

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1080 of 1995

Date of decision :30.09.2015

Sampuran Singh

.....Appellant

Vs.

Rajinder Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present:- Mr.Arjun Lakhanpal, Advocate for the appellant.

Ms.Vandana Malhotra, Addl.A.G.Punjab.

Mr.D.R.Bansal, Advocate for respondent No.4.

K.KANNAN, J.

The appeal is against the dismissal of the petition claiming compensation.

The petition was filed by one Sampuran Singh claiming to be the husband of Nasib Kaur who died in an accident on 05.12.1993 involving the respondent No.1 with tractor bearing Registration No.PB 39-1613. The fact of death of a woman in the accident is not in dispute but the identity could not be assessed post death since the body had been cremated by the police. The person claiming as husband contended that he identified the *saree* that she was wearing but the Tribunal held that there was no proof that *saree* had been preserved by the police. During the pendency of the appeal, appellant-Sampuran Singh also expired and his four sons have been impleaded as a party but I had a doubt about the impleadment of legal representatives. I have observed on 02.09.2015 that the persons claiming themselves to be legal representatives of the deceased petitioner were perhaps not legal representatives on a suspicion that they had filed a Will said to have executed by the deceased mother describing her to be 75 years of age in the year 1990. The petition had been filed showing the deceased to be 50 years of age. I had, therefore, directed to presence of the

Representatives in Court for examination. I have examined one of them and I

am convinced that he was son of the deceased on the basis of his own evidence, his service records and copy of voter list produced before the court. I allow the evidence given by legal representatives to be proof of his status as son of the deceased petitioner.

I find the observations of the trial Court that the petitioner had not proved that he was the husband of the deceased to be wrong. It is a little too strained and a heartless approach to realities in life. There is no dispute about the fact that in an accident that took place on 05.12.1993 and a woman died. The police did not retain the body and they had cremated. If a person in the village turns up in Court and states that his wife died, unless there is a case of any of the respondents that petitioner was married to some other woman or that the petitioner was making some claim to some unknown person, the Court could not have rejected the petition. Indeed the petitioner has also died and I have examined one of his sons and it was elicited from him that he was the son born to the petitioner and the deceased and his own status as a son is borne out through his service records. I called for the production of ration card as well and deceased Nasib Kaur is shown to be the wife of Sampuran Singh-claimant in the ration card and her age is stated to be 61 years at that time. I, therefore, take all the applicants who have been subsequently brought on record as legal representatives.

There has been no assessment of compensation made by the Court and I thought for a while whether it would be necessary to refer it to the Tribunal for consideration. Since the claimant has also expired, I dispense with such a formality and I assess the compensation at Rs.1.50 Lacs and allow the interest at the rate of 7.5% from the date of petition. The amount shall be distributed equally amongst the persons moved before this court.

As regards the liability, the Tribunal's observation was on the basis of the FIR that the driver was in a drunken condition. Though a term of the policy provided for exclusion of liability on the ground that the driver shall not

third party, it could only be taken as a breach of violation of terms of policy that can still not avail for an insurer to plead non-liability of claim. The liability of the insurer ought to be therefore clearly answered in favour of the claimants. Even as regards the breach of condition, there ought to be something positive at the trial and breach of condition has always to be proved only with the insurer and a mere reliance on statement in FIR without examining the person who was said to be the driver that the driver was under the influence of alcohol beyond the legally admissible extent, the breach should not have been inferred. I therefore, make the Insurance Company liable for the entire award that is assessed. The appeal is allowed on the above terms. The sons of the deceased will share the award equally.

30.09.2015
anil

(K.KANNAN)
JUDGE