

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4764 of 2004 (O/M)
Date of decision : 24.7.2015

Smt. Urmila Devi and others Appellants

Versus

New India Assurance Company and others Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ramesh Sharma, Advocate,
for the appellants.

Mr. R.N. Singal, Advocate, for respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

This order of mine will dispose of FAO No. 4764 of 2004 titled as Smt. Urmila Devi and others Versus New India Assurance Company and others, filed by the claimants/appellants against the award dated 29.7.2004, passed by the Motor Accident Claims Tribunal, Gurgaon (in short 'the Tribunal').

The brief facts of the case are that on 26.7.1993, Harbans Lal was driving truck bearing registration No. HR-29A-7139 (herein called 'the first truck') and was going to Jaipur from Gurgaon. When the first truck, being driven by Harbans Lal, reached near village Binola on Gurgaon-Jaipur NH-8 in front of Janata Hotel, the

truck bearing registration No. DL-1G-6933 (herein called 'the second truck'), being driven by respondent No. 1 (since deceased) rashly and negligently, came from the opposite side and hit the first truck. As a result of the accident, Harbans Lal died. It was claimed in the claim petition that Harbans Lal was employed by Jaipur Transport Company and was earning Rs. 10,000/- with TA/DA and night stay per month. Harbans Lal was 35 years of age at the time of accident. The legal representatives of deceased-Jaswant Singh (respondent No. 1 before the Tribunal) denied the accident. It was pleaded by the insurance company that deceased Harbans Lal as well as Jaswant Singh, driver of second truck, were not holding valid driving licences.

From the pleadings, following issues were framed :-

- “1. Whether Jaswant Singh died due to rash and negligent driving of vehicle No. DL-1G-6933 by Jaswant deceased ? OPP
2. To what amount of compensation, the petitioners are entitled to and from whom ? OPP
3. Whether Jaswant was not driving the vehicle at the time of accident and he was also not holding a valid driving licence at that time ? OPR
4. Whether respondent No. 1 contravened the terms and conditions of insurance policy, if so its effect ? OPR
5. Relief.”

While deciding issued No. 1, the Tribunal came to the conclusion that in the earlier claim petition arising out of the same

accident, copy of which is Ex.R1, it was held by another Tribunal at Gurgaon that the accident was the result of the negligence of both the drivers. Therefore, it was held that contributory negligence is proved.

Regarding the income of the deceased, claimant Urmila Devi (PW3) has stated that the deceased used to earn Rs. 7,000/- per month. Claimant/petitioner had also produced Shri V.K. Sharma, the Legal Assistant at Jaipur Golden Transport Company as PW5. He produced the wages slip (Ex.P3) of Harbans Lal (deceased), in which the salary of the deceased was shown to be Rs. 1,180/- in the month of June, 1993. As per the document, the deceased was only a cleaner and not a driver of the truck. Therefore, his income was held to be Rs. 1,180/- as a cleaner and not as a driver. Rs. 380/- were deducted as personal expenses and the dependency of the claimants was calculated at Rs. 800/-. The annual dependency was calculated at Rs. 9,600/-. The multiplier of '15' was applied and the amount of compensation was calculated at Rs. 1,44,000/-. 50% cut was applied on account of contributory negligence and the claimants were held to be entitled to Rs. 72,000/- only. Rs. 2,500/- towards funeral charges and Rs. 2,500/- towards loss of estate. Rs. 3,000/- were also awarded to Urmila Devi for loss of consortium and in total, the claimants were held entitled to Rs. 80,000/- from both the respondents.

I have heard learned counsel for the appellants, learned

counsel for respondent No. 1 and have also carefully gone through the files.

A perusal of the file shows that in order to prove the negligence of the driver of second truck, claimants had examined one Prithvi Chand (PW4), who was also driving truck bearing registration No. HIH-3407 and is the eye-witness of the occurrence. He has clearly stated that second truck was being driven rashly and negligently and dashed against the truck of Harbans Lal, which resulted in the accident. He further stated that his statement was recorded by the police at the spot. He had also informed the office of Jaipur Golden Transport Company. The witness was subjected to searching cross examination where he stated that he was at a distance of 40-50 yards from the place of occurrence. There was heavy traffic on the road at the time of accident. He admitted that he had not lodged the FIR with the police, but claimed that police has recorded his statement. He further disclosed that the police reached the spot within 20 minutes after the accident when the injured was still at the spot. He further stated that there were 2/3 more persons in the truck of Harbans Lal and they had also sustained injuries. All these facts goes to show that Prithvi Chand was present at the spot. He had witnessed the occurrence, that is why he could tell so many facts which happened immediately after the accident. He claimed to have informed the transport company of first truck about the accident. The claimant had also tendered into evidence the

statement of Bishamber Dayal. However, the Tribunal relied upon the award given by another Tribunal, wherein contributory negligence was held.

I am of the view that merely on the basis of earlier claim petition arising out of the same accident, to which the appellants were not party, the findings recorded in the said award (Ex.R1) cannot be made binding on the present appellants. In the present application, they had led specific evidence. They also did not deny the fact that criminal case was registered. The copy of FIR Ex.P2 was proved by HC Balbir Singh. The criminal investigation was also carried out. Therefore, merely from the previous award by some other Tribunal, the Tribunal in this case, erred in holding that there was contributory negligence. In this case, from the evidence the negligence of second truck is proved. Accordingly, the findings recorded by the Tribunal on issue No. 1 are reversed.

Now, coming to the quantum of compensation, it is proved on record that the deceased was working as a cleaner and was earning Rs. 1,180/- as salary. The Tribunal did not add the future prospects. Keeping in view the fact that the deceased was 35 years of age, 50% of the income, i.e. Rs. 590/-, is to be added on account of future prospects. The income of the deceased comes to Rs. 1,770/-. 1/3rd, i.e. Rs. 590/-, is deducted as personal expenses. The dependency of the claimants comes to Rs. 1,180/-. Keeping in view the age of the deceased, the multiplier of 16 is to be applied.

Therefore, the amount of compensation comes to Rs. 1,180/- x 16 x12 = Rs. 2,26,560/-. Keeping in view the fact that the accident was of the year 1993, a sum of Rs. 50,000/- to the widow of the deceased for loss of consortium is allowed. Another sum of Rs. 50,000/- to the children of the deceased for loss of love and affection is allowed. Rs. 25,000/- for funeral and last rites are also allowed. The total amount of compensation comes to Rs. 3,51,560/-. Respondents shall be severally and jointly liable to pay the compensation. Since the second truck was insured with respondent-insurance company, therefore, the insurance company shall be liable to pay the compensation. Out of the compensation, $\frac{1}{2}$ shall go to the widow of the deceased, who is to run day-to-day affairs of the family and the remaining compensation shall go to the children of the deceased in equal shares. The claimant Naresh was minor at the time when the claim petition was filed in the year 2003. However, now 12 years have passed, the amount shall be disbursed to the claimant. However, if claimant Naresh is found to be minor, the amount of his share shall be invested in FDR scheme in the nationalized bank of the choice of mother of the claimant for the period till he becomes major and shall be disbursed to him on his becoming major. The appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

24.7.2015
sjks