

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1984 of 2005 (O&M)
Date of Decision: May 11, 2015

Smt.Raj Bala Devi and others

...Appellants

Versus

Satish Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Harkesh Manuja, Advocate
for the appellants.

Mr.Surinder Saini, Advocate
for respondents No.1 and 2.

Ms.Madhu Sharma, Advocate
for respondent No.3.

INDERJIT SINGH, J.

Appellants Smt.Raj Bala Devi, Aman, Ankit, Sama Kaur and Ramehar have filed this appeal against respondents Satish Kumar, driver, Bijender Singh, owner and The Oriental Insurance Company Ltd., Insurer of offending truck bearing registration No.HR-46-1105, challenging the impugned Award dated 13.12.2004 passed by learned Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as 'Tribunal'), vide which the claim petition filed by the appellants under Section 166 of the Motor Vehicles Act was dismissed.

Notice of motion was issued. Learned counsel respondents appeared and contested the appeal.

The brief facts of the case are that claimants Smt.Raj Bala

and others filed claim petition against Satish Kumar, driver of truck bearing registration No.HR-46-1105 (offending vehicle), Bijender Singh, owner and the Oriental Insurance Company Ltd., Insurer of offending vehicle, by stating that in the night intervening 25/26.06.2003, Upender Singh along with two labourers was returning after unloading his tractor-trolley from Gharwathi brick kiln to Rohtak and the tractor was being driven by Upender Singh. When they reached between village Bhagwatipur and Samargopaipur, a truck being driven in rash and negligent manner, came from Jind side and struck with the tractor-trolley, as result of which, tractor-trolley became out of control and it ran over Upender Singh and he died on account of injuries suffered by him. FIR No.134 dated 26.06.2003 was lodged against respondent-driver. It is also stated in the claim petition that deceased was aged about 30 years and was earlier serving in Haryana Police and his monthly income at the time of accident was ₹10,000/-. A sum of ₹20,000/- was incurred on transportation of the dead body and last rites.

Respondents driver and owner filed written statement and took preliminary objections of maintainability and denied the accident itself. It is further stated that respondent-driver was holding a valid driving licence. It is also stated that tractor driver was driving the tractor-trolley at a fast speed and there was no fault of truck driver.

Respondent Insurance Company filed separate written statement and took plea that truck bearing registration No.HR-46-1105 was not involved in the accident.

In order to prove their case, claimants examined PW-1 Mool Chand, eye witness and one of the claimant Raj Bala examined herself as PW-2 and closed their evidence.

On the other hand, respondent-driver examined himself as RW-1 and Bhup Singh, Criminal Ahlmad as RW-2.

Learned Tribunal after appreciating the evidence, found that respondent-driver was falsely involved in this case just to cause claimants get compensation for this accident and it is also held that accident was neither caused by respondent-driver nor truck bearing registration No.HR-46-1105 was involved in the accident.

I have heard learned counsel for the appellants as well as learned counsel for respondent No.3 and have gone through the record.

From the record, I find that it is admitted fact that FIR No.134 dated 26.06.2003 was registered against respondent-driver. This FIR was registered against unknown driver/truck. The accident had taken place on the intervening night of 25/26.06.2003 and the FIR was registered on 26.06.2003 i.e. without any delay. It is not necessary that name of the truck driver or number of the vehicle must be written in the FIR. PW-1 Mool Chand, who is the eye witness, has deposed regarding the accident and further deposed that the accident had taken place due to rash and negligent driving of respondent-driver Satish Kumar. RW-2 Bhup Singh, Criminal Ahlmad has brought the record regarding FIR No.134 dated 26.06.2003 under Sections 279, 337 and 304-A IPC registered at Police Station Sadar, Rohtak and

deposed that case was pending in the Court of Chief Judicial Magistrate, Rohtak. He further deposed that accused was arrested on 18.08.2003. Statement of PW-1 Mool Chand so recorded by police on 04.07.2003 under Section 161 Cr.P.C. has also been brought on record, in which he stated that he was also travelling on the said truck.

In view of the fact that respondent-driver has been arrested in this case and after investigation, a criminal case has been filed on the basis of that FIR and trial is going on and further in view of the statement of Mool Chand, eye witness in this case and further the fact that statement of Mool Chand was also recorded by the police under Section 161 Cr.P.C. during the investigation, it is clear that the presence of Mool Chand on the spot and the fact that he has seen the accident, cannot be doubted.

Satish Kumar respondent-driver, who appeared as witness before the Tribunal has stated that the accident was caused due to sole fault of tractor driver but in the written statement, his version is that no such accident took place. If he has seen the accident or his truck was not involved, then how he can say that accident occurred due to sole fault of tractor driver. The Tribunal has wrongly reached to the conclusion that accident has not occurred by rash and negligent driving of offending truck by respondent-driver.

The Insurance Company has taken the plea regarding collusion of driver and owner with the claimants, but there is no evidence on record to prove the same.

In view of the above discussion, I find that the findings

given by the Tribunal are incorrect, not as per evidence and law and the same are set aside.

As per the evidence, the deceased was driving the tractor-trolley, therefore, he might be earning ₹3000/- per month and his income is assessed as ₹3000/- per month. There are five claimants, therefore, after deducting 1/4th which the deceased might be spending on himself, dependency comes to ₹2250/- per month i.e. ₹27,000/- per annum. In view of the age group of the deceased, multiplier of 17 would apply and compensation comes to ₹4,59,000/-. The claimants are further entitled to compensation of ₹25,000/- as funeral expenses and ₹1 lac as loss of consortium as has been held by the Hon'ble Supreme Court in ***Rajesh and others vs. Rajbir Singh and others, 2013(3) RCR (Civil) 170***. The claimants are further entitled to ₹1 lac for loss of love and affection.

In view of the above discussion, the present appeal is allowed accordingly. The claimants-appellants are entitled to total compensation of ₹6,84,000/- along with interest @ 6% per annum from the date of filing of the claim petition till its realization. The respondents are jointly and severally liable to pay. Out of the compensation amount, ₹3 lac be given to widow, ₹1.5 lacs each to each minor, ₹50,000 to mother and ₹34,000/- to father of the deceased. The share of the minors, if they are still minor, be deposited in the shape of FDR in a nationalized bank till they attain majority.

May 11, 2015

Vgulati

**(INDERJIT SINGH)
JUDGE**