IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O. No. 886 of 2001
Date of decision: January 22, 2015

Jahangir and others ....Appellants

Versus

Naib Ram and others ....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present: Mr. Sudhir Rana, Advocate, for the appellant
Mr. Ishan Cooner, Advocate for respondents no. 1 and 2
Mr. Ravinder Arora, Advocate, for respondent no. 3-Insurance Company

Fateh Deep Singh, J.

The appellants are the husband and children of the deceased Najma Begum who died in a motor vehicular accident on 12.11.1998 and has challenged award of learned Motor Accident Claims Tribunal, Ambala dated 14.11.2000 denying compensation to the claimants. Since the original records stands destroyed in the fire that engulfed the record room and not much can be appreciated as the remnants comprises of whatever could be gathered.

It is the argument of the appellants' side that the deceased was working as a daily wager with M/s Agro Dutch Foods Limited, Tofanpur and on the day of accident the two were going together. The husband being eye witness has testified himself as PW1 and has stated that the wife was going ahead of him on foot when offending truck No. PB-12-B-1165 came from behind and crushed her under its front wheel. As has been highlighted in the submissions of the appellants' counsel, the Tribunal has critically evaluated the evidence as it was adjudicating criminal prosecution for this accident. It needs to be stressed here that Motor Vehicles Act, 1988 (in short, the Act) is a welfare statute for the betterment of the claimants and therefore, the provisions have to be liberally construed and strict principles of law and evidence not to be applied. Merely on the premise that PW1 Jahangir and eye witness PW3 Sarup have wrongly in contradiction stated that the wife was going ahead of the husband and vice-versa have arrived at the conclusion that the witnesses were not truthful and that second eye witness Sarup PW3 was co-worker of the deceased and has falsely supported case of the claimants. It needs to be taken note of the fact that the claimants have relied upon report under section 173 Cr.P.C. and it is not disputed even before this Court that FIR pertaining to this accident was registered against the driver by way of Ex. P2 from which it can be safely concluded that the deceased received injuries in the motor vehicular accident and subsequently died on account of it. However, the critical appraisal which is undesirable by the learned Tribunal that Ex. P1 holds that the truck driver had run away from the spot and that

PW1 Jahangir has lodged the FIR one day after the accident. By now it is well settled position of law, reliance of which can be placed on **Virat Sama vs. Mohan Lal and others, 1994 (1) PLR 82** that FIR is not a pre-requisite for claiming compensation in a motor accident claim cases. Post Mortem report Ex. P3 reflects death due to motor vehicular accident are matters which irrefutably leads to irresistible conclusion that the deceased died in a motor vehicular accident. More-so, the driver is contesting the claim but has not stepped into the witness box to state his side of the story and by that act adverse presumption needs to be drawn against the driver in terms of section 114 of the Evidence Act. Thus, the findings drawn by the Tribunal qua issue no. 1 are palpably wrong and it is held that the driver of the offending vehicle, therefore, clearly was at fault and the death of Najma Begum took place due to rash and negligent driving of offending vehicle by its driver. Thus the findings of the Tribunal to this effect are reversed.

The learned Tribunal did not venture into compensation aspect and it would too preposterous to remand the matter back to the Tribunal for adjudication and it would certainly result into delay and invariably denied of justice to the claimants. It is there on the record that the deceased was aged around 29 years. It is contended on behalf of the appellants that she was earning Rs 100/- per day which could not be controverted by the contesting respondent as the evidence to this aspect has remained unrebutted. Even otherwise, if for the sake of arguments it is accepted that she is a pure house wife irrespective of the conclusion arrived at by the Tribunal, that PW3 Sarup her co-worker has interest to testify shows employment of the deceased. Even otherwise her notional income as per the settled law needs to be considered and thus, a sum of Rs 2500/- per month was reasonable amount keeping in view the contribution of a house wife towards its family comprising of young husband and four minor children and thus the annual dependency comes to Rs 30,000/-. Keeping in view the age of the deceased to be 29 years, multiplier of 17 needs to be applied in view of ***Sarla Verma and others versus Delhi Transport Corporation and another, 2009 (6) SCC 121*** and therefore, compensation comes to Rs 5,10,000/-. Besides this, the husband has lost her life companion, the children their mother and thus on account of love and affection, protection and future sustenance has been put to jeopardise, the family must have spent money on last rites and ceremonies and under these conventional heads a sum of Rs 1,50,000/- needs to be awarded. Therefore, total compensation comes to Rs 6,60,000/- (Rupees six lacs and sixty thousands only). The claimants shall also be entitled to interest @ 7.5% per annum from the date of filing of claim petition till realization of the amount and the claimants shall be entitled to equal shares in this compensation. Interim compensation paid, if any, shall be adjusted. Keeping in view that it is admitted stand that Naib Ram respondent was the driver of the offending vehicle which was owned by respondent no. 2-Karamjit Singh and it is admitted stand that the vehicle at the time of accident was insured by National Insurance Company Limited through insurance policy Ex. R2. Thus, driver, owner and the insurer are jointly and severally liable to pay this compensation amount. The award certainly is wrong interpretation of the evidence and law and needs to be set aside by way of acceptance of this appeal.

Since as per own stand of the driver and owner who have tendered copy of the driving licence Ex. R1 of the driver and as per testimony of M.R.Verma, Junior Assistant, Office of the Licensing Authority, Una, the licence was never issued by them puts the driver and the owner to liability. However, since the vehicle is under insurance cover and in view of the welfare nature of the statute, all the three are liable to pay the compensation jointly and severally. However, the Insurance Company reserves its right to recover the amount from the driver and owner jointly and severally.

The appeal stands allowed in the aforesaid terms.

(Fateh Deep Singh)
Judge

January 22, 2015
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