

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.3154 of 2004 (O&M)
Date of Decision: April 23, 2015

Preeti Sondhi and another

...Appellants

Versus

Naib Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Arvind Kashyap, Advocate
for the appellants.

Mr.N.K.Verma, Senior DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

CM No.15195-CII of 2011

The application is allowed as the claimants-appellants only want to placed on record the certified copy of Award dated 19.02.2003, in which the claim petition of other claimants arising out from the same accident has been decided. Ex.C-3 is taken on record.

FAO No.3154 of 2004

Appellants Preeti Sondhi and Shivansh Sondhi have filed this appeal against Naib Singh (driver), Punjab Roadways, Chandigarh Depot through its General Manager (owner) of the offending vehicle and Adarsh Sondhi respondents challenging the impugned award dated 11.03.2004 passed by learned Motor Accident

Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as 'Tribunal').

The brief facts of the case are that Preeti Sondhi, wife and Shivansh Sondhi, minor son of deceased Raja Singh filed claim petition against respondents No.1 and 2 i.e. Naib Singh (driver), Punjab Roadways, Chandigarh Depot through its General Manager (Owner) of offending bus bearing registration No.PB-12C-9094 and respondent No.4 Adarsh Sondhi, mother of the deceased under Section 166 of the Motor Vehicles Act (respondent No.3 to be disclosed by respondents No.1 and 2 of the claim petition).

It is stated in the claim petition that on 14.01.2002 Adarsh Sondhi along with Suresh Sondhi, son Raja Sondhi, daughter-in-law Preeti Sondhi had gone to Ludhiana in Maruti car bearing registration No.PCW-5656 to distribute Lohri in their relations. They started from Ludhiana for Chandigarh at 3.30 P.M. on the same day in the above-said car. Suresh Sondhi was driving the car and other persons were sitting in the car. When they reached near village Khant at about 4.30 P.M., a bus bearing registration No.PB-12C-9094 belonging to Punjab Roadways, Chandigarh came from front side at a very high speed, being driven by respondent-driver Naib Singh in rash and negligent manner. Suresh Sondhi tried to take his car in *kacha* portion of the road. In the meantime, the bus which was coming on its wrong side, struck against the Maruti car. Suresh Sondhi and Raja Songhi got entangled in the car and car was badly damaged. Passerby took out Suresh Sondhi and Raja Sondhi from the car in a very serious injured

condition. The Driver and Conductor of the bus alighted from the bus and after noticing the condition of the occupants of the car, fled away from the spot. It is further stated in the claim petition that Suresh Sondhi died on the spot while Raja Sondhi died at Civil Hospital, Bassi Pathana. FIR was registered against respondent-driver at Police Station Khamano. Post-mortem examination on the dead bodies was conducted. It is also stated in the claim petition that accident took place due to the rash and negligent driving of bus by respondent-driver Naib Singh at a very high speed. It is further stated that Raja Sondhi was running shop of scooter spare parts at Mohali under the name and style of Mohali Auto Centre. He was 27 years old at that time and earning ₹10,000/- per month. Claimants and Adarsh Sondhi were totally dependent on the earnings of Raja Sondhi. The claimants claimed ₹20 lacs as compensation.

In the written statement, respondent-driver stated that no accident took place with the bus as alleged in the claim petition. It is admitted that respondent-Punjab Roadways is owner of the bus. The claimants have put-forth a false and concocted story. It is further stated by respondent-driver that he was driving the bus with great care and caution at normal speed on the left side of the road, while the driver of car No.PCW-5656 was coming on a very high speed. The car driver was trying to overtake a truck going ahead of the car. The respondent-driver tried his level best to avoid the accident and took the bus towards its left on the *kacha* path of the road. The driver of the car while overtaking the truck could not control the speed of the

car and struck his car against the bus in a rash and negligent manner.

The remaining averments are denied.

Respondent-owner also took same plea as taken by respondent-driver. Respondent-Adarsh Sondhi filed written statement supporting the claim of the claimants.

Learned Tribunal framed following issues:-

“1. Whether Raja Sondhi died in accident of bus bearing No.PB-12C-9094 driven by respondent No.1 and whether the petitioners are entitled for compensation/damages if any to what extent and from whom and if interest then at what rate?OPP.

2. Whether the driver of the car was not holding a valid driving licence ?OPR.

3. Whether the petition is bad for non-joinder of the necessary parties?OPR.

4. Whether the accident took place due to the negligence driving of car by Suresh Sondhi?OPP

5. Whether respondent No.4 is also entitled for compensation along with claimants, to what amount and from whom?OPR-4

6. Relief.”

The claimants examined PW-1 Preeti Sondhi, PW-2 Avtar Krishan, PW-3 Chandu Ram and closed their evidence. On the other hand, respondents examined RW-1 Sant Singh, who was travelling in the bus, RW-2 Naib Singh (respondent-driver) and closed their evidence. Respondent-Adarsh Sondhi appeared as RW-3 and closed her evidence.

Learned Tribunal, decided all the issues in favour of respondents-driver and owner and claim petition is allowed only to the

extent of ₹50,000/- under Section 140 of the Motor Vehicle Act in equal share to be paid by the owner of the bus.

Aggrieved from this Award, present appeal has been filed by the claimants-appellants.

Notice of motion was issued and learned State counsel appeared and contested the appeal.

At the time of arguments, learned counsel for the appellants argued that the Tribunal has wrongly appreciated the evidence and has reached to the wrong conclusion that respondent-driver was not driving the bus rashly and negligently. He further argued that in the other claim petition filed before MACT, Rupnagar arising out of the same accident, the MACT, Rupnagar has already held that respondent-driver of the bus was rashly and negligently driving the bus and caused the accident. Therefore, learned counsel for the appellants argued that this claim petition has been wrongly dismissed by the Tribunal and compensation should have been awarded and thus, the appeal should be allowed.

On the other hand, learned State counsel argued that the findings given by the Tribunal are correct, as per law and do not require interference from this Court. He further argued that the accident occurred due to fault of car driver and the driver of the bus was driving the bus on its right side, carefully and cautiously.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the evidence on record shows that PW-1

Preeti Sondhi, claimant has been examined, who mainly deposed that her husband Raja Sondhi was doing the business of scooter spare parts and he was aged about 27 years. She also deposed regarding the accident and deposed as per claimants' version. In cross-examination, she stated that she cannot produce any documentary evidence in respect of ownership of the said shop and also cannot produce any document to prove the income of her husband. PW-2 Avtar Krishan mainly deposed that Raja Sondhi was 25-26 years and earning ₹10,000/- to ₹15,000/- per month and was also doing the work of sale and purchase of vehicles. This witness also did not produce any documentary evidence. PW-3 Chandu Ram, eye witness to the occurrence and passenger in the bus, deposed regarding the accident and also rash and negligent driving by the bus driver Naib Singh. I have perused the cross-examination of this witness. There is nothing which may make his statement unreliable.

Furthermore, respondent-Adarsh Sondhi also appeared as witness as RW-3. She is mother of Raja Sondhi deceased and Suresh Sondhi, the other person who died in the accident was her husband. She is also the eye witness and deposed regarding rash and negligent driving of Naib Singh. The oral statements of PW-3 as well as RW-3, eye witnesses of the accident, are supported and corroborated by the documentary evidence i.e. FIR Ex.C1 and copy of the Post Mortem examination report Ex.C2. On the other hand, respondent examined RW-1 Sant Singh. He was also travelling in the bus, who deposed as per the version given by respondent-driver in

the written statement. He stated that police did not record his statement. He did not care for any injured as he was in hurry for his duty. From this statement, it looks that this witness is not believable. If he is knowing that a false FIR has been registered, he might have get recorded his statement before the police or might have filed complaint regarding the same. Respondent-driver of the bus has also not made any complaint or representation to the higher authorities for false implication. He admitted that criminal case is pending against him in the Court of CJM, Fatehgarh Sahib.

Keeping in view the evidence on record, I find that the claimants have led cogent evidence to prove that accident had occurred due to the rash and negligent driving of the bus driver and findings of learned Tribunal by presuming the speed of the vehicles etc. are against the evidence on record. The findings are given on the basis of conjectures and surmises. No evidence has been discussed by the Tribunal in right perspective. The findings of the Tribunal, therefore, are against the evidence on record and findings on issue No.1 given by the Tribunal are set aside and I hold that Raja Sondhi died in accident due to the rash and negligent driving of the bus driver and claimants-appellants are entitled for compensation/damages.

As per the oral evidence as well as the post-mortem examination report, it is clear that Raja Sondhi was 27 years old at the time of accident. The claimants-appellants are wife and minor son of the deceased. They are entitled to compensation. As regarding respondent-Adarsh Sondhi, she is mother of the deceased but from

the evidence on record, it is clear that her husband has also died in the same accident and she has filed separate claim petition showing her as dependent upon her husband and Award has already been passed in her favour. Therefore, she cannot be treated as dependent on Raja Sondhi. Otherwise also, she has been given 1/3rd share in a non-fault liability of ₹50,000/-, which is awarded by the Tribunal.

The findings of the Tribunal on issues that driver of the car was not having driving licence and the claim petition is bad for non-joinder of the necessary parties and issue No.4 that accident took place due to negligence of Suresh Sondhi, are also set aside, as these are against the evidence on record.

In the present case, though, it is alleged that deceased was doing work of spare parts and was having shop but no document has been produced on the record regarding income, ownership of the shop or anything to show that deceased was doing the business. Therefore, the income of the deceased is taken as ₹3000/- per month, which even a labourer earns by doing manual labour. As there are only two dependents, therefore, 1/3rd deduction is applied, which the deceased might be spending on himself. Therefore, the dependency comes to ₹2000 x 12= ₹24,000/- per annum. By applying the multiplier of 17 as per law laid down by the Hon'ble Supreme Court in ***Smt.Sarla Verma and others vs. Delhi Transport Corporation and another, 2009(3) RCR (Civil) 77***, the compensation amount comes to ₹4,08000/-. The claimants-appellants are further entitled to ₹25,000/- as funeral expenses, ₹1 lac on the ground of loss of consortium and

₹1 lac on the ground of loss of love and affection to the minor. The total compensation amount comes to ₹6,33,000/-. Further, the claimants-appellants will be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till actual realization. However, the amount of ₹50,000/-, which has already been granted as non-fault liability under Section 140 of the Motor Vehicles Act, is to be adjusted. The compensation will be paid by the respondents-driver and owner jointly and severally. Out of the total amount, ₹4 lacs along with interest be paid to the claimant-Preeti Sondhi (wife of the deceased Raja Sondhi) and remaining amount along with interest be paid to claimant-Shivansh (minor son of deceased Raja Sondhi).

Therefore, finding merit in the present appeal, the same is allowed accordingly.

April 23, 2015
Vgulati

(INDERJIT SINGH)
JUDGE