

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.3987 of 2003 (O&M)

Date of Decision.07.08.2015

Smt. Rani and others

.....Appellants

Versus

Balbir Singh and another

.....Respondents

Present: Mr. Madan Pal, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J.

1. The petition for compensation for death of one Partap Singh in a motor accident that took place on 5.5.2000 was dismissed. The claim was pursued by widow, three minor children and parents. The owner/driver engaged a counsel to file written statement contending that his vehicle had not been involved in the accident. The insurance company supported the plea and took general defences about the fact of insurance, the liability for the policy etc. The Tribunal found that the deceased was 28 years of age at the time of accident, assessed his income as though he was a daily wager drawing ₹ 65 to ₹ 70/- per day and found the loss claimable at ₹ 2,45,200/-. However, on point of liability, the Tribunal held that the petitioner had not proved either the involvement of the vehicle or the rashness or negligence of the driver-

cum-owner. It proceeded, therefore, to dismiss the petition and the aggrieved claimants are the appellants before me.

2. In view of the fact that the respondent/driver-cum-owner had actually been served but did not come to Court to defend himself in denial of the contentions raised by the appellants in the nature of accident, I had issued a notice to the police to cause the production of the 1st respondent. This Court had also secured the report of the police sent to the Magistrate that the vehicle could not be traced to be brought through the Court. The driver-cum-owner was examined as a Court witness and he literally admitted that the accident did take place but it was on account of negligence on the part of the deceased. He admitted the involvement of his vehicle and stated that he had disposed of the vehicle only because the police was harassing him. He also deposed that he had come to Court after filing of the claim petition but his lawyer had advised him that it was not necessary to give evidence and discharged him. One thing, therefore, becomes very clear that the finding adopted by the Tribunal cannot be supported in view of the additional material which has come before this Court namely the involvement of the vehicle. Nobody comes to road to be killed and if there is an accident, the nature of burden cast on the claimant is to show the nexus of death to the accident and the driver, who had literally evaded the witness stand and who had been summoned before the Court for examination as court witness cannot be granted premium in his evidence about his own assertion of careful driving and the alleged negligence of the deceased. The deceased was a pedestrian after all and any driver of a motor vehicle has to exercise sufficient caution not

to dash against him and fell him to death. I will, therefore, set aside the finding of the court below and hold that the 1st respondent as owner and driver of the vehicle was responsible for the accident by his negligence driving. The insurance company itself had not denied the claim and there was not even a suggestion before the Court during the cross-examination of the owner/driver by the counsel for the insurance company that there was no valid insurance at the relevant time. There was also no suggestion to the owner-cum-driver that he did not possess the requisite driving licence to drive the particular category of three wheeler.

3. The issue will, therefore, have to be only with reference to the contentions raised in the status of the party that he was said to be a Band Master by profession. The wife had given evidence to the effect that the husband used to earn about ₹ 5,000/- per month. The Tribunal took him to be a daily worker and assessed his income very modest. I take it that he would have earned at the relevant time not less than ₹ 3,000/- per month and provide for a further prospect of increase in future to another ₹ 1500/- per month and take the aggregate income at ₹ 4500/- per month. I will apply a deduction of 1/4th considering that there are six dependents and apply a multiplier of 17. The loss of dependence will be ₹ 6,88,500/-. The claimant has given evidence that she has spent about ₹ 2500/- as last rites. The same will be provided. For loss of estate, I will provide ₹ 5,000/- and award ₹ 1 lacs towards loss of consortium and ₹ 50,000/- each for loss of love and affection for three minor children. The total amount payable will be ₹ 8,46,000/-.

The amount shall bear interest @7.5% from the date of petition till the

date of payment. The compensation assessed will be distributed amongst wife, children and parents in such a way that the wife and children take twice as much as the parents. The liability shall be cast jointly and severally against the respondents and the right of recovery will be available to the insurance company against the owner-cum-driver.

4. The award passed by the Tribunal is set aside and the appeal is allowed.

(K. KANNAN)
JUDGE

August 07, 2015
Pankaj*