

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 6243 of 2013 (O&M)

Date of decision : 18.08.2015

Baldev Singh

.....Appellant

Versus

Abdul Razak and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Manfaid Khan, Advocate for
Mr. A.K. Jain, Advocate
for the appellantss.

Mr. Navin Kapur, Advocate
for respondent No. 2.

LISA GILL, J.

Present appeal has been filed by the appellant – Baldev Singh praying for enhancement of the compensation awarded by the learned Motor Accident Claims Tribunal, Jind (hereinafter referred to as the 'Tribunal') vide award dated 09.11.2012 in respect to the death of a buffalo owned by him.

Brief facts as revealed in the claim petition filed under Section 166 of the Motors Vehicle Act, 1988 are that the appellant claimed that when he alongwith his buffalo reached Uchana -Budain road on 01.12.2011 at about 7.00 a.m. a Tata Magic vehicle bearing registration No. HR-56A-1790 owned and driven by respondent No.

1 – Abdul Razak was being driven in a rash and negligent manner. Despite signal by the appellant, it struck against his buffalo. Due to the injuries sustained, the buffalo died at the spot. DDR No. 4 was lodged at Police Post, Uchana Mandi. As per the said DDR lodged at the behest of the appellant, two buffaloes started fighting with each other on the road, one being pushed by the other as a result of which one of the buffaloes came in front of the running vehicle all of a sudden suffering injuries and consequently died at the spot. Post Mortem Examination of the dead buffalo was conducted by Veterinary Surgeon, Government Hospital, Uchana Kalan. Appellant filed the claim petition praying for compensation on account of death of his buffalo besides mental agony suffered by him.

Respondents contested the claim petition by filing separate written statements. Driver-cum-owner of the vehicle – respondent No. 1 denied the contents of the claim petition completely claiming that a false DDR had been lodged by the claimant with ulterior motive to extract compensation. It was revealed that the vehicle in question was insured by respondent No. 2. Respondent – insurance company which also denied the accident and claimed that it was the claimant himself who was at fault. Driver of the vehicle in any case cannot be held guilty for the alleged accident caused by buffaloes coming in front of the said vehicle suddenly.

Insurance company also denied its liability to pay the compensation on the ground that the vehicle was being plied in contravention of terms and conditions of the insurance policy.

Following issues were framed by the Tribunal:-

1. Whether the accident in question was caused by respondent No. 1 while driving Tata Magic No. HR-56A-1790 in a rash and negligent manner causing death of buffalo of claimant Baldev Singh, as alleged? OPP
2. If issue no. 1 is proved, whether claimant Baldev Singh is entitled to any compensation and if so, to what extent and from whom? OPP
3. Whether respondent no. 1 had violated any terms and conditions of insurance policy? OPR-2
4. Relief.

Learned Tribunal on considering the facts and circumstances concluded that both respondent No. 1 i.e. owner and driver of the vehicle as well as the claimant – appellant were equally responsible in causing the accident. Therefore, negligence was apportioned in ratio of 50:50. Value of the deceased buffalo was assessed as ₹75,000/- on the basis of evidence on record and a sum of ₹37,500/- i.e. 50% thereof was awarded to the appellant. Aggrieved therefrom present appeal has been preferred.

Learned counsel for the appellant vehemently argues that contributory negligence on the part of the appellant is not proved on record. Therefore, the Tribunal has grossly erred in depriving the appellant of 50% of the compensation amount. It is further submitted that the buffalo was carrying a male foetus approximately 9½ months which also died. No compensation has been accorded on that count. No other argument has been raised.

I have heard learned counsel for the appellant and perused the file.

Ex. P1 DDR No. 4, which was registered at the behest of

the claimant in regard to the alleged accident shows that the claimant has himself mentioned that the accident took place due to his deceased buffalo fighting with another one. As a result thereof, his buffalo struck against the vehicle in question resulting in its death and damage to the vehicle. He has admitted in his cross examination that the alleged accident took place due to scuffle of two buffaloes. No fault can be found with the finding that the deceased buffalo was permitted to traverse the road with much vehicular traffic in such a casual and routine manner. It is the duty of the owner to have taken proper care and caution in such a situation. It is to be noted that respondent No. 1 did not flee from the spot. He accompanied the claimant to the police post. Damage was caused to his vehicle as well. There is nothing on record which would persuade this Court to take a contrary view.

In respect to the quantum of compensation, value of the deceased buffalo aged five years has been assessed by PW3 S.S. Duhan, Veterinary Surgeon. Assessment is Ex. P2. There is a specific reference to a male foetus of about 9½ months dying in the uterus in Ex. P2 as well as in the testimony of PW3. It is, thus, evident that the value has been arrived at after taking all the facts and circumstances into consideration including the dead foetus.

It is relevant to note that PW2, the claimant disclosed that he purchased the said buffalo for a sum of ₹65,000/- one and a half year prior to the death but no documentary evidence to this effect is available.

Learned counsel for the appellant is unable to point out

any infirmity or illegality in the quantum of compensation assessed by the learned Tribunal. There is no evidence on record to enhance the compensation so awarded. There being no infirmity or illegality in the impugned award, which warrants interference by this Court, present appeal is dismissed.

August 18, 2015
rts

(Lisa Gill)
Judge