

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Dated of decision : 24.7.2015

FAO No. 5299 of 2008 (O/M)

Bhagwan and others

..... Appellants

Versus

Mukesh Kumar and others

..... Respondents

FAO No. 3374 of 2010 (O/M)

Subhash Chander and another

..... Appellants

Versus

Mukesh Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Yadav, Advocate, for,
Mr. R.D. Yadav, Advocate, for the appellants
FAO No. 5299 of 2008 and for respondents No. 2 to 4
in FAO No. 3374 of 2010.

Mr. S.S. Khurana, Advocate, for the appellants
in FAO No. 3374 of 2010 and
for respondents No. 4 and 5 in FAO No. 5299 of 2008.

Mr. Arun Yadav, Advocate, for respondent No. 2 in
FAO No. 5299 of 2008 and for respondent No. 5 in
FAO No. 3374 of 2010.

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 ?

-. -

-. -

KULDIP SINGH, J. (ORAL)

This order of mine shall dispose of FAO No. 5299 of
2008 titled as Bhagwan and others Versus Mukesh Kumar and
others and FAO No. 3374 of 2010 titled as Subhash Chander and

another Versus Mukesh Kumar and others filed against the same award dated 1.10.2008, passed by the Motor Accident Claims Tribunal, Rewari (in short 'the Tribunal'), vide which compensation to the tune of Rs. 2,35,400/- alongwith interest at the rate of 6% per annum from the date of filing the claim petition till its realization was awarded in favour of the claimants-appellants Subhash Chander and Smt. Ramesh Devi on account of death of their 22 years old son, namely, Kuldeep on 15.4.2006. In FAO No. 3374 of 2010, claimants are seeking the enhancement of compensation, whereas in FAO No. 5299 of 2008, Bhagwan and others, who are the registered owner of offending tractor claim that the subsequent purchaser Budh Ram should be made liable to pay the amount of compensation. The Tribunal had ordered that respondents No. 1 to 5, i.e. the driver of the offending tractor, registered owners Bhagwan, Ramphal and Rajinder sons of Matadin and the subsequent purchaser Budh Ram shall be liable to pay the compensation jointly and severally.

Brief facts of the case are that on 15.4.2006, Kuldeep (deceased), aged about 22 years old, was going towards his village Pranpura on his motorcycle bearing registration No. HR-35-C-5577. At about 7:15 PM, in the area of village Mundi, he was hit by a tractor bearing registration No. RJ-02-8702, being driven in rash and negligent manner by Mukesh Kumar (respondent). Kuldeep received multiple injuries and while being removed to General

Hospital, Rewari, he succumbed to the injuries. FIR No. 57 dated 15.4.2006 under Sections 279/304-A IPC was registered at Police Station Khol. It was claimed that respondents No. 2 to 4, namely, Bhagwan, Ramphal and Rajinder, sons of Matadin are the registered owner of the offending tractor, whereas respondents No. 5 and 6 i.e. Budh Ram and Bhim Singh are the subsequent purchasers of the same.

In the written statement, respondent No. 1 driver took the plea that the deceased was driving the motorcycle at very high speed and the accident took place due to his negligence. Respondents No. 2 to 4, the registered owners, claimed that they had already sold the offending tractor to respondent No. 5 Budh Ram, who further sold the same to respondent No. 6 Bhim Singh. The police took the possession of the tractor from the custody of Bhim Singh. Budh Ram, who was respondent No. 5 before the Tribunal, claimed that he is not the owner of the offending tractor. He was never the owner of the offending tractor and has nothing to do with the offending tractor. Respondent No. 6 also denied that he is the owner of the offending tractor. Here it is added that the offending tractor was not insured with any insurance company.

From the pleading, following issues were framed :-

- “1. Whether the accident in question resulting into the death of Kuldeep s/o Sh. Subhash Chand took place due to the rash and negligent driving of offending Tractor bearing

registration No. RJ-02/8702 by its driver/respondent No.

1 ? OPP

2. Whether the petitioners are entitled to the compensation on account of death of Kuldeep s/o Subhash Chand and if so to what amount and from whom ? OPP.

3. Relief.”

The Tribunal assessed the income of the deceased as minimum wages i.e. Rs. 3,600/- per month. 1/3rd was deducted towards personal expenses and the dependency of the claimants/parents was assessed at Rs. 2,400/- per month. The multiplier of 8 was applied, as per the age of the parents and compensation to the tune of Rs. 2,30,400/- was awarded. Another sum of Rs. 5,000/- was awarded towards funeral expenses and total compensation of Rs. 2,35,400/- was awarded. At the same time, respondent No. 5 Bhim Singh was proved to be the subsequent purchaser in possession of the tractor. Therefore, respondents No. 1 to 5 were held liable to pay the compensation jointly and severally.

It comes out that Budh Ram (respondent No. 5) had challenged the award of the Tribunal by filing FAO No. 630 of 2009, which was decided on 17.2.2009. His claim that he is not the owner of the offending tractor was negated and his appeal was dismissed by a Single Bench of this Court, vide order dated 17.2.2009.

I have heard learned counsel for the parties and have also carefully gone through the file.

So far as the income of the deceased is concerned, in the absence of proof, the Tribunal was justified in taking his income as the minimum wages at that time, i.e. Rs. 3,600/- per month. Since the deceased was a bachelor, in place of 1/3rd, 1/2nd is to be deducted as personal expenses. Therefore, the dependency of the claimants comes to Rs. 1,800/-. The multiplier of 8, as per the age of the parents, was applied. As the deceased was 22 years of age, the multiplier of 18, as per age of deceased, is to be applied as per the authority of the Hon'ble Supreme Court in case of Smt. Sarla Verma and others Versus Delhi Transport Corporation and another, 2009 (3) RCR (Civil) 77 and followed by a Three-Judges Bench of the Apex Court in case of Munna Lal Jain and another Versus Vipin Kumar Sharma and others, in Civil Appeal No. 4497 of 2015, decided on 15.5.2015. Thus, the amount of compensation comes to Rs. $1,800 \times 12 \times 18 =$ Rs. 3,88,800/-. In place of Rs. 5,000/-, Rs. 25,000/- towards funeral expenses and last rites are allowed. Rs. 1,00,000/- towards loss of love and affection to the parents are also allowed. Thus, the total amount of compensation comes to Rs. 5,13,800/-. The claimants shall be entitled to recover the same.

Now, coming to the question of liability, it comes out that the appeal of Budh Ram has already been dismissed on 17.2.2009 by a Single Bench of this Court in FAO No. 630 of 2009. However, there is evidence on file in the form of statement of Ashok Kumar Sharma, Senior Manager, Punjab National Bank, Kahirthal (RW2) to

the effect that Budh Ram had obtained the loan against the said tractor and that he had been repaying the same. Therefore, Budh Ram is apparently subsequent purchaser/owner.

Learned counsel for the appellants relied upon the authority of the Apex Court in HDFC Bank Limited Versus Kumari Reshma and others, 2015 (1) PLR 366. However, in this case, it is proved from the facts that Budh Ram is the subsequent purchaser. He was in possession of the tractor and he had been repaying the loan against the said tractor. Therefore, he is liable to pay the compensation jointly and severally with the driver of the tractor i.e. Mukesh Kumar (respondent). The enhanced compensation shall be paid with interest at the rate 7.5% from the date of filing the claim petition till its realization.

Consequently, FAO No. 3374 of 2010, filed by the claimants/appellant is allowed and FAO No. 5299 of 2008, filed by the registered owners of the tractor is allowed to the abovesaid extent.

(KULDIP SINGH)
JUDGE

24.7.2015
sjks