPP.
2. Whether the petitioners are entitled to get compensation, if so, to what amount and from whom?OPP.

3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of the accident and the insured violated the terms and conditions of the insurance policy, as alleged, if so to what effect? OPR-3.

4. Relief.

(8) In order to prove their case, claimants/appellants examined Dr. Adarsh Sharma, Medical Officer, Civil Hospital, Gohana as PW-1; Ombir Singh, Record-Keeper, Paschimi Hospital, New Delhi as PW-2; Parveen Kumar, Clerk, Paschimi Medicos as PW-3; Sandeep, Teacher, M.C. Primary School, Mangol Puri as PW-4; Bijender as PW-5 and Smt. Santosh (appellant No.1) as PW-6 and produced documentary evidence Ex. P-1 to Ex. P-21 and Mark-A to Mark-C.

(9) On the other hand, respondents produced documentary evidence as Ex.R-1 (Driving Licence of respondent No.1) and Ex.R-2 (copy of Insurance Policy).

(10) PW-1, Dr. Adarsh Sharma, Medical Officer, Civil Hospital, Gohana, *inter alia*, deposed that on 16.7.2007, when he was posted at General Hospital, Sonapat, Ramesh, aged 48 years, was medico-legally examined by him with the alleged lacerated wound on left frontal area of skull, which was bone deep with fresh bleeding; crushed lacerated wound on the right lower leg, bone deep with fresh bleeding; reddish abrasion on the front of right clavicle area and graze abrasion on the right fore-arm near the wrist. Further deposed that patient was given first aid at Bharat Hospital, Sector 14, Sonapat. He specifically deposed that injured was brought with alleged history of road side accident and produced Medico Legal Report (Ex.P-1) and specifically deposed that injuries Nos.1 and 2 can be fatal to the life.

(11) PW 2-Ombir Singh, Record Keeper, Paschimi Hospital deposed that Ramesh Kumar was admitted in their hospital on 16.07.2007 and discharged on 19.07.2007 and he was operated there. He produced the Hospital Bill as Ex.P-2 and Discharge Summary of deceased as Ex.P-3.

(12) PW 3-Parveen Kumar, Clerk, Paschimi Medicos, Paschimi Hospital, Delhi produced the medical bills (Ex.P-4 to Ex.P-18), total amounting to Rs.18,387/- (approximately) and deposed that these bills have been issued by their medical store in the name of patient and he brought the original record of these bills.

(13) During cross-examination, this witness stated that Paschimi Medicos is the part of Paschimi Hospital and medical bills have been issued by him.

(14) PW 4-Sandeep, Teacher in M.C. Primary School, A Block, Mangolpuri, Delhi, brought the pay register of the School and deposed that deceased was working as Chowkidar in their School and produced his Pay Certificate (Ex.P-19), which shows the total monthly salary of deceased as Rs.7061/-.

(15) During cross-examination, this witness stated that Pay Certificate has been issued by the Principal of their School and the services of deceased were confirmed in April, 2004.

(16) PW 5-Bijender deposed that on 16.7.2007 at about 6.30 AM, he was going to Village Bidhlan and narrated the entire version of the accident as alleged in the claim petition to the effect that deceased sustained various injuries and fell down on the road and thereafter he was shifted to Bharat Hospital, Sonapat in a Car and thereafter to Civil Hospital, Sonapat and he has produced the copy of FIR No.133 dated 17.07.2007, under Sections 279 and 337, IPC, Police Station Kharkhoda, District Sonapat as Ex.P-20.

(17) During cross-examination, this witness denied the suggestion that accident took place due to the fault of deceased-Ramesh or that he was not present at the spot.

(18) PW 6-Santosh (appellant No.1) deposed that her husband met with an accident on 16.07.2007 and succumbed to the injuries on 16.12.2007. Further deposed that they are having five children and all were dependent on the income of deceased. Also deposed that she spent about one Lakh rupees on the treatment of her husband and Rs.25,000/- on last rites.

(19) During cross-examination, she stated that two daughters are married, whereas other children are unmarried. Specifically stated that she has not received any pensionary benefits after the death of her husband as no such pension scheme was in force at the time of his death. She denied the suggestion that she is deposing falsely in order to get the compensation.

(20) Learned Tribunal, while deciding Issue No.1, came to the conclusion that it stands established that accident in question resulting into injuries to deceased took place on account of rash and negligent driving of the offending Bus by respondent No.1, but it is not proved

that deceased died on account of the injuries received in this accident and thus, decided this Issue partly in favour of the appellants while observing as under:-

“15. In view of the fore-going circumstances, I arrive at the conclusion that the accident in question resulting into injuries to the petitioner took place on account of rash and negligent driving of Bus No.HR-69-3112 by the respondent no.1, but it is not proved that the deceased died on account of these injuries received in the accident. Hence, the issue is accordingly partly decided in favour of the petitioners.”

(21) Learned Tribunal, while deciding Issue No.3 against the Insurance Company, observed that Insurer has failed to prove that respondent No.1 was not holding a valid and effective driving license at the time of accident.

(22) While deciding Issue No.2, learned Tribunal found that total amount of Rs.18,400/- was incurred on account of medical expenses on the treatment of deceased-Ramesh Kumar and Rs.5000/- on account of special diet, transportation and attendant charges. Salary of deceased was found to be Rs.7061/- per month and awarded a sum of Rs.14,000/- for loss of income for the period, when deceased remained admitted in the hospital. Thus, a total amount of Rs.37,400/- was awarded in favour of the appellants along with interest @ 7.5% per annum from the date of the filing of the petition till its realization.

(23) It is argued by learned counsel for the appellants that learned Tribunal has committed a grave error of law as well as facts while recording the findings on Issue No.1 to the effect that deceased did not die on account of the injuries suffered by him in the accident in question. Further argued that sufficient material available on record to prove that deceased died due to cause and effect of the injuries suffered by him in the accident, caused by the offending Bus, driven by respondent No.1 and as such, Issue No.1 ought to have been decided in entirety in favour of the appellants and against the respondents. Also argued that keeping in view the age, income and untimely death of deceased, the appellants are entitled for enhancement of compensation in view of the law laid down by Hon'ble the Supreme Court in *Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another*¹ and *National Insurance Company Limited versus Pranay*

¹ (2009) 6 SCC 121

***Sethi and others*².**

(24) Heard learned counsel for the appellants and perused the paper- book.

(25) The factums of age, income and sufferance of injuries in the accident in question on account of rash and negligent driving of offending Bus by respondent No.1 are duly proved. The respondents have neither filed any substantive appeal; nor cross-objections against the above findings. Even they have not chosen to oppose the present appeal at the time of hearing of this case, therefore, the findings to that effect are affirmed.

(26) The points for determination in the present appeal are:-

“(i) as to whether the deceased died on 16.12.2007 as a consequence of the injuries suffered by him on 16.07.2007 in the motor-vehicular accident, caused with the offending Bus, driven by respondent No.1 or not?”

(ii) If aforesaid point is proved in affirmative, then what should be the 'just compensation' for which the appellants are entitled in view of the facts and circumstances of the present case?”

(27) It is duly proved on record that regarding the accident in question, an FIR No.133 dated 17.07.2007 was registered against respondent No.1- driver and after investigation by the police, a report under Section 173 Cr.P.C. was submitted before the Court of competent jurisdiction. PW 1-Dr. Adarsh Sharma medicolegal examined the deceased on 16.7.2007 and as per the MLR (Ex.P-1), he found the following injuries on his body:-

5. Lacerated wound of size 7x1 cm. in the left frontal area of skull, bone deep with fresh bleeding.

6. Crushed lacerated wound of size 10x8 cms. on the right lower leg, bone deep with fresh bleeding.

7. Reddish abrasion on the front of right clavicle area of size 4x3 cms.

8. Graze abrasion of size 3x2 cms. on the right fore-arm near the wrist.

(28) Perusal of injuries Nos.1 and 2 reveal that these are

² (2017) 16 SCC 680

lacerated and crushed wound on left frontal area of skull as well as on on the right lower leg, bone deep with fresh bleeding. PW 1-Dr. Adarsh Sharma further deposed that there was a reddish abrasion on the front of right clavicle area and graze abrasion on the right fore-arm near the wrist and injured was brought with alleged history of road side accident. This witness specifically deposed that injuries Nos.1 and 2 can be fatal to the life. Even learned Tribunal also found that injuries were duly proved and was of the opinion that these injuries could be fatal to life. Despite that, learned Tribunal recorded the finding to the effect that appellants have failed to prove that deceased died on account of these injuries received in the accident in question. It needs to be recorded that PW 1-Dr. Adarsh Sharma, in his testimony, specifically deposed that “*injuries Nos.1 and 2 can be fatal to the life and there is neither any suggestion; nor any other material produced by the respondents to the contrary*”, therefore, the findings recorded by learned Tribunal to the effect that death of deceased did not result on account of the injuries suffered by him on 16.07.2007 are not sustainable and deserve to be reversed. In the opinion of this Court, the testimony of PW 1-Dr. Adarsh Sharma, coupled with the fact that deceased remained under treatment for almost five months continuously with the best efforts of appellants and there is no material on record to controvert that. There was any lapse on the part of the appellants or injured for the treatment, the irresistible conclusion is that deceased died due to the cause and effect of accidental injuries, suffered by him on 16.07.2007, caused with the offending Bus, driven by respondent No.1 in a rash and negligent manner and the finding of learned Tribunal on Issue No.1 is reversed to that extent.

(29) In a claim petition under the Act, it is not to be treated like a criminal trial, where evidence is required to prove the charge beyond reasonable doubt, rather in these cases, preponderance of probabilities is to be seen. In the present case, as discussed above, the deceased suffered various injuries including the head injury and he continuously undergoing treatment without any lapse for almost five months and ultimately, died then the death can be safely co-related with the accidental injuries because in a claim petition, the wrong doer is not to be inflicted the conviction by the Tribunal. The observation of learned Tribunal that no Post Mortem Examination was conducted in this case is also not a ground to reject the claim petition as the facts of this case reveal that deceased was merely a Chowkidar, maintaining a large family and thus, was a very poor man and keeping in view the social background of the appellants, they cannot be expected to visualize the

consequences of non-conducting any Post Mortem Examination for the purpose of claim petition. More particularly, when after undergoing a trauma of five months' treatment of deceased, they lost the only bread-earner in the family. Therefore, merely that Post Mortem Examination was not conducted cannot be a ground to discard the cause and effect of accidental injuries, resulting into the death of deceased. In view of the above, point No.1 is decided in favour of the appellants and against the respondents.

Point No.II

(30) No doubt, the award of compensation should not be taken as a windfall, but at the same time, a practical and humane approach ought to be adopted while adjudicating the claim petitions under the Act. To keep a balance, a little bit more sensitivity is expected from the Tribunals while dealing with these cases, where the victim has suffered serious injuries resulting into loss of limb(s) of the body or loss of life and technicalities may be not allowed to over shadow the beneficial legislation in a welfare state, otherwise, the very purpose of the valuable piece of legislation will be rendered as otiose. In the case in hand, learned Tribunal has awarded a total compensation of Rs.37,400/- and which is not sustainable and deserves to be enhanced. On the date of accident, deceased was aged about 48 years and his monthly income was also duly proved by way of Salary Certificate (Ex.P-19) as Rs.7061/- and he was working as Chowkidar on regular basis. It has also been duly proved that at the time of accident as well as on the date of his death, there were total six dependents upon the deceased and in view of the law laid down by Honb'le the Supreme Court in *Sarla Verma's* case (supra), 1/4th deduction is to be made towards personal expenses of the deceased and multiplier of 13 is attracted. Still further, in view of the judgment of Hon'ble Supreme Court in *Pranay Sethi's* case (supra), appellants are also entitled for addition of 30% towards future prospects as well as compensation under other conventional heads i.e. loss of estate, loss of consortium and funeral Expenses.

(31) Keeping in view the facts and circumstances, discussed hereinabove, the following amount of compensation would be the "just compensation" on account of death of Ramesh Kumar for which appellants are entitled:-

Sr. No.	Heads	Calculation
(i)	Monthly income of the deceased	Rs. 7061
(ii)	Annual Income of the deceased	Rs.7061 x 12 = Rs.84,732
(iii)	1/4 th of (ii) deducted for personal expenses	Rs.84,732 - Rs.21,183 = Rs.63,549
(iv)	30% addition for future prospects	Rs.63,549 + Rs.19,064 = Rs.82,613
(v)	Net annual income of the deceased	Rs.82,613
(vi)	Multiplier	13
(vii)	Total Loss of dependency	Rs.82,613 x 13 = Rs.10,73,969
(viii)	Actual medical expenses	Rs.18,400
(ix)	For loss of estate	Rs.15,000
(x)	For loss of consortium	Rs.40,000
(xi)	For Funeral Expenses	Rs.15,000
	Total Compensation	Rs.11,62,369

(32) In view of the above, the present appeal is allowed and the impugned award dated 24.07.2009, passed by learned Tribunal, is modified and amount of compensation is enhanced from Rs.37,400/- to Rs.11,62,369/-.

(33) Needless to say that amount of compensation, already paid to the appellants, shall be adjusted and the remaining balance amount shall be paid in the same proportion, as awarded by learned Tribunal, within a period of six weeks from the date of receipt of certified copy of this order.

Shubreet Kaur