

(2012) 07 P&H CK 0278

High Court Of Punjab And Haryana At Chandigarh**Case No:** FAO No. 3999 of 2012

Nachattar Singh and Another

APPELLANT

Vs

Veena Devi and Others

RESPONDENT

Date of Decision: July 16, 2012**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 163A, 173
- Penal Code, 1860 (IPC) - Section 279, 304A, 427

Hon'ble Judges: Jaswant Singh, J**Bench:** Single Bench**Advocate:** Anjali Khosla, for the Appellant;**Final Decision:** Dismissed

Judgement

Jaswant Singh, J.

The instant appeal u/s 173 of the Motor Vehicles Act (for short the Act) 1988 has been filed by the driver and owner of truck No. HR 58-0379 (hereinafter referred to as the offending vehicle) challenging the award dated 16.4.2012 passed by the learned Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as the Tribunal) whereby the claim petition u/s 163-A of the Act filed by the widow, minor son and mother of deceased Darshan Singh was partly accepted by the Tribunal and a sum of Rs. 3,99,600/- alongwith interest @ 7.5% p.a., from the date of filing the petition till realisation was awarded as compensation for the death of Darshan Singh in a motor vehicular accident involving the offending vehicle driven and owned by appellants 1 and 2 respectively. Briefly noticed the facts giving rise to the claim petition are that claimants/respondents filed a claim petition u/s 163-A of the Act alleging that on 28.12.2009 at about 8 pm deceased Darshan Singh had gone to his in laws house at Dabwali on his cycle and when he did not return upto 11 pm, a search was carried out and said Darshan Singh was found dead in a motor vehicular accident caused by the offending vehicle in the area of Dabwali near T Point Jogewala, Tehsil Dabwali. The dead body was identified by Jagsir Singh @ Jagga

brother of the deceased and postmortem was carried out. Regarding the incident FIR No. 229 dated 29.12.2009 under Sections 279/427/304-A IPC was got lodged by said Jagsir Singh @ Jagga against appellant No. 1 in PS City Dabwali. It was further alleged that deceased Darshan Singh was aged 42 years and was a taxi driver by profession. The claimants filed claim petition seeking compensation to the tune of Rs. 7 lac.

2. Appellants filed joint written statement denying the averments made in the claim petition and stated that the appellant No. 1 had not caused any accident and that he and offending vehicle had been falsely implicated in a criminal case.

3. On the pleadings of the parties issues were framed. Both sides led evidence. The learned Tribunal after hearing both sides and perusing the material available on record, partly accepted the claim petition as noticed above. Hence the present appeal.

4. Heard learned counsel for the appellants.

5. Learned counsel for the appellants has argued that the respondents/claimants have not led any evidence to show that the driver/ offending vehicle itself was involved in the incident, as there is no eye witness of the accident. The evidence of Jagsir Singh PW2, who lodged the FIR is only a hearsay witness who has not witnessed the accident. The other argument raised by the counsel for the appellants is that while determining the compensation the learned Tribunal has wrongly assessed the monthly income of the deceased at Rs. 3200/- on the oral evidence of PW1 Veena Devi i.e. the widow of the deceased and that there is no other independent evidence available on record to support the fact that deceased was earning Rs. 3200/- per month.

6. After hearing the learned counsel for the appellants at length, I find the arguments wholly devoid of any merit and liable to be rejected.

7. From the record it is evident that the accident had taken place at about 8 pm on 28.12.2009 in the area of Dabwali near T Point Jogewala, Tehsil Dabwali meaning thereby that the accident had taken place at an inhabited place and an FIR bearing No. 229 dated 29.12.2009 i.e. on the very next day implicating the offending vehicle was lodged by Jagsir Singh against the driver in PS City Dabwali. Admittedly, Nachhatar Singh driver of the truck is facing criminal trial for commission of the offence punishable under Sections 279/427/304A IPC. In a case involving similar facts and issues, a learned single Judge of this Court in case reported as [Lakhu Singh and Another Vs. Uday Singh and Others](#), in para 3 of the judgement has held that statement of the witness coupled with the fact of registration of FIR and trial of the accused driver is sufficient to arrive at a conclusion that the accident had taken place in the manner as asserted. Thus the argument that the driver/offending vehicle itself was not involved in the accident in the present case is rejected.

8. As regards the income of the deceased Darshan Singh as Rs. 3200/- per month, it is apparent that any able bodied person, even on daily wages would earn more than Rs. 3200/- per month and as such income assessed by the learned Tribunal cannot be termed to be arbitrary.

9. No other point was raised. In view of the above, finding no merit in the present appeal the same is hereby dismissed.