HIGH COURT OF JAMMU AND KASHMIR & LADAKH
AT JAMMU

MA No. 292/2017
c/w
MA No. 291/2017

Reserved on: 17.10.2023
Pronounced on: 30.11.2023

MA No. 292/2017

New India Assurance Co. Ltd.
Th. its Deputy Manager
Sh. Sandeep Kumar Incharge, T.P. Legal
Claims-HUB, Gandhi Nagar, Jammu ...Appellant(s)

Through :- Mr. Rupinder Singh, Advocate
Ms. Damini Singh Chauhan, Adv.

v.

1. Bishan Dass S/o Dhanno Ram
2. Bimla Devi W/o Sh. Bishan Dass
Both residents of Upper Rajwalta Tehsil Billawar District Kathua.

3. Amarjeet Singh S/o Sh. Dewan Chand R/o Rajwalta Tehsil Billawar, A/p Sunjwan Khanpur Tehsil and Distrcit Kathua
(Driver and owner of the offending vehicle No. JK08C-1571) .....Respondent (s)

Through :- Mr. Jagpaal Singh, Adv.

MA No. 291/2017

New India Assurance Co. Ltd.
Th. its Divisional Manager
Sh. Sandeep Kumar Incharge, T.P. Legal
Claims-HUB, Aquaf Market, Gandhi Nagar, Jammu ...Appellant(s)

Through :- Mr. Rupinder Singh, Advocate
Ms. Damini Singh Chauhan, Adv.

v.

1. Balbir Singh S/o Joginder Singh R/o Upper Rajwalta Tehsil Billawar District Kathua.
2. Amarjeet Singh S/o Sh. Dewan Chand R/o Rajwalta Tehsil Billawar, A/p Sunjwan Khanpur Tehsil and Distrcit Kathua
(Driver and Owner of the offending vehicle No. JK08C-1571) .....Respondent (s)

Through :- Mr. Jagpaal Singh, Adv.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

1. Both the aforetitled appeals are being disposed of by virtue of this common judgment as they trace their genesis to the same motor vehicular accident stated to have occurred on 21.11.2012 in respect of which FIR 227 of 2012 came to be registered with Police Station, Rajbagh.

2. Before a closer look at the grounds urged in the memo of appeals, it shall be expedient to have an overview of the background facts, as they emerge from the claim petitions.

3. While deceased Veena Devi daughter of the claimants/respondents no. 1 and 2 [MA no. 292 of 2017] and claimant-Balbir Singh, [MA No. 291 of 2017] were standing on the road side on 21.11.2012, they were hit by a vehicle bearing Registration No. JK08C-1571, on its way from Village Malaman to Makwal, Tehsil Billawar due to rash and negligent driving of its driver, as a result whereof, Veena Devi died on the spot and Balbir Singh sustained grievous injuries. Separate claim petitions came to be preferred before the tribunal by legal representatives of the deceased and the injured. As per the claim petition filed by parents of the deceased (CP No. 29), deceased was 15 years of age and as per the claim petition filed by the injured (CP No. 30), he was 16 years of age and was a student of 8th standard at the time of accident. It was claimed by the injured that after the accident, he was evacuated to the District Hospital, from where he was referred to Government Medical College and Hospital (GMC&H) Jammu, where he remained under treatment for about 25/26 days and later he was admitted at

Pathankot Hospital and Trauma Centre on 09.01.2023 where he was operated upon and was discharged from the hospital on 15.01.2023.

4. The Respondent/driver-cum-owner of the offending vehicle though denied involvement of his vehicle in the accident, but admitted that vehicle in question, at the relevant time, was insured with the appellant-insurance company.

5. On the other hand, the appellant-insurance company though admitted that vehicle in question was insured with the company in the name of respondent/owner-cum-driver w.e.f. 26.07.2012 to 25.07.2013, but it was affront with the contention that driver of the offending vehicle was not holding a valid/effective driving licence. It is pertinent to mention that later amended objections came to be filed by the appellant-insurance Company, by virtue of which, claim petitions were primarily opposed on the ground that since victims i.e. deceased and injured, at the time of occurrence, were travelling as gratuitious passengers in the goods vehicle in question, therefore, company was not liable to indemnify the insured on account of violation of the terms and conditions of the insurance policy.

6. Following issues were drawn by the tribunal in CP No. 29 (MA No. 292/2017):

1. **Whether an accident occurred on 21.11.1011 at Malaman to Makwal road Tehsil Billawar, District Kathua by rash and negligent driving of offending vehicle bearing registration numberJK08C-1571 by its erring driver in which petitioner sustained grievous injuries and died thereafter? OPP**
2. **If issue No. 1 is proved in affirmative, whether petitioner is entitled to the compensation. If so, to what amount and from whom? OPP**
3. **Whether the vehicle was being driven by the driver without having valid/effective driving license at the time of accident? OPR-3**
4. **Relief O.P. Parties**

7. Similarly following issues were framed by the tribunal in CP No. 30 (MA No. 291/2017):

i. **Whether an accident occurred on 21.11.2011 at Malaman to Makwal road Tehsil Billawar, District Kathua by rash and negligent driving of offending vehicle bearing registration number JK08C-1571 by its**

erring driver in which petitioner sustained grievous injuries and died thereafter? OPP

ii. **If issue No. 1 is proved in affirmative, whether petitioner is entitled to the compensation. If so, to what amount and from whom? OPP**

iii. **Whether the vehicle was being driven by the driver without having valid/effective driving license at the time of accident? OPR-3**

iv. **Relief O.P. Parties**

8. The claimant, father of deceased Veena Devi besides himself appearing in the witness box examined PWs Balbir Singh and Kamal Singh to prove the factum of accident as also the quantum of compensation. The injured also appeared in the witness box to prove his claim. Insurance Company examined a solitary witness, namely, Vinay Kando to establish that vehicle in question was a goods vehicle and therefore, company was not liable to indemnify the insured. Learned Tribunal on appraisal of the evidence has awarded compensation to the tune of Rs.4,60,000/- with interest @ 7.5% per annum from the date of institution of claim petition to the claimants, parents of deceased Veena Devi and a total compensation of Rs.95,760/- with interest @ 7.5% per annum from the date of institution of claim petition has been awarded to the injured.

9. The appellant-insurance company has questioned the impugned award *inter alia* on the grounds that since driver of the offending vehicle at the time of accident was not holding a valid license and since victims at the time of accident were travelling as gratuitious passengers in the offending vehicle, therefore, it cannot be held liable to indemnify the insured due to violation of the terms and conditions of the insurance company. Appellant has also assailed the quantum of compensation awarded by the tribunal.

10. Having heard rival contentions of the parties and perused the record, I have given my anxious consideration to the facts and circumstances attending the present case as also the legal position governing the field.

11. Mr. Rupinder Singh learned counsel appearing for the appellant-insurance company has reiterated the grounds urged in the memo of appeal and

relied upon **Oriental Insurance Co. Ltd. v. Premlata Shukla and ors**. reported as **2007 (5) Supreme 370**, **United India Insurance Co. V. Amina Begum and ors.** reported as **2011 (4) JKJ 240 [HC], National Insurance Co. Ltd. v. Rattani and ors**. reported as **2009 ACJ 925** and a couple of judgments passed by this Court on 08.02.2023 in **United India Insurance Co. Ltd. v. Chander Mohan and ors**. [**Mac App No. 119/2019 decided on 08.02.2023**] and 10.03.2023 in **National Insurance Co. Ltd. v. Mursa Begum and ors.** [**MA No. 64/2007 along with connected MAs decided on 10.03.2023**].

12. *Ex adverso,* Mr. Jagpaal Singh learned counsel appearing for the respondents/claimants has also relied upon a host of citations, to be discussed in later part of this judgment, to highlight that an FIR or charge sheet, filed pursuant to the investigation of a criminal case, with respect to an accident, cannot be taken into consideration, as claim petitions entail separate enquiry into the factum of accident and if a claimant otherwise succeeds to establish the factum of accident, claim petition is liable to the considered on its own merits.

13. Reverting to the case, allegation of the claimants is that while deceased and injured were standing on the road side, they were hit by the offending vehicle, being driven by its driver in a rash and negligent manner. Respondent No. 1/claimant, who happens to be father of deceased Veena Devi testified before the Tribunal that while his daughter, injured Balbir Singh and few others were waiting for a Matador on the road side on 21.11.20212 at Malaman, Tehsil Billawar, his daughter and injured-Balbir Singh were hit by the offending vehicle at round 5:40 P.M, as a result whereof, his daughter died on the spot and Balbir Singh was shifted to the hospital. The accident took place due to the negligence of the respondent driver of the offending vehicle. Statement of the father of the deceased has been supported by PWs Balbir Singh and Kamal Singh on all material aspects that while deceased and injured were waiting on the road side,

they were hit by the offending vehicle being driven by its driver in a rash and negligent manner, as a result whereof, Veena Devi died on spot and Balbir Singh sustained grievous injuries and was shifted to the district hospital where from he was referred to GMC&H Jammu. Significantly, appellant-insurance company has produced only one witness namely Vinay Kando, who though testified that vehicle in question was not a passenger vehicle and was a goods vehicle, however, he obviously could not say anything about the manner in which accident took place. Therefore, on the basis of preponderance of evidence produced by the claimants, issue with respect to the factum of accident having taken place on 21.112011 at Malaman to Makwal road Tehsil Billawar, District Kathua by rash and negligent driving of the respondent driver in which deceased Veena Devi succumbed to the injuries on the spot and Balbir Singh sustained serious injuries, was decided in favour of the claimants and against the appellant-company.

14. The onus to prove that driver of the offending vehicle at the time of accident was not holding a valid and effective driving licence was on the appellant-insurance company. Significantly, the claimants placed on record a copy of the driving license, valid upto 31.03.2023, issued in favour of the respondent-driver of the offending vehicle. It was evident from the copy of the driving license produced by the claimants that driving license was valid at the time of accident. The sole witness produced by the appellant-insurance company, namely, Vinay Kando has also admitted that the vehicle in question was insured with the appellant-insurance company w.e.f. 27.07.2012 to 25.07.2013. However, the appellant-insurance company has failed to produce any evidence to prove that driver of the offending vehicle, at the relevant time, was not holding a valid and effective driving licence, despite claimants producing a copy of the driving licence of the driver of the vehicle in question, which was valid and effective at

the time of accident. Therefore, appellant-insurance company having failed to discharge its onus to prove that driving of the offending vehicle at the time of accident was not holding a valid and effective driving licence, issue No. 3 was decided against the appellant-insurance company.

15. Since claimants succeeded to prove the factum of accident having taken place due to rash and negligent driving of the driver of offending vehicle in question, and appellant- insurance company failed to discharge its onus to prove that driver of the offending vehicle was not holding a valid and effective driving license, therefore, learned Tribunal proceeded to assess the compensation.

16. According to the parents, deceased at the time of accident was 15 years of age and was a student of 9th standard. Since there was no material available on the file with respect to the age of mother of the deceased, therefore, learned Tribunal having regard to the age of the father of the deceased as 47 years applied multiplier of 13 in the age group of 45 to 50 years. Notional income of the deceased was taken as Rs.30,000/- per annum and applying multiplier of 13 and adding compensation under conventional heads towards love and affection and funeral expenses, a total compensation of Rs.4,60,000/- has been awarded to the claimant/parents of the deceased.

17. Injured-Balbir Singh failed to produce the disability certificate. He only placed on record original bills to the tune of Rs. 56,758/-. Therefore, learned Tribunal has awarded total compensation of Rs. 95,760/- including the aforesaid amount of bill, Rs. 5,000/- as transport expenses, Rs. 10,000/- as attendant expenses and Rs. 25,000/- under the head of pain and suffering.

18. Although appellant insurance company has assailed the impugned award on various grounds urged in the memo of appeal, however, Mr. Rupinder Singh learned counsel appearing for the appellant, during arguments, restricted his challenge to the impugned award on the predominant premise that since deceased

and injured at the time of accident, as per copy of the FIR annexed with the claim petition, were travelling as gratuitious passengers in the offending vehicle, therefore, appellant-company is exonerated from any liability to indemnify the insured on account of offending vehicle being driven in violation of the terms and conditions of the insurance policy. Learned counsel for the appellant has relied upon **Premlata Shukla** (supra) to contend that since claimants annexed a copy of FIR with the claim petitions to prove the factum of accident, according to which, there were passengers travelling in the offending vehicle at the time of accident, therefore, now claimants cannot be allowed to turn around to contend that they were standing on the road side and were hit by the offending vehicle.

19. It is by far a crystallized position of law that every case has its own facts and circumstances and ratio of a particular observation made in a judgment cannot be applied mechanically without adverting to the background facts, under which said observation came to be made by a Court. The following words of Lord Denning in the matter of applying precedents have become *locus classicus*:

> **"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of another. To decide, therefore, on which said of the line a case falls, the broad resemblance to another case is not at all decisive."**

Therefore, Courts cannot embark upon to place reliance on a particular observation made in a judgment without taking note of the factual background in which said observation has been made. These observations must be read and understood in the context in which they appear to have been made.

20. There is no dispute to the settled position of law, as held by the Apex Court in **Premlata Shukla** (supra) that once a part of a document is admitted in

evidence, the party **bringing the same on record and relying thereupon**, cannot turn around to contend that rest of the contents of the documents were not proved. However, **Premlata Shukla** and rest of the case law relied by learned counsel for the appellant-insurance company on the said principle is clearly distinguishable from the facts and circumstances attending the present case for the following reasons.

21. It is pertinent to underline that in **Premlata Shukla**, the parties not only brought FIR on the record to prove the factum of accident, but it was marked as an exhibit, as both the parties intended to rely upon it. It was in this background that aforesaid observation came to be passed by Hon'ble Supreme Court that once first information report was relied upon by the claimant, he could not be permitted to turn around to contend that rest of the contents were not proved. In the present case, First Information Report was though annexed with the claim petitions but claimants have succeeded to make out claims on the basis of ocular evidence adduced during the trial which remained unblemished and unimpeached.

22. Likewise, in **United India Insurance v. Chander Mohan** (supra) claimant relied upon the charge sheet to prove the factum of accident and it was mentioned in the charge sheet itself that claimant was travelling as a passenger in the offending vehicle. It was in this background that a Co-ordinate Bench of this Court relied upon **Premlatta Shukla**, to hold that since claimant was travelling as a gratuitous passenger in the offending vehicle, in violation of the policy of insurance, therefore, appellant insurance company could not be fastened with any liability. A similar view has been expressed by the same Co-ordinate Bench of this Court in **Mursa Begum** (supra) wherein it was pleaded by none other the claimants that deceased and injured were initially travelling in a bus but in the midway they were made to de-board the bus by the Army personnels and they

were forcibly made to board the offending vehicle. Therefore, in **Mursa Begum** there was admission on the part of the claimants that they were travelling in the offending vehicle as gratuitous passengers, therefore, appellant-insurance company was relieved of its liability. In similar fact situation, another co-ordinate Bench of this Court in **Amina Begum** (supra) absolved the appellant-insurance company of its liability because investigation of the FIR clearly revealed that claimant was travelling in the offending vehicle as a gratuitous passenger and charge sheet was relied upon by the claimant to prove the factum of accident. Similarly, in **National Insurance Co. v. Rattani,** there were depositions of the claimants before the Tribunal that deceased and injured were travelling in the offending goods vehicle as representatives of the owner of the goods. The First Information Report brought on the record in this case clearly proceeded on the basis that deceased and injured were members of a marriage party and they were travelling in the said vehicle as representatives of the owners of the goods.

23. In the present case, however, distinguished from the facts and circumstances of all the aforesaid cases, neither it is averred in the claim petition nor deposed by the claimants before the Tribunal that deceased and injured were travelling in the offending vehicle. I have carefully gone through the FIR, which states that there were some passengers travelling in the vehicle in question. It is nowhere mentioned that it were deceased and injured who were travelling in the said vehicle. Mere annexation of First Information Report with claim petition would not *ipso facto* infer that claimants rely upon the FIR to prove the factum of accident unless same is relied upon and proved in accordance with law, as it was done in the case of **Premlatta Shukla**.

24. Be it noted that an enquiry with respect to a motor vehicular accident under the Motor Vehicles Act is summary in nature. The provisions of the Code of Civil Procedure and Evidence Act are not strictly applicable to claim petitions.

It no longer remains *res integra* now that First Information Report and charge sheet are not substantive pieces of evidence and claimants in claim petitions are obliged to establish their claims on the basis of preponderance of evidence and probabilities and Tribunal are obliged to ensure that genuine claims are not approached in a perfunctory fashion and do not fail on technical grounds.

25. To better understand the controversy, let us have a look on the observations made by Hon'ble Supreme Court in the following case law.

26. In **Halappa v. Malik Sab; (2018) 12 SCC 15** the defence of the insurer was that claimants at the time of accident were riding on the mudguard of the offending tractor, as it was stated in the FIR. Therefore, a plea was taken that since the insurance policy did not cover the risk of anyone other than the driver of the tractor, as such, company was not liable. The Tribunal rejected the defence of the insurance company and relied upon the testimonies of the claimants made before it. The High Court having noticed that FIR came to be registered on the basis of statement made by the claimant that he was sitting on the mudguard next to the driver of the tractor and subsequently another statement was made by the claimants before police contradicting earlier statement that accident had taken place due to rash and negligent driving of the driver of the tractor due to which tractor turned turtle and fallen over him, took the view that police had attempted to protect the liability of the owner with a view to support the plea that claimant was a third party. Hon'ble Supreme Court, however, observed that cogent analysis of the evidence by the Tribunal was displaced by the High Court without considering material aspects of the evidence brought on the record before the tribunal. It was held by the Apex court that High court was not justified in holding that Tribunal had arrived at a finding of fact without applying its mind. It was also noticed by the Supreme Court that since insurer did not produce either

the file or the report of the investigator in the case, therefore, it could not be absolved of its liability to pay compensation.

27. A similar view has been expressed by Hon'ble Supreme Court in **Kishan Gopal and anr. v. Lala and ors**.; **2013 (3) ACC 878.**

28. Apex Court in **National Insurance Company Ltd. v. Chamundeswari and ors.; 2021 SCC OnLine SC 849** has also held that in view of evidence recorded before the Tribunal there is no reason to give weightage to the contents of first information report. It was clearly observed that if any evidence adduced before the Tribunal is contrary to the contents of the FIR, the evidence recorded before the tribunal has precedence over the contents of the FIR. Relevant excerpt of the judgment reads as below:

> **"8. ……..In view of such evidence on record, there is no reason to give weightage to the contents of the First Information Report. If any evidence before the Tribunal runs contrary to the contents in the First Information Report, the evidence which is recorded before the Tribunal has to be given weightage over the contents of the First Information Report. In the judgment, relied on by the appellant's counsel in the case of Oriental Insurance Company Limited v. Premlata Shukla, this Court has held that proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act. In the said judgment, it is held that the factum of an accident could also be proved from the First Information Report……"**

29. An identical view has been expressed by the Apex Court in a recent pronouncement in **Mathew Alexander v. Mohammed Shafi and anr.; 2023 LiveLaw (SC) 531**.relevant excerpt whereof reads thus:

> **"9. Insofar as the claim petition filed by the Appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.**

> **In this context, we could refer to judgments of this Court in the case of N.K.V. Bros. (P) Ltd. vs. M. Karumai Anmal reported in AIR 1980 SC 1354, wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-A of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in (2009) 13 SCC 530, in the case of Bimla Devi vs. Himachal Road Transport Corporation ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi.**
>
> **10. In that view of the matter, it is for the Appellant herein to establish negligence on the part of the driver of the tanker lorry in the petition filed by him seeking compensation on account of death of his son in the said accident. Thus, the opinion in the final report would not have a bearing on the claim petition for the aforesaid reasons. This is because the Appellant herein is seeking compensation for the death of his son in the accident which occurred on account of the negligence on the part of the driver of the tanker lorry, causing the accident on the said date. It is further observed that in the claim petitions filed by the dependents, in respect of the other passengers in the car who died in the accident, they have to similarly establish the negligence in accordance with law."**

30. It is evident from the aforequoted observations of Hon'ble Supreme Court that in case of conflict between the oral evidence adduced before the Tribunal and the contents of the First Information Report or the charge sheet, it is the ocular evidence led before the tribunal which has precedence over the contents of the FIR or the charge sheet. In view of clear oral evidence adduced by the claimants before the Tribunal that deceased and injured were standing on the road side and were hit by the offending vehicle, contents of the FIR or charge sheet for that matter, pale into significance.

31. In this view of the matter, the plea of the appellant-insurance company that since as per the contents of the FIR, there were passengers travelling in the offending vehicle at the time of accident, therefore, company cannot be held

liable because claimants were travelling as gratuitous passengers in the goods vehicle, is misconceived and is liable to be rejected.

32. Appellant has also assailed the quantum of the impugned award. However, I do not find any illegality in the findings recorded in the impugned award with respect to award of compensation to legal heirs of the deceased, Veena Devi and compensation to the injured.

33. In fatal accident cases, arising out of the use of Motor Vehicles, the law laid down by Hon'ble Apex Court in **1994 ACJ 1** and **1996 ACJ 831**, recognizes following two heads of damages:

i. **Damages to the dependants proportionate to loss caused to them on account of death.**
ii. **Damages for loss of estate.**

34. Loss to dependants known in legal parlance as loss of dependency is determined by applying the multiplier method as laid down by Hon'ble Supreme Court in **Sarla Verma and ors. v. Delhi Transport Corporation and anr**. reported as **2009 (3) Supreme 487.** Multiplier method in brief involves ascertainment of total income of the deceased at the time of death and the income the deceased was accustomed to spend for himself and part of the income the deceased would contribute to the family. The latter part is known as dependency of the dependants. The annual loss of dependency suffered by the dependants on account of the death is taken as multiplicand, which is then capitalized by multiplying with a figure representing the appropriate number of years purchase, popularly known as the multiplier.

35. Claimant-Bishan Dass, father of deceased Veena Devi, at the time of recording his statement on 17.08.2015, described his age 50 years. The accident took place on 21.11.2012. Therefore, as per statement of the claimant, his age at the time of occurrence was around 47 years. Since there was no evidence on

record with respect to the age of mother of the deceased, therefore, learned Tribunal has rightly taken age of father of the deceased as 47 years for assessment of just compensation, which falls in the age group of 45 to 50 years and the appropriate multiplier in the said group is 13 in the light of **Sarla Verma** (supra**).** Learned Tribunal has relied upon **Krishan Gopal and ors. v. Lala and ors.**; **2014 (1) SCC 244** to take notional income of Rs. 30,000/- per annum of the deceased, being a minor which is just and proper. Applying the aforesaid multiplier of 13, the loss of dependency has been worked out at Rs.3,90,000/- (i.e. 30,000/- x 13). In addition, compensation of Rs.50,000/- and Rs.20,000/- respectively has been granted under the conventional heads of love and affection and funeral expenses. Therefore, total compensation awarded to the parents of the deceased to the tune of Rs.4,60,000/-, in my opinion, is just and fair and cannot be interfered with.

36. Insofar as injured-Balbir Singh is concerned, he has placed on record some medical bills to the tune of Rs.56,758/- only. According to the injured, after the accident he was evacuated to the District Hospital, from where he was referred to GMC&H, Jammu, where he remained under treatment for about 25/26 days and later he was admitted at Pathankot Hospital and Trauma Centre on 09.01.2023 where he was operated upon. Testimony of the injured, in support has been recorded by the tribunal which remained unimpeached. Although injured has failed to produce the disability certificate, however, tribunals are statutorily charged with responsibility to award 'just compensation' on the basis of fair and equitable principle. A claimant cannot be denied compensation on account of medical expenses incurred by him merely due to failure on his part to produce the disability certificate or even the documentary evidence in support thereof as held by Hon'ble Supreme Court in **Jagdish v. Mohan and other** reported as **2018 SC 1347**. Therefore, learned Tribunal taking a holistic view of the facts and

circumstances attending the present case, apart from allowing the amount of original bills produced by the injured, also awarded Rs.5,000/- as transport expenses, Rs. 10,000/- as attendant expenses and another Rs.25,000/- for pain and suffering i.e. total compensation of Rs.95,760/- which, in my opinion, is neither exorbitant nor unjust and does not call for any interference.

37. Having regard to what has been observed and discussed above, I do not find any illegality much less perversity in the impugned award. Hence, both the appeals, being bereft of merit, are dismissed and impugned award is upheld.

(RAJESH SEKHRI)
JUDGE

JAMMU
30.11.2023
Paramjeet

Whether the order is reportable? *Yes*
Whether the order is speaking? *Yes*