



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No.1958 of 2006 (O&M)
RESERVED ON : 3rd DECEMBER, 2024
DATE OF DECISION : 10th JANUARY, 2025

Piare Lal & others

.... Appellants

Versus

Satpal and others

.... Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

* * * *

Present : Mr. Maneet Kaushik, Advocate for
Mr. Ashit Malik, Advocate for the appellants.

Mr. Mayank Gupta, Advocate and
Mr. Vinod Gupta, Advocate for respondent No.3.

* * * *

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal has been preferred by the claimants/appellants against the award dated 05.12.2005 passed by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988, whereby, the claim petition of the claimants was dismissed.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 13.05.2002 at about 8.00 p.m. Mohan Lal (since deceased) along with Smt. Shakuntla Devi was going on a scooter bearing registration No.PB-02R-4223 from Kala Amb to Naraingarh. When they reached near Aamwala Pir Kala Amb road, one truck bearing No.HR-37-7751 came from Naraingarh side and caused the accident with their scooter. As a result, Mohan Lal received multiple



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simple and grievous injuries besides head injury and died on the spot. Smt. Shakuntla Devi, who was pillion rider on the same scooter also received multiple injuries and under semi-conscious condition wrongly disclosed her name as Kamlesh and name of the deceased as Ram Kumar to the police. However, later on when, she regained consciousness, she made a statement on 16.05.2002 that her name is Shakuntla Devi and that of deceased is Mohan Lal. The accident was caused due to rash and negligent driving of driver of the truck No. HR-37-7751. Respondents No.2 and 3 are owner and insurer of the offending vehicle, respectively. It has been averred that the deceased was 34 years of age and he was working as mason-cum-labour contractor and was earning ₹40,000/- per annum. It has been averred that the deceased could not marry due to medical reasons. The deceased had adopted Gulzar Singh claimant No.2, who happened to be son of elder brother of the deceased. It is also submitted that earlier the claimant No.1 had filed a claim petition in the MACT, Ambala City, but due to several errors in the said petition and the fact that the claimant No.2-Gulzar Singh was minor, the said petition was withdrawn.

3. Upon notice of the claim petition, respondents No.1 and 2 did not appear despite service and they were proceeded against *ex parte* vide order dated 29.07.2004.

4. Respondent No.3 has contested the claim petition and has submitted that the claim petition is not maintainable because earlier claim petition filed at Amabla was withdrawn without permission of the court.



5. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the accident was caused due to involvement of truck registration No.HR 37-7751 being driven by Satpal respondent No.1 causing death of Mohan Lal as alleged?
OPP
2. Whether the petitioners are entitled to receive any compensation amount on account of death of deceased Mohan Lal in the accident. If so, how much and from who? OPP
3. Whether the insured has violated any terms and conditions of the insurance policy, as alleged. If so to what effect ?
OPR3
4. Relief.

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

7. The learned counsel for the claimants-appellants contends that the claim petition was solely dismissed on the ground that previous claim petition Exhibit P-4, filed before the MACT, Ambala, was withdrawn without liberty to file fresh petition on the same cause of action. Therefore, he prayed that the present appeal be allowed.

8. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the claim petition has rightly been dismissed.



9. I have heard learned counsel for the parties and perused the whole record of this case.

10. The relevant portion of the award is reproduced as under:

“10. It is worth-noting that Smt. Sardari Devi mother and Gulzar Singh, adopted son of deceased Mohan Lal filed this claim petition before Motor Accident Claims Tribunal, Karnal on 17-3-2003. Unfortunately Smt. Sardari Davi died on 26-3-2003 itself and therefore, her legal heirs were impleaded. The affidavit of Piare Lal brother of the deceased shows that the deceased was 34 years old and was working as labour contractor and was earning Rs. 40,000/- per annum. He also alleged that the deceased incapable of producing a child, therefore, he did not marry and he adopted his son Gulzar Singh in Baisakhi 2000 in accordance with Hindu rites and ceremonies. The petitioners also produced one school certificate mark C allegedly issued by Head Master, Geeta High School, Gheer in accordance with which Gulzar Singh son of Mohan Lal was a student of 5th standard in that school.

11. The most material question that arises for determination is whether the petitioners are entitled to any compensation or not. After scanning the evidence on record I am of the opinion that the claim petition of petitioner No.1 Smt.Sardari Devi is not maintainable and petitioner No.2 is not proved to be the adopted son of Mohan Lal, therefore, both of them are not entitled to any compensation at all.

12. It is noteworthy that earlier Smt. Sardari Devi filed a claim petition for compensation on account of death of Mohan Lal in the same very vehicular accident before Motor Accident Claims Tribunal, Ambala City. The copy of the order dated 29-3-2003 Ex. P4 shows that claim petition was dismissed as withdrawn in the court of Shri Sanjeev Kumar, Motor Accident



Claims Tribunal, Ambala City without permission of the court to file a fresh claim petition on the same cause of action.

13. *The learned counsel for the petitioners has urged that in fact Smt. Sardari Devi had filed an application for withdrawal of the claim petition with permission to file a fresh petition but the Tribunal at Ambala City simply dismissed the claim petition as withdrawn. The learned counsel for the petitioner has cited Kantibhal D. Patel Vs. Ahmedabad Municipal Corporation 1998(3) Civil Court Cases (Gujrat) 97, L. Shivakumaraswamy Vs. H. Lingappa & others 1982 Civil Court Cases Karnataka 583 and Hans Raj Akrot Vs. The State of H.P. through Collector 1989 Civil Court Cases H.P. 45 and has vehemently argued that it was not open to the court to grant withdrawal of the petition and refuse permission to file fresh petition. He has contended that the court could either reject the entire prayer or allow the entire prayer. The learned counsel for the petitioners has also cited Mrs. Vijay Chopra etc. Vs. Udham Singh etc. 1989-2 PLR Punjab & Haryana 36 and has argued that strict rules of the Code of Civil Procedure do not apply to proceedings before Tribunal, therefore, even if the present claim petition was filed without the permission to file a fresh claim petition on the same cause of action nevertheless the same is maintainable.*

14. *I have given my thoughtful consideration to the above arguments of the learned counsel for the petitioners. Order 23 Rule 1 of the Code of Civil Procedure reads as under:*

WITHDRAWAL OF SUIT OR ABANDONMENT OF A PART OF CLAIM (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in



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rules 1 to 14 of Order XXXII. extend, neither the suit nor any part of the claim shall be abandoned without the leave of the court.

(2) *An application for leave under the proviso to sub-rule (1) shall be accompanied by affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of a pleader to the effect that the abandonment proposed is in his opinion, for the benefit of the minor or such other person.*

(3) *Where the Court is satisfied,:-*

(a) *that a suit must fail by reason of some formal defect, or*

(b) *that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit or part of a claim.*

It may on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of the claim.

(4) *Where the plaintiff:-*

(a) *abandons any suit or part of claim under sub-rule (1), or*

(b) *withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),*

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter of such part of the claim.

A perusal of the Haryana, Motor Vehicle Rules 1993 shows that as per Rule 220 provisions of Order 23 Rules 1 to 3, of the



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Code of Civil Procedure are applicable to the proceedings before the Claims Tribunal. There is no dispute with the proposition of law laid down in Mrs. Vijay Chopra etc.. Vs. Udham Singh etc. (supra) that strict rules of the Code of Civil Procedure do not apply to the proceedings before the Claims Tribunal. However, in the instant case it is specifically mentioned in the Haryana Motor Vehicle Rules, 1993 that the provisions of Order 23 Rules 1 to 3 are applicable to the proceedings before the Claims Tribunal. So it was incumbent upon Smt. Sardari Devi claimant No.1 to seek withdrawal of the earlier claim petition with liberty to file a fresh claim petition from the Claims Tribunal, Ambala. It is true that as per law laid down in the rulings cited by the learned counsel for the petitioners the court can either reject the entire prayer or allow the entire prayer and it is not open to the court to grant withdrawal of suit and refuse permission to file fresh suit. However in the instant case there is absolutely no material on the file which could warrant that the petitioner No.1 Smt. Sardari Devi made & prayer seeking withdrawal of her earlier claim petition with liberty to file a fresh claim petition on the same cause of action. The claimants have mentioned in their claim petition that there were several errors in the claim petition filed before Motor Accident Claims Tribunal, Ambala City and claimant No.2 was minor and claimant No.1 was not keeping good health, therefore, they were not in a position to conduct that petition at Ambala. The claimants have nowhere alleged in the present claim petition that they had in fact moved an application seeking withdrawal of the claim petition with liberty to institute a fresh claim petition at Karnal. Further, even copy of order Ex.P4 shows that the learned, counsel for the claimants made a simple statement that he did not want to proceed with the petition and the same be dismissed as withdrawn. Accordingly the claim petition filed by Smt. Sardari



Devi was dismissed as withdrawn by Motor Accident Claims Tribunal, Ambala City. Once the claim petition of Smt. Sardari Devi petitioner No.1 was dismissed as withdrawn, her similar claim petition against the same very respondents was not at all maintainable. She was precluded from instituting any fresh claim petition in respect of same subject matter. Otherwise also Smt.Sardari Devi being mother of the deceased had a right to claim compensation on account of death of Mohan Lal and since she died within six days of filing of the claim petition, therefore, her legal heirs are not entitled to any compensation.

15. *So far as the right of claimant No.2 Gulzar Singh to claim compensation being adopted son of Mohan Lal deceased is concerned, it is pertinent to note that no documentary evidence has been produced to this effect that Gulzar Singh was adopted by Mohan Lal deceased in Baisakhi 2000. The petitioners did not examine any other witness except Piare Lal (PW1) the real father of Gulzar Singh. PW1 Piara Lal deposed in his cross-examination that an entry regarding adoption was made in their family Bahi as well as school record. He also deposed that his mother was having a separate ration card from him which included names of Mohan Lal and Gulzar Singh. He stated that he could not produce the said ration card as it was lost. Even if the said ration card was lost the petitioners could produce record from Food & Supplies department to prove that Gulzar Singh was residing with Mohan Lal as his adopted son. Further-more the alleged family Bahi in which entry regarding adoption of Gulzar Singh by Mohan Lal was made was also not produced. So, the omission on the part of the petitioners to produce the record relating to ration card and family Bahi raises an adverse inference against them. No doubt the petitioners produced one certificate mark C allegedly issued by the Head Master, Geeta High School, Gheer, in accordance with which Gulzar Singh*



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s/o Mohan Lal was studying in 5th standard in that school but that certificate was not duly proved by summoning the record of the school. The application form of admission of Gulzar Singh was not produced to show that Mohan Lal had got Gulzar Singh, admitted in the school as his adopted son. Since the certificate mark C was not duly proved therefore, no reliance can be placed on it. Burden was upon the petitioners to prove by cogent, concrete and definite evidence that Gulzar Singh was adopted by Mohan Lal deceased. However, the self serving statement of PW1 Piare Lal itself is not sufficient to prove the adoption of his son Gulzar Singh by Mohan Lal deceased. In other words there is no positive evidence to prove that Gulzar Singh claimant No.2 being adopted son of Mohan Lal is entitled to any compensation on account of his death in the above vehicular accident. This issue is decided against the petitioners.”

11. A perusal of the impugned award reveals that the learned Tribunal (MACT Karnal) dismissed the claim petition solely on the ground that the claimant had previously filed a claim petition before the MACT, Ambala, which was withdrawn without obtaining explicit liberty to file a fresh claim petition. This conclusion rests on the order dated 29.03.2003 (Exhibit P-4), passed by the MACT, Ambala, which reads as follows:

“File taken up today on the application moved on behalf of the claimant. The learned counsel for the claimant has made a statement that he does not want to proceed with the petition and the same be dismissed as withdrawn. Accordingly, the claim petition is dismissed as withdrawn. The learned counsel for the respondents be informed. File be consigned after compliance.”



12. However, upon a closer examination of the records, it becomes evident that the claimant had specifically moved an application before the MACT, Ambala, seeking withdrawal of the claim petition due to substantial drafting errors. In the application, the claimant explicitly stated that these errors could severely prejudice her interests. She also sought permission to withdraw the petition with liberty to file afresh, citing her inability to travel to Ambala and effectively contest the case due to her advanced age and health condition.

13. It is evident that the MACT, Ambala, failed to exercise judicial discretion in considering the claimant's application and erroneously dismissed the claim petition as withdrawn without addressing the request for liberty to file a fresh petition.

14. In the present proceedings, the MACT, Karnal, recorded a categorical finding that the death of the deceased was caused by the use of the offending vehicle (HR-37-7751), driven by Satpal Singh.

15. The MACT, Karnal, further exacerbated the issue by dismissing the fresh claim petition filed by the claimant on the procedural ground that the earlier petition had been withdrawn without permission to file afresh.

16. Such an approach by the MACT, Karnal, reflects a hyper-technical interpretation of procedural rules, which undermines the remedial purpose of the Motor Vehicles Act, 1988. The Act is a beneficial legislation designed to ensure that victims of motor vehicle accidents and their dependents receive just compensation promptly. Adopting a rigid procedural stance defeats the very objective of the Act.



17. The Hon'ble Supreme Court, in a consistent line of judgments, has clarified that strict adherence to the procedural provisions of the Code of Civil Procedure is not mandatory in proceedings before Motor Accident Claims Tribunals.

18. This Court in *FAO No.195 of 2006*, titled as "*Mamta and others Vs. Happy and others*", has held that Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The relevant extract of the same is reproduced as under:-

1. *The learned Tribunals upon receiving the application under Sections 140, 163-A of the Motor Vehicles Act, 1988 (pre-amendment i.e. 2019 amendment w.e.f. 01.04.2022), Sections 164 and 166 (post- amendment i.e. 2019 amendment w.e.f. 01.04.2022), shall thoroughly appreciate the evidence and exercise their judicial discretion;*
2. *The learned Tribunals after applying their judicial mind to the evidence led as well as all relevant facts and circumstances of the case and the extent of loss to be compensated, shall, before announcing the award, shall apprise the claimants of their right to seek compensation, under the best available remedy to them, under the Motor Vehicles Act, 1988;*
3. *Even if the claim petition is filed under Sections 140, 163-A of the Motor Vehicles Act, 1988 (pre-amendment i.e. 2019 amendment w.e.f. 01.04.2022) or Sections 164, learned Tribunal shall after appreciation of the evidence and before passing the award, if it finds that respondents negligence is established should advice the claimant, in the interest of justice, to opt for Section 166 of the Motor Vehicles Act, 1988. The learned Tribunals shall then grant compensation under Section 166 of the Motor Vehicles Act, 1988 (post-amendment i.e.*



2019 amendment w.e.f. 01.04.2022), keeping in view the law settled by the Hon'ble Apex Court in the case of Sarla Verma (Supra), Pranay Sethi (Supra) and Magma Insurance Company Ltd. (Supra);

4. *It is further clarified that with the 2019 amendment (w.e.f.01.04.2022) Section 164 is introduced where the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and half lakh rupees in case of grievous hurt to the legal heirs of the victim, as the case may be, and the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person. Therefore, the claim petition originally filed under Section 164 of the Motor Vehicles Act, 1988 (post-amendment i.e. 2019 amendment w.e.f. 01.04.2022), can also be converted to Section 166 of the Motor Vehicles Act, 1988, with due diligence, after considering the case's facts, circumstances and evidence led by both the parties.*
5. *The Judge should not go into the technicalities of the provisions, specially in motor vehicle cases, under which the application or petition is moved but should apply his judicial mind, since these are only the irregularities and not illegalities which cannot be cured. The Hon'ble Supreme Court in the above mentioned judgments have analysed that the Court should make every effort to fill the loss of the victims/legal-representatives/claimants/relationship. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot*



be compensated. Still the Court should make every effort by exercising its discretion empathetically.

6. *Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.*

19. In sequel of the above, the hyper-technical approach adopted by the MACT, Karnal, is contrary to the settled principles of law and the beneficial nature of the Motor Vehicles Act. Consequently, the award of the MACT, Karnal, deserves to be set aside, and the claimants are held entitled to the compensation.

20. Since Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be granted as per the substituted statutory provision i.e. Section 164 of the Act, therefore, the appellants herein are entitled to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in case of death in the amount of Rs.5 lakh and in case grievous hurt of Rs.2.5 lakh.

21. Further, this Court in **FAO No.4301 of 2006**, titled as “**Akaljit Kaur and Others Vs. Parveen Kumar and Others**” held as under:-

“11. Hon’ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]** held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under



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Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

12. *This Court in **FAO-195-2006** titled as **Mamta and Others Vs. Happy and Others**, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary.”*

22. In view of the above, the claimants/appellants are held entitled to compensation to the tune of Rs.5 lakh.

23. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the



appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

24. The respondent No.3-Insurance Company is directed to deposit the enhanced amount of compensation along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is further directed to disburse the amount of compensation along with interest in equal shares. The claimants/appellants are directed to furnish their bank accounts details to the Tribunal.

25. The respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Vinod Gupta, Advocate within a period of twenty days from the date of receipt of the copy of this judgment.

26. Disposed of accordingly.

27. Pending application(s), if any, also stand disposed of.

10th, JANUARY, 2025
'raj'

(SUDEEPTI SHARMA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>