

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 5295 of 2003 (O&M)
Date of Decision: 04.11.2016

Smt. Savitri Devi and others

... Appellants

Vs.

Dharambir and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sagar Aggarwal, Advocate,
for the appellants.

Respondent No. 1 already proceeded *ex parte*.

Mr. D.K. Dogra, Advocate,
for respondent No. 3.

Amol Rattan Singh, J.

This is an appeal of the claimants before the Motor Accidents Claims Tribunal, Karnal, seeking enhancement of the compensation awarded by the learned Tribunal, vide the impugned Award, of an amount of Rs.2,97,500/-. The said compensation was awarded on account of the death of Shamsher Singh, husband of the first appellant and father of appellants-claimants no.2 to 6, in a motor vehicle accident that took place on 01.11.1998. The claim petition was filed under Section 163-A of the Motor

Vehicles Act, 1988 (hereinafter to be referred to as the Act), and not under Section 166 thereof.

2. The facts, leading up to the filing of the claim petition, as taken from the impugned Award, are that Shamsheer Singh is stated to have been travelling on a TATA 407 vehicle bearing registration no.HR-26-3055, going to Azadpur Mandi, Delhi, to sell his vegetables which were packed in bags. The vehicle was driven by respondent no.1, Dharamvir, owned by respondent no.2 and insured by respondent no.3.

Sukhbir Singh and Ram Phal were also stated to be travelling in the said vehicle which was allegedly being driven by respondent no.1 in a rash and negligent manner. It was further stated that despite being advised to drive carefully, the said respondent paid no heed to the advice, and eventually, the vehicle turned turtle and its occupants received injuries to which Shamsheer Singh unfortunately succumbed on the spot itself.

3. It was contended that he was an agriculturist who used to earn Rs.15,000/- per month and that as he had died due to the rash and negligent driving of respondent no.1, the six claimants, i.e. his wife and children, were entitled to a compensation of Rs.10,00,000/-.

4. Notice having been issued in the claim petition, respondents no.1 and 2 did not appear and were proceeded against *ex parte*.

5. The insurance company, i.e. respondent no.3, contested the petition by filing its written statement, taking preliminary objections regarding locus standi, mis-joinder etc.

The accident itself was denied, alleging further that the “vehicle

had been falsely implicated” in the accident in connivance with respondents no.1 and 2.

It was further contended by the insurance company that respondent no.1 was also not holding a valid and effective driving licence at the time of the alleged accident.

6. The following issues were consequently framed by the Tribunal:-

- “1. Whether the accident was caused by respondent no.1 Dharamvir while driving four-wheeler No.HR-26-3055 rashly and negligently resulting into death of deceased Shamsher Singh, as alleged? OPPs
2. Whether the petitioners are entitled to receive any compensation amount. If so, how much and from whom? OPPs
3. Whether the claim petition is not maintainable in the present form? OPR3
4. Whether the petitioners have no locus standi to file the present petition? OPR3
5. Whether the petitioners have filed this claim petition in collusion with respondents no.1 and 2, as alleged. If so to what effect? OPR3
6. Whether respondent no.1 was not holding a valid and effective driving licence to drive the four wheeler at the time of accident, as alleged. If so to what effect? OPR3
7. Relief.”

7. The appellants-claimants examined appellant no.1 as PW3 and the eye witness, Ram Phal, as PW2, who deposed in terms of the claim petition, including the negligence of respondent no.1, but also stating that

when the vehicle reached the Kundli border, the front wheel of the vehicle came off the axle, due to which it turned turtle leading to injuries to Shamsher Singh on his head.

Dr.Rajinder Mohan Sharma of Sharma Hospital, where Shamsher Singh was taken near the Kundli border itself, testified as PW1 and stated that Shamsher Singh was 40 years old and had been brought to hospital in an unconscious condition at about 11:00 p.m. on 01.11.1998 by one Tara Singh, and had died due to his injuries on 02.11.1998 at about 4:35 p.m. (This is recorded as such in the Award, though earlier on it is stated that Shamsher Singh died on the spot). The witness further testified that the history of the accident was given to the effect that the deceased had fallen from the tempo, following a sudden 'slip' of the rear wheel of the vehicle.

An additional Ahlmad from the Court of the learned Additional Chief Judicial Magistrate, Sonapat, also testified with regard to a criminal complaint filed by the first appellant, Savitri Devi, against respondent no.1, seeking his prosecution under Sections 279/304-A of the IPC. The witness further testified that the SHO, Police Station Rai, had been asked to investigate the matter and a report under Section 156 (3) of the Code of Criminal Procedure had been submitted, upon which the SHO was directed to register an FIR and to investigate the case.

As per the Award, the SHO, SI Ram Kishan, was also examined as PW5 and in his deposition, he testified that he had found in his investigation that the driver of the four-wheeler had driven the vehicle at a very high speed due to which he could not keep control over it and it turned

turtle near village Rasoi, leading to grievous injuries to Shamsheer Singh. This witness also testified that he had recorded the statement of Sukhbir Singh and Ram Phal, which he proved as Exs.P5 and P6 respectively.

8. The respondents did not lead any oral evidence but produced a copy of a complaint filed by the first appellant-claimant under Section 12 of the Consumer Protection Act, 1986, before the District Consumer Disputes Redressal Forum, alongwith the order passed by the Forum, as Exs. R1 and R3 respectively. The insurance policy was also tendered by way of documentary evidence as Ex.R4.

9. Having considered the pleadings and the evidence, the Tribunal held that the claim petition having been filed under Section 163-A of the Motor Vehicles Act (and not under Section 166), negligence in driving did not have to be proved, as long it was proved that the death of the deceased had taken place in a motor vehicle accident that took place with the vehicle in question.

Further, it was also observed, by citing a judgment of this Court in **Jaimal Singh and another v. State of Rajasthan and others** 1994 ACJ 447, that even if no case is registered by the police but evidence is led that there was no negligence on the part of the driver of the vehicle, he could still be held liable for his act of rash and negligent driving.

Eventually, it was held that the death of Shamsheer Singh occurred due to a motor vehicle accident involving the vehicle driven by respondent no.1 and owned by respondent no.2, and it had also been proved that there was negligent driving by respondent no.1 who had not bothered to

step into the witness box.

10. Noticing that it was contended by the first claimant, that Shamsher Singh was aged 40 to 42 years, had an income of Rs.15,000/- per month and that she had spent a sum of Rs.15,000/- on his funeral and last rites, it was further held that no evidence to that effect had been brought and as such, the income of the deceased could at best taken to be that of a daily wager @ Rs.2400/- per month, or Rs.28,800/- per annum.

1/3rd of the above amount was deducted by the Tribunal towards the personal living expenses of the deceased, thereby assessing the annual dependency of the claimants to be Rs.19,200/-.

Applying a multiplier of 15 to the aforesaid amount, the loss of income to the claimants was calculated to be sRs.2,88,000/-.

In addition to the above, Rs.5000/- was awarded to appellant no.1 herein towards loss of consortium, and the claimants were also held entitled to Rs.4500/- towards funeral expenses and loss of estate.

Thus, a total sum of Rs.2,97,500/-, alongwith interest @ 9% per annum thereupon, running from the date of the filing of the claim petition, till realisation of the amount, was awarded to the present appellants-claimants.

11. Further, first holding that there was insufficient evidence for proving connivance between the claimants and respondents no.1 & 2, the insurance company, i.e. respondent no.3, was held liable to indemnify the second respondent and to pay the compensation amount; however, thereafter, accepting the contention that passengers travelling in a goods vehicle are not

covered under the insurance policy, it was finally held that the insurance company was liable to pay compensation but thereafter was entitled to recover it from respondent no.2, i.e. the insured owner of the vehicle.

12. Before this Court, learned counsel for the appellants submitted that the maximum annual income to be taken, of a deceased in a claim petition filed under Section 163-A is Rs. 42,000/- and as such the assessment of Rs. 2400 per month (2400x12=28,800/-) is erroneous, as that is what should have been awarded, in view of the fact that the deceased had five minor children dependent upon him, in addition to his widow.

Learned counsel for the appellants further submitted that in terms of **Smt. Sarla Verma and others v. Delhi Transport Corporation and another** (2009) 6 SCC 121, the deduction towards the personal expenses of the deceased, where he had six dependents, should have been 1/4th.

13. Learned counsel for the respondent-insurance company on the other hand, submitted that once the claim petition was filed under Section 163-A, no compensation outside the schedule can be awarded and the compensation has been assessed correctly.

He further submitted that the claim petition being one under Section 163-A and not under Section 166 of the Act of 1988, the statutory mandate, as regards compensation to be awarded, has to be strictly adhered to, in terms of the 2nd Schedule of the Act.

He further submitted that in any case, if this Court comes to the conclusion that the compensation for any reason is to be enhanced, recovery

rights awarded by the Tribunal to the insurance company, i.e. respondent No.3, should be still maintained even qua the enhanced amount of compensation, if any.

14. I have heard learned counsel for the parties.

First of all, it is not in dispute that the petition was filed under Section 163-A of the Act and not under Section 166. Hence, even though negligence of respondent no.1 was attempted to be proved, and the Tribunal in fact, virtually held him guilty of negligent driving, such negligence cannot be looked at to determine compensation, which has to be awarded in terms of Section 163-A and the 2nd Schedule to the Act, which has been framed under that provision, w.e.f. 14.11.1994.

Section 163-A reads as follows:-

Special provisions as to payment of compensation on structured formula basis.-

“(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.— For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or

default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.]”

15. Thus, as per sub-section (1) of Section 163-A, compensation is to be awarded in terms of the 2nd Schedule appended to the Act. As per that schedule, where a deceased was 40-45 years of age, as in the present case (where the deceased was shown to be between 40-42 years), the multiplier to be applied is 15, to the last proved annual income of the deceased. It was claimed by the appellants before the Tribunal that the deceased was an agriculturalist possessing 8 acres of land, from which he was earning Rs. 15,000/- per month by way of agricultural income. However, no proof of possession of any agricultural land was shown before the learned Tribunal. Consequently, the Tribunal assessed the income of the deceased to be Rs.2,400/- per month, taking him to be a daily wager on the date of the accident, i.e. 01.11.1998.

As regards that assessment, in the absence of any other proof of income, I see no ground to enhance that amount, which even as per the minimum wages payable to a unskilled labourer in Haryana in the year 1998, is about Rs. 600/- over and above such minimum wages (which are shown to be Rs. 1,729.54 per month, as per the chart kept by this Court, derived from the notifications of the State of Haryana to that effect). Hence, for the reason that the income assessed is in fact above the minimum wages notified by the State of Haryana during the relevant period and further, the fact that in case

the deceased was an agriculturalist, even with no proof thereof, the land would still be available to the claimants for earning their income therefrom, I see no reason to interfere with the assessment made by the learned Tribunal under that head.

16. As regards the amount of Rs. 5,000/- awarded towards loss of consortium, Rs. 2,500/- for loss of estate and Rs. 2,000/- towards funeral expenses, I also see no ground to interfere and enhance the compensation awarded under the aforesaid heads by the Tribunal, in view of the fact that the date of the accident is only four years after Section 163-A and the Second Schedule to the Motor Vehicles Act came into force, w.e.f. 14.11.1994.

Without a doubt, the hon'ble Supreme Court in **Puttamma and others** vs. **K.L. Narayana Reddy and another** (2013) 15 SCC 45, has held that the schedule has now become unworkable and accordingly, even this Court has been awarding higher compensation under Clause 3 of the second schedule, where the accident took place five years and more after the schedule came into force.

However, that not being so in the present case and though undoubtedly even in four years some inflation would have taken place, requiring a revision of the amount of compensation in the second schedule, I find it inappropriate to do so in the present case, the accident being within five years of the schedule coming into force. Of course, in view of the fact that interest was also awarded by the Tribunal upon the compensation amount, at least some part of inflation would be offset by awarding of such interest, as regards the period after the accident.

17. Consequently, finding no ground to interfere with the Award of the Tribunal, the appeal is dismissed but with no order as to costs.

November 04, 2016
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes