

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1)

FAO No.6928 of 2010 (O&M)
Date of Decision:20.02.2015

Mandeep Kaur and another

....Appellants

Versus

Union of India

....Respondent

(2)

FAO No.6929 of 2010 (O&M)

Mandeep Kaur and another

....Appellants

Versus

Union of India

....Respondent

(3)

FAO No.6930 of 2010 (O&M)

Lakhwinder Singh

....Appellant

Versus

Union of India

....Respondent

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Rajinder Kumar Singla, Advocate for the appellant(s).

Mr. Sandeep Vermani, Advocate for the respondent.

NAVITA SINGH, J.

1. An accident on the road took place on 10.8.2006 when car No. DL-3CU-5128 being driven by deceased Kuldeep Singh had hit a train at an unmanned railway crossing. The deceased at that time was accompanied by his wife and son. Three claim petitions were filed, one by the widow and son for compensation for the death of Kuldeep Singh, another for compensation towards damage to the car and yet another for compensation on account of the injuries received by Lakhwinder Singh. The Motor Accident Claims Tribunal, Sangrur

(Tribunal for short) awarded an amount of Rs.50,000/- for the death of Kuldeep Singh on account of no fault liability but dismissed the other two petitions. The appellants came up in appeal in all the claim petitions i.e. for enhancement in the case of compensation for death of Kuldeep Singh and against the dismissal order in the other two claim petitions.

2. Counsel for the appellants argued that the deceased was hit by a moving train at an unmanned crossing and, therefore, he was wrongly held by the Tribunal to be solely negligent as he did not take proper care before crossing the railway line. He did not check both sides whether any train was coming or not. It was contended that even if it be so, it was the case of composite negligent because the Railways were also negligent in not putting up any indication about the unmanned railway crossing and in the train driver not slowing down the train while passing from that part.

3. It was further argued on behalf of the appellants that it had come in the statement of RW1, who was the Assistant Driver at that time, that the crossing was unmanned and that there was no indication of any sort. The statement of the said witness, however, shows that he had not mentioned anything about absence of signboard nor any such question was put to him in the cross examination. He rather stated that the car driver should have stopped first at the crossing and should have crossed after checking both the sides whether any train was approaching. The driver had blown the whistle from a distance of more than half a kilometer and also no crop was standing in the fields near the crossing as alleged by the claimants. Their case was that crop was standing and vision was, therefore, blocked.

4. It was then argued that it was held in United India Insurance Co. Ltd. Vs. Premakumaran and others 1988 ACJ 597 and Parikhita Behera and another

Vs. Divisional Railway Manager, South Eastern Railway and others 1998 ACJ 1019 that if accident had taken place at a level crossing which was unmanned, the Railways were to pay compensation as they were negligent in keeping the level crossing unmanned. In the case decided by the High Court of Kerala, it was held to be composite negligence. In any case, both the judgments are not by the Supreme Court and the facts are also different.

5. Counsel for the appellants lastly and repeatedly argued that the inquest report Ex.P1 contained a site plan which showed that there was a blind curve, which would mean that the car driver could not have seen the level crossing. The document i.e. the site plan, which is part of the inquest report, however, shows that curve was not blind. The view of the deceased was, therefore, not blocked on account of that.

6. Counsel for the other side pointed out that it came in the statement of Mandeep Kaur, widow of Kuldeep Singh, who appeared as AW1 that her husband had not stopped the car before crossing the railway line. They had not seen on either side whether any train was approaching or not and she admitted that the driver had been blowing the whistle and was blowing it prior to the moment of accident. Thus, even if it be taken that the railway people were negligent in not manning the level crossing, the admission on the part of Mandeep Kaur, appellant, proved that her husband was negligent in entirety for causing the accident. The question here was not whether there were any signboards or whether the accident could otherwise have been averted but was that the deceased did not bother to be careful while crossing railway line. It was not the case of the appellants that they were new to the place and were not even aware that an unmanned level crossing existed.

7. The Tribunal definitely did not err in holding that the accident took place due to sole negligence of the deceased and in awarding compensation only for a use of the vehicle and no fault liability. Damage to the car was also result of negligence of the deceased. So far as injured Lakhwinder Singh was concerned, there was no proof of permanent disablement and as such nothing was awarded to him and rightly so.

8. All the appeals are dismissed.

(NAVITA SINGH)
JUDGE

20.02.2015
Ishwar

Whether to be referred to reporter: Yes