

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5128 of 2002 (O&M)
Date of Decision:21.01.2015

Balwinder Kaur and others

....Appellants

Versus

Gurvinder Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Ms. Lovleen Dhaliwal, Advocate for
Mr. K.S. Dhaliwal, Advocate for the appellants.

Mr. Gurkirat Singh, Advocate for respondent No.1.

Mr. Rohit Goswami, Advocate for
Mr. Ravinder Arora, Advocate for respondent No.3-
New India Assurance Company Ltd.

NAVITA SINGH, J.

1. The Motor Accident Claims Tribunal, Kurukshetra (Tribunal for short) awarded compensation to the tune of Rs.50,000/- to the appellants in view of Section 140 of the Motor Vehicles Act (hereinafter referred to as the Act). It was the appellants who came up in appeal for enhancement.

2. The claim was laid by the appellants under Section 166 of the Act and they also tried to prove that the accident occurred on account of rash and negligent driving of the tractor involved, by respondent No.1. The Tribunal, however, held that there was no rashness or negligence on the part of respondent No.1 because the deceased was hit by the tractor due to the circumstances beyond the control of the driver who had to swerve his vehicle towards one side of the road to save a cow which had suddenly come on the road and in that process he lost control on the vehicle and hit the deceased on the kacha portion of the road. It was observed by the Tribunal that nobody was

actually responsible. According to the award, therefore, it was a pure and simple accident.

3. Learned counsel for the appellants argued that the evidence was not appreciated by the Tribunal though it was proved on record that the accident had occurred on account of the rash and negligent driving of the tractor by respondent No.1. She referred to para 9 of the award stating that it was incorporated therein that Gurdeep Singh, PW4 was an eye witness and had stated that the deceased was standing at bus stand Behlolpur when the truck being driven by respondent No.1 in a rash and negligent manner, came to the wrong side of the road and hit the said person. Father of the deceased also stated that he had found his son under the wheels of the tractor near bus stand Behlolpur. It was further contended that despite evidence regarding rashness and negligence, the Tribunal granted the compensation for no fault liability, which was not legal.

4. Counsel for the appellants further argued that even if it be taken that a cow had come in front of the tractor and respondent No.1 was in an effort to save the animal, lost control of the vehicle and went to the other side of the road, the presumption would be that he was driving at high speed for which reason he could not control the vehicle. Had the speed been moderate, he would have controlled the vehicle and stopped it on the road itself. This court, however, is not convinced with the arguments advanced by counsel for the appellants where she referred to the speed of the vehicle. High speed is not always an essential ingredient for rashness and/or negligence. A person may be driving at a high speed, but still may well be in control of the vehicle so as not to be rash. In any case, a tractor cannot be driven in such a high speed so that the driver may lose control only because of speed. Record of the Tribunal was not available as it

was destroyed in the fire incident. From the award, nothing can be made out that as it was the case of the appellants that the tractor was being driven at a high speed. The pleadings were only regarding loss of control over the vehicle, which could be a direct result of the fact that the cow appeared on the road and respondent No.1 tried to save the animal by swerving his vehicle.

5. Counsel for the appellants argued that the animal which came on the road could not be said to be negligent and negligence has to be on the part of the tractor driver in not controlling his vehicle while saving the animal. She further submitted that the court can adopt guidelines in the second Schedule of the Act formulated for the purpose of Section 163-A of the Act though the case may be otherwise. She relied on S. Kaushnuma Begum and others Vs. New India Assurance Co. Ltd. and others 2001 (2) ALL MR 246.

6. The judgment of the Supreme Court referred to by counsel for the appellants would not help her because in that case it was categorically held that the amount for no fault liability is payable without exception and proof of negligence is not necessary. The facts of the reported case are different from that before the Tribunal and the High Court had divested the claimants of the compensation payable under Section 140 of the Act. The manner in which the accident had taken place in the other case was also different.

7. However, if it be taken that the appellant would be entitled to compensation as ordered by the Supreme Court in the reported case, the predicament would be that there is no record here and there is nothing to show as to what was the income of the deceased and what was the proof thereof. Rather for an accident, which occurred in the year 1999, the appellants had claimed a sum of Rs.29,56,000/- which was highly exaggerated and beyond imagination. They also said that they had spent about Rs.20,000/- on funeral etc.

which is also excessive. It was pleaded that the deceased was running a poultry and dairy farm and was earning Rs.20,000/- per month. No evidence was, however, either led or discussed in the award on that point. Even otherwise, from the long experience in dealing with such cases for the last many years, it is seen that the figures are always exaggerated and also dairy farming is mentioned as one of the professions in such employment.

8. In the given facts and circumstances, the best which can be done for the appellants, can be to award some amount for funeral expenses and some for love and affection to the family members. A consolidated sum of Rs.1,00,000/- is awarded on that count over and above the amount already granted by the Tribunal. Except that, the appeal is dismissed. The Insurance Company shall pay only an amount of Rs.1,00,000/- to the appellants with no attachments.

9. The appeal is disposed of in the above terms.

(NAVITA SINGH)
JUDGE

21.01.2015
Ishwar

Whether to be referred to reporter: Yes