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KUSUM LATA & ORS.

v.

SATBIR & ORS.

(Civil Appeal No. 2269 of 2011)

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MARCH 02, 2011

[G.S. SINGHVI AND ASOK KUMAR GANGULY, JJ.]

MOTOR VEHICLES ACT, 1988:

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s.166 – Fatal motor accident – Claim petition – Appreciation of evidence – Claim disallowed by Tribunal as also by High Court on the ground that in the FIR the number of offending vehicle and the name of the driver were not mentioned – HELD: In motor accident claims, claimants are not required to prove the case like in a criminal trial – Courts must keep this distinction in mind – In the instant case, the incident was witnessed by the brother of the deceased and a co-villager – The brother of victim rushed him to hospital while the co-villager chased the offending vehicle and caught the driver – He gave the name of the driver and number of the vehicle to police the following day – There is no reason why Tribunal and High court would ignore such an evidence – Further, even though the age of the victim was determined to be 29 years, the Tribunal erred in applying multiplier of 16 instead of 17 – Accordingly, compensation amount would come to Rs.3,93,428/- apart from funeral expenses and loss of consortium – However, exercising power under Article 142 of the Constitution and considering the number of claimants which include a widow, two minor daughters and one minor son, and the deceased being the sole bread earner, an amount of Rs. 6 lakh including funeral expenses and loss of consortium, is allowed with 7% interest from date of application till payment – Constitution of India, 1950 – Articles 136 and 142 –Evidence.

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by a tempo. His brother rushed him to hospital where he
succumbed to his injuries. The claim petition of the
dependants filed u/s 166 of the Motor Vehicles Act, 1980
was disallowed by the Motor Accident Claims Tribunal as
also by the High Court mainly for the reason that the
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number of the offending vehicle and the name of its driver
were not mentioned in the FIR.

Allowing the appeal filed by the dependants of the
deceased, the Court

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HELD: 1.1 It is well known that in a case relating to
motor accident claims, the claimants are not required to
prove the case as it is required to be done in a criminal
trial. Courts must keep this distinction in mind. [para 9]
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[487-A-B]

1.2 In the instant case, evidence has come on record
from the deposition of one 'DK' who clearly proved the
number of the vehicle. His statement is that he was going
along with one 'AK' on a scooter to know the condition
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of one of their relative in the Hospital. As they reached
near the place of incident, a tempo bearing No. HR-34-
8010 of white colour being driven in a rash and negligent
manner came from behind and overtook their scooter.
The witness saw that the tempo hit the victim, as a result
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of which he fell down but the tempo did not stop; they
followed the same and caught the driver. On their asking,
the driver disclosed his name. Thereafter, they went to
the Hospital and on the following day when they were
returning, they found police and other persons were
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present at the spot. The witness told the name of the
driver and gave the number of the tempo to the police.
This witness claims to have seen the incident with his
own eyes. When he was cross-examined, he stated that
the deceased was not related to him nor was he his
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neighbour. He was his co-villager. He also told that he

A knows the driver of the vehicle bearing No. HR-34-8010. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of the witness. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of the witness. The so-called reason that as his name was not mentioned in the FIR, so it was not possible for him to see the incident, is not a proper assessment of the fact-situation in this case. [Para 7 and 9] [485-F-H; 486-A-D; 486-G-H; 427-A-B]

C *Bimla Devi and others v. Himachal Road Transport Corporation and others*. 2009 (6) SCR 362 = (2009) 13 SCC 530 - relied on.

1.3 When a person sees that his brother, being D knocked down by a speeding vehicle is suffering in pain and is in need of immediate medical attention, that person is obviously under a traumatic condition. His first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of E the presence of any person in the vicinity especially when the witness did not stop at the spot after the accident and gave a chase to the offending vehicle. Under such mental strain if the brother of the victim forgot to take down the number of the offending vehicle it was also not unnatural. F [para 8] [486-E-G]

2.1 In respect of the finding reached by the Tribunal on the assessment of compensation, this Court finds that the Tribunal has used the multiplier of 16, even though the age of the deceased has been determined to be 29. G The Tribunal erred by applying the multiplier of 16. However, considering the age of the victim, the multiplier of 17 should be applied. It is not in dispute that in the instant case, the claim for compensation has been filed u/s 166 of the Motor Vehicles Act. If the multiplier of 17 is H applied then the amount comes to Rs.3,93,428.45 apart

from the amount of funeral expenses and the amount granted for loss of consortium. Taking all these together, the amount comes to a little more than four lacs of rupees. [para 11] [487-E-H]

Sarla Verma (Smt) and others v. Delhi Transport Corporation and another 2009 (5) SCR 1098 = (2009) 6 SCC 121 - relied on.

2.2 The Court, however, in exercise of its power under Article 142 of the Constitution of India and considering the fact that the victim was the sole wage earner in the family and he left behind three minor children and a widow, is of the opinion that for doing complete justice in the case and by taking a broad and comprehensive view of the matter, an amount of Rs.6 lacs including the amounts of consortium and funeral expenses would meet the ends of justice. The Court, therefore, grants a compensation of Rs.6 lacs along with interest @ 7% from the date of presentation of the claim petition till the date of actual payment. [para 12] [488-A-C]

2.3 In respect of the dispute about licence, the Tribunal has rightly held that the insurance company has to pay and then may recover it from the owner of the vehicle. The insurance company is to pay the aforesaid amount in the form of a bank draft in the name of appellant no.1 with interest and deposit the same in the Tribunal. This direction should be strictly complied with by the Insurance Company. The judgments of the Tribunal and the High Court are set aside. [para 13-14] [488-D-E]

National Insurance Company Limited v. Swaran Singh and others 2004 (1) SCR 180= (2004) 3 SCC 297 - relied on.

Case Law Reference:

2009 (5) SCR 1098 relied on para 10

A 2009 (6) SCR 362 relied on para 11

2004 (1) SCR 180 relied on para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2269 of 2011.

B From the Judgment & Order dated 21.05.2010 of the High Court of Punjab and Haryana at Chandigarh in F.A.O. No. 4047 of 2006.

Vikas K. Sangwan for the Appellants.

C Sunil Mund, M.K. Dua for the Respondents.

The Judgment of the Court was delivered by

GANGULY, J. 1. Leave granted.

D 2. Heard learned counsel for the claimant, learned counsel for the insurance company and also the learned counsel for respondent nos.1 and 2, the driver and the owner of the offending vehicle.

E 3. In this case the claim for compensation filed by the appellants was concurrently denied both by the Motor Accident Claims Tribunal (for short, 'the Tribunal') as also by the High Court.

F 4. The material facts of the case are that on 12th January, 2005 while Surender Kumar, the victim, was going on foot, he was hit by a vehicle from behind as the vehicle was driven rashly and negligently and was also in a high speed. The victim sustained several injuries and was rushed to the hospital and was declared dead. After the said incident the appellants, G namely, Kusum Lata, wife of the victim and three of his children, two are minor daughters and one is a minor son, filed a claim petition.

H 5. When the matter came up before the Tribunal, the Tribunal in its award dated 14.6.2006 framed three issues for

adjudication. Of those three issues, since the Tribunal came to a finding against the appellants on the first issue, the other findings of the Tribunal in the second and third issue were, according to Tribunal, of no avail to the appellants. On the first issue the Tribunal came to a finding that the involvement of the offending vehicle being tempo No.HR-34-8010 has not been proved and since on this issue the Tribunal's finding went against the appellants, no compensation was awarded. On an appeal filed against the said award, the High Court by the impugned judgment dated 21.5.2010 also affirmed the finding of the Tribunal.

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6. The main reason why both the Tribunal and the High Court reached their respective findings that vehicle No.HR-34-8010 was not involved in the accident are primarily because of the fact that in the FIR which was lodged by one Ashok Kumar, brother of the victim, neither the number of the vehicle nor the name of the driver was mentioned.

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7. Admittedly, the facts were that the brother of the deceased, Ashok Kumar while walking on the road heard some noise and then saw that a white colour tempo had hit his brother and sped away. Immediately, he found that his brother, being seriously injured, was in an urgent need of medical aid and he took him to the hospital. Under such circumstances it may be natural for him not to note the number of the offending vehicle. That may be perfectly consistent with normal human conduct. Therefore, that by itself cannot justify the findings reached by the Tribunal and which have been affirmed by the High Court. In the present case, evidence has come on record from the deposition of one Dheeraj Kumar, who clearly proved the number of the vehicle. The evidence of Dheeraj Kumar is that he was going along with one Ashok Kumar on a scooter to know the condition of one of their relative in Mahendergarh Hospital. As they reached at turning at Mahendergarh road a tempo bearing No. HR-34-8010 of white colour being driven in a rash and negligent manner came from behind and overtook their scooter. Dheeraj Kumar was not driving the scooter.

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- A Dheeraj Kumar saw that the tempo hit Surender, the victim, as a result of which he fell down but the tempo did not stop after the accident. However, the evidence of Dheeraj Kumar is that they followed the same and caught the driver. On their asking, the driver disclosed his name as Satbir son of Shri Ram Avtar.
- B Thereafter, they went to Mahendergarh Hospital and on the next day when they were returning, they found police and other persons were present at the spot. Dheeraj Kumar told the name of the driver and gave the number of the tempo to the police. Dheeraj Kumar claims to have seen the incident with his own eyes.
- C When Dheeraj Kumar was cross-examined, he stated that the deceased Surender is not related to him nor was he his neighbour. He was his co-villager. Dheeraj Kumar also told that he knows the driver of the vehicle bearing No. HR-34-8010. He denied all suggestions that he was giving his evidence to help the victim. Both the Tribunal and the High Court have refused to accept the presence of Dheeraj Kumar as his name was not disclosed in the FIR by the brother of the victim.
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8. This Court is unable to appreciate the aforesaid approach of the Tribunal and the High Court. This Court is of the opinion that when a person is seeing that his brother, being knocked down by a speeding vehicle, was suffering in pain and was in need of immediate medical attention, that person is obviously under a traumatic condition. His first attempt will be to take his brother to a hospital or to a doctor. It is but natural for such a person not to be conscious of the presence of any person in the vicinity especially when Dheeraj did not stop at the spot after the accident and gave a chase to the offending vehicle. Under such mental strain if the brother of the victim forgot to take down the number of the offending vehicle it was also not unnatural.
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9. There is no reason why the Tribunal and the High Court would ignore the otherwise reliable evidence of Dheeraj Kumar. In fact, no cogent reason has been assigned either by the Tribunal or by the High Court for discarding the evidence of Dheeraj Kumar. The so-called reason that as the name of
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Dheeraj Kumar was not mentioned in the FIR, so it was not possible for Dheeraj Kumar to see the incident, is not a proper assessment of the fact-situation in this case. It is well known that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The Court must keep this distinction in mind.

10. Reference in this connection may be made to the decision of this Court in *Bimla Devi and others v. Himachal Road Transport Corporation and others* [(2009) 13 SCC 530], in which the relevant observation on this point has been made and which is very pertinent and is quoted below:-

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

11. In respect of the finding reached by the Tribunal on the assessment of compensation, this Court finds that the Tribunal has used the multiplier of 16, even though the age of the deceased has been determined to be 29. We find that the Tribunal erred by applying the multiplier of 16. However, considering the age of the victim, the multiplier of 17 should be applied in view of the decision of this Court in *Sarla Verma (Smt) and others v. Delhi Transport Corporation and another* reported in (2009) 6 SCC 121, and the chart at page 139. It is not in dispute that in the instant case the claim for compensation has been filed under Section 166 of the Motor Vehicles Act. This Court finds that if the multiplier of 17 is applied then the amount comes to Rs.3,93,428.45 apart from the amount of funeral expenses and the amount granted for loss of consortium. Taking all these together the amount comes to a little more than four lacs of rupees.

A 12. The Court, however, in exercise of its power under
 Article 142 and considering the number of claimants, of which
 three are minor children, is of the opinion that for doing complete
 justice in the case and by taking a broad and comprehensive
 view of the matter, an amount of Rs.6 lacs including the
 B amounts of consortium and funeral expenses would meet the
 ends of justice. The Court, therefore, grants a compensation
 of Rs.6 lacs considering the fact that the victim was the sole
 wage earner in the family and he left behind three minor children
 and a widow. The said amount is to be paid along with interest
 C @ 7% from the date of presentation of the claim petition till the
 date of actual payment.

D 13. In respect of the dispute about licence, the Tribunal has
 held and, in our view rightly, that the insurance company has to
 pay and then may recover it from the owner of the vehicle. This
 Court is affirming that direction in view of the principles laid down
 by a three-Judge Bench of this Court in the case of *National*
Insurance Company Limited v. Swaran Singh and others
 reported in (2004) 3 SCC 297.

E 14. The appeal is, therefore, allowed. The judgments of the
 Tribunal and the High Court are set aside. The insurance
 company is to pay the aforesaid amount in the form of a bank
 draft in the name of appellant no.1 with interest as aforesaid
 within a period of six weeks from date and deposit the same
 in the Tribunal. This direction should be strictly complied with
 F by the Insurance Company.

G 15. This Court directs the Tribunal to take steps for opening
 a bank account in the name of the appellant no.1 in a
 Nationalised Bank and deposit the demand draft in that
 account. If, however, there is any bank account in the name of
 the appellant no.1, the demand draft is to be deposited in that
 bank account.

16. No costs.

H R.P.

Appeal allowed.