

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6064 of 2012 (O/M)
Date of decision : 2.7.2015

Smt. Saliman and another

..... Appellants

Versus

Ayub and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Randhir Singh Hooda, Advocate, for the appellants.

None for respondents.

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 ?

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KULDIP SINGH, J. (ORAL)

Claimants/appellants have filed this appeal against the award dated 31.8.2012, passed by the Motor Accident Claims Tribunal, (in short 'the Tribunal'), Nuh, District Mewat, vide which the claim petition filed by the claimants/appellants under Section 166 of the Motor Vehicle Act, 1988, was dismissed.

The brief facts are that on 3.11.2009, Sazid @ Sazid Hussain (since deceased) accompanied by his uncle Abdul Gaffar boarded a three wheeler from Utawar to Nuh, at about 5:00/5:15

PM. When the said three wheeler reached towards Adbar in the area of Nuh, the offending truck bearing registration No. HR-55-D-5882, being driven rashly and negligently by respondent No. 2 hit the said three wheeler. As a result of the said accident, the said Sazid @ Sazid Hussain received injuries. Initially, he was removed to Civil Hospital, Nuh, but from there he was referred to District Hospital, Gurgaon. However, he succumbed to the injuries on way to District Hospital, Gurgaon. It is stated that the deceased was 18 years of age and was a labourer and was earning Rs. 4,000/- per month. FIR No. 405 dated 4.11.2009 was registered at Police Station Nuh.

In the written statement, respondents No. 1 and 2 took the plea that the vehicle of respondent has been falsely implicated. It was stated that the actual driver of the offending vehicle ran away from the spot. Respondent No. 3-insurance company took the plea that the truck bearing registration No. HR-55-D-8558 was not involved in the accident. The factum of accident and injuries received by the deceased was also denied. The other objections were also taken and it was stated that truck bearing registration No. HR-55-D-5882 was not insured with the insurance company. It was further stated that as per the FIR, the accident, if any, was caused by truck bearing registration No. HR-55-B-5882.

From the pleadings, following issues were framed :-

“1. Whether accident in question resulting the death of

Sazid @ Sazid Hussain son of Sh. Hanif, took place on 3.11.2009 at about 5/5.15 p.m. toward ½ km Adbar from Nehar pool in the area of Nuh, District Mewat, because of rash and negligent driving of truck bearing registration No. HR-55-D-5882 by its driver-respondent No. 2 ? OPP

2. If issue No. 1 is proved, whether the petitioners are entitled to get compensation. If so to what extent and from whom ? OPP

3. Whether the respondent No. 2 was not holding a valid and effective driving licence at the time of alleged accident. If so to what effect ? OPR (3)

4. Whether the respondent No. 3 is not liable to make payment of any compensation on account of alleged violation of terms and conditions of insurance policy by respondent No. 1. OPR (3)

5. Relief.”

The Tribunal came to the conclusion that truck bearing registration No. HR-55-D-5882 was not involved in the accident and as such, the claim petition was dismissed. Against the said order, the claimants/appellants have come up in appeal.

Respondents did not appear, despite service and were proceeded against ex-parte.

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

The Tribunal dismissed the claim petition on the ground that in the FIR, the number of offending vehicle was mentioned as HR-55-B-5882, while in the claim petition, the number of the offending vehicle is given that of HR-55-D-5882. Both the trucks,

however, belonged to the same owner.

I am of the view that the Tribunal took technical view of the matter. The owner Ayub owned two trucks, one bearing registration No. HR-55-B-5882 and the other having registration No. HR-55-D-5882. The error in the FIR is not to be magnified to dismiss the claim petition. It is clear that Sazid @ Sazid Hussain was involved in the motor vehicle accident and he died. The driver and owner are the same. It is not the case that some other person was driving the offending truck. Therefore, the Tribunal grossly erred in dismissing the claim petition in toto. There could be misreading of the registration number of the offending vehicle when the accident took place and the possibility is there that in place of 'D', letter 'B' was read after '55' in the registration number. It is not proved that some other person was driving the truck. The owner is also the same.

Before the Tribunal, it was proved by Amit Kumar (PW4) that after the investigation, the police presented challan against Mohd. Ateek (respondent) on the basis of FIR No. 405 dated 4.11.2009 registered under Sections 279/304-A IPC at Police Station Nuh. The charges have also been framed and the case is fixed for prosecution evidence. During the said investigation, it was found that truck bearing registration No. HR-55-D-5882 was involved in the accident. Therefore, the same was taken into possession and taken back on *Superdari* by its owner Ayub (respondent No. 1).

I am of view that even if entirely wrong number of the offending vehicle is mentioned in the FIR for one or the other reasons, the police during investigation can always find out as to which vehicle was involved in the accident. The numbers HR-55-D-5882 and HR-55-B-5882 appear similar and this error of number could not have been magnified. Hence, it is held that truck bearing registration No. HR-55-D-5882 was involved in the accident. Consequently, the findings of the Tribunal in this regard are reversed.

Now, coming to the compensation part, it comes out that the deceased was 18 years of age and was a labourer. Therefore, the minimum wages, as applicable in the year 2009, are to be assessed, which were around Rs. 3,500/- per month. 50% i.e. Rs. 1,750/- is added on account of future prospects. The income of the deceased comes to Rs. 5,250/- per month, from which 50% is deducted as personal expenses. The dependency of the claimants comes to Rs. 2,625/- per month. The multiplier of '18' is to be applied. The amount of compensation comes to Rs. $2,625 \times 12 \times 18$ = Rs. 5,67,000/-. Rs. 1,00,000/- on account of love and affection to the parents are allowed. Rs. 25,000/- on account on funeral expenses are allowed. The total compensation comes to Rs. 5,67,000/- + Rs. 1,00,000/- + Rs. 25,000/- = Rs. 6,92,000/-. Since as per Ex.R2, the offending vehicle bearing registration No. HR-55-D-5882 was insured with the respondent-insurance company,

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authenticity of this document

therefore, respondent-insurance company shall be liable to pay the amount of compensation to the claimants with interest @ 7.5% from the date of filing of the claim petition till its realization.

The appeal is accordingly allowed.

(KULDIP SINGH)
JUDGE

2.7.2015
sjks