

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

FAO No.4466 of 2008 (O&M)

Paramjit Kaur @ Shakkuntla and others

...Appellants

Versus

Shinda Singh and others

...Respondents

(2)

FAO No.4847 of 2008 (O&M)

Amit Kumar

...Appellant

Versus

Shinda Singh and others

...Respondents

Date of Decision: May 12, 2015

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashok Jindal, Advocate
for the appellants.

Ms.Vandana Malhotra, Advocate
for respondent No.3.

INDERJIT SINGH, J.

Both the above-mentioned FAOs are taken up together for disposal being arisen from same Award.

During arguments, learned counsel for the appellants has placed on record certain documents and the same being pertaining to the record of the Tribunal are taken on record and treated as reconstructed.

FAO No.4466 of 2008 has been filed by appellants-claimants Paramjit Kaur @ Shakkuntla and others against respondents Shinda Singh driver, Ved Pal owner and United India Insurance Company Limited, Insurer of the Canter No.RJ-12G-7236 (offending vehicle) challenging the impugned Award dated 22.07.2008 passed by learned Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'Tribunal'), for enhancement of the compensation amount.

FAO No.4847 of 2008 has been filed by appellant-claimant Amit Kumar against same respondents as stated above (in FAO No.4466 of 2008) challenging the same Award for enhancement of the compensation amount.

The Registry is directed to arrange and page mark the documents as per sequence.

The common facts of both the cases are that on 08/09.10.2005, Bawa Singh and Nirvail Singh along with Mansar Dass, Shambhu, Karamjit Singh and Bhola Singh were going towards Barnala in Indica Car bearing registration No.HR-01Q-5829, which was being driven by Bawa Singh. When they reached near Rampura-Barnala main road at about 12.00 a.m., then a Canter bearing registration No.RJ-13G-7236 came from opposite side being driven by respondent-driver in rash, negligent and zig zag manner at a very high speed, which became out of control and struck with the car, which was on its left side, as a result of which, Bawa Singh and Nirvail Singh received multiple fatal injuries. Binder Singh was following Bawa

Singh in another car, who reported the matter to the police and FIR was recorded.

In the claim petition filed by Paramjit Kaur and others, it is stated that Bawa Singh @ Balwinder Singh was serving as driver and getting salary of ₹3300/- per month. Amit Kumar claimant claimed ₹3,20,000/- as damages to the car bearing registration No.HR-01Q-5829.

In the claim petition filed by Paramjit Kaur and others, driver and owner were impleaded as respondents No.1 and 2 respectively and United India Insurance Company (insurer of Canter) as respondent No.3. Amit Kumar, owner and IFFCO TOKIO General Insurance Company Limited, Insurer of the Indica Car, were impleaded as respondent No.4 and 5 respectively and claim petition has been filed under Section 163-A of the Motor Vehicles Act.

In another claim petition filed by Amit Kumar, driver and owner were impleaded as respondents No.1 and 2 respectively and United India Insurance Company (insurer of Canter) was impleaded as respondent No.3, whereas IFFCO TOKIO General Insurance Company Limited, Insurer of the Indica Car was impleaded as respondent No.4.

In the written statement, respondents driver and owner denied the accident with the Canter. Respondent No.3 filed separate written statement denying the accident and took the plea that the accident occurred due to contributory negligence.

Learned Tribunal, after appreciating the evidence on

record, held that the accident occurred due to contributory negligence of drivers of both the vehicles and total amount of compensation regarding damage to the car was assessed at ₹1,70,000/- and while assessing contributory negligence, an amount of ₹85,000/- has been awarded to claimant Amit Kumar.

As regarding the claim petition filed by Paramjit Kaur and others, the Tribunal took the age of the deceased as 27 years and assessed his income as ₹3000/- per month. Multiplier of 18 has been applied and the Tribunal awarded ₹4,32,000/- to the claimants Paramjit Kaur and others.

Aggrieved from the above said Award, present appeals have been filed by the claimants for enhancement of the compensation.

Notice of motion was issued and learned counsel for respondent No.3-Insurance Company appeared and contested the appeals. FAO No.4847 of 2008 was also admitted.

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

As regarding FAO No.4847 of 2008, I find that the Tribunal on the basis of evidence held that accident had occurred due to contributory negligence. The perusal of the record shows that there is no plea of respondent driver of the Canter regarding contributory negligence in the written statement. Even, when the driver of the Canter namely Shinda Singh came in the witness box, no such plea of contributory negligence has been taken by him. Rather, he denied the

accident, though in the cross-examination, he admitted the accident. When no plea is taken by the driver nor there is an iota of evidence regarding contributory negligence led by the respondents, the findings of the Tribunal that it is case of contributory negligence only on the ground that the Canter fell on the left side, are not as per evidence. If there is any pleading regarding contributory negligence or from the evidence of claimants or from the cross-examinations of the witnesses, it is clear that it is case of contributory negligence, only then the Tribunal can give the finding of contributory negligence. The Tribunal cannot presume some of the facts when there is no pleading or evidence on the record nor the facts itself show that both the drivers of the vehicles are negligent for accident like head on collision in middle of the road etc. There is nothing on the record to disbelieve the version of the eye witness. Therefore, the findings of the Tribunal regarding contributory negligence, are set aside. The accident had occurred due to the negligence of Shinda Singh, driver of the Canter i.e. offending vehicle. Therefore, claimant Amit Kumar is entitled to the compensation of ₹1,70,000/- for the damages to the car along with interest @ 9% on the enhanced amount from the date of filing the claim petition till its realization. FAO No.4847 of 2008 is allowed accordingly.

As regarding FAO No.4466 of 2008 filed by Paramjit Kaur and others on account of death of Bawa Singh, I find that claimants have filed the claim petition under Section 163-A of the Motor Vehicles Act. The income of the deceased was given as ₹3300/- per month and

the Tribunal, on the basis of evidence, has correctly taken the income as ₹3000/- per month. Keeping in view the age of the deceased, multiplier of 18 has been applied and it cannot be held that compensation has been awarded on the lower side.

As regarding the argument, that no funeral expenses and no compensation on the ground of loss of consortium had been awarded, I find that as per Schedule II attached to the Motor Vehicles Act, the claimants are entitled to ₹2000/- as funeral expenses and ₹5000/- for loss of consortium. Therefore, the claimants Paramjit Kaur and others are held entitled to enhancement of ₹7000/- along with the interest @ 9% from the date of filing of claim petition till its realization. The enhanced amount be disbursed to the claimants proportionately as per Award of the Tribunal. Therefore, FAO No.4466 of 2008 is allowed accordingly.

May 12, 2015
Vgulati

(INDERJIT SINGH)
JUDGE