

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.554 of 1994

Date of Decision.15.03.2016

Surjit Kaur and others

.....Appellants

Vs.

Amrik Singh and others

.....Respondents

Present: Mr. A.K. Khunger, Advocate
for the appellants.

Mr. Narinder S. Lucky, Advocate
for respondent No.1.

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

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The appeal is against the dismissal of the petition for claim made by the widow, daughter and two sons. The accident was said to have taken place at the time when the deceased was driving scooter and struck against 2nd respondent's truck driven by the 1st respondent which was coming from the opposite direction. The accident had taken place on 13.07.1991 at 10.30 AM and the FIR was lodged at 2.30 PM. The incident of accident itself was not denied but the driver placed reliance on the judgment of the Criminal Court that acquitted him which recorded the fact that that the body was seen on the right side of the road when according to the prosecution witnesses, the point of impact was on the left side of the road by a scooter coming on the left side. The Criminal Court had relied on the defence that the truck had been stationary and

the scooterist dashed against the truck and obtained fatal injuries.

2. The Tribunal recorded the point of law correctly that criminal court judgment cannot be binding on the Tribunal and it had to assess the quality of evidence brought before it on its own merits but all the same chose to reproduce criminal court finding to render dismissal of the petition. I find the approach to be wholly erroneous. There was a evidence placed through an eye witness who stated that collision had taken place when the truck coming from the opposite direction which was driven in a rash and negligent manner dashed against the scooterist and dragged him of a distance of 5 to 6 karams. If the truck had not been immediately stopped and it was dragging the person to a further distance, it can be imagined that the driver of the truck would be only attempting to steer to left side of the road and if the body had also been, therefore, pulled all the way and then tossed on the left side of the road by the truck then the situation could be visualized as natural and there was nothing artificial about a person coming on the left side of the road by scooter to be dragged to the opposite side by a vehicle coming from the opposite direction. If the fact of collision and death as resulting from the accident itself could not be impeached, then the Tribunal ought to have accepted that the accident was on account of negligent driving of the driver of the truck and ought not to have relied on the criminal court judgment of acquittal to toss out the petition itself. The Tribunal was unjustified in looking even for a delay of 3 to 4 hours in lodging the FIR as relevant especially when the involvement of the truck was never in challenge. It was not a case of hit and run where the identity of the vehicle which caused the accident was not established. The identity of

the truck as responsible for the collision was clearly available and I set aside the finding of the Tribunal and hold the driver of the truck to be responsible.

3. The claimants were widow, one daughter and two sons. The deceased was 28 years of age and was making a living by earning about ₹6000/- as Granthi. There was no clear proof available and I am prepared to accept that over a period of time, his average income would have been not less than ₹4000/- per month. I will apply 1/4th deduction and apply a multiplier of 17 to assess the loss of dependence at ₹6,12,000/-. I will provide for ₹1,00,000/- towards loss of consortium and ₹25,000/- for each one of the children towards loss of love and affection although the present dispensation provides for a higher sum. I believe, however, that provision for interest for all the period from the time when the accident took place on 13.07.1991 will itself provide the component of love and affection to the sum which are now being determined. I will also provide for ₹5,000/- towards loss to estate and ₹10,000/- towards funeral expenses. The total compensation payable shall be ₹8,02,000/- and the same amount will be distributed equally amongst all the claimants. The liability shall be on the insurance company. The amount now determined shall also attract interest @7.5% from the date of petition till the date of payment. The Tribunal while dismissing the claim petition made a provision for ₹25,000/- under no fault liability. The records were burnt and I have no proof available whether the amount has been deposited or not. If the amount of ₹25,000/- has already been deposited with interest as directed by the Tribunal, the same shall be adjusted against the amount now assessed by

this Court as part payment of the liability now fastened on the insurance company.

4. The award passed by the Tribunal is set aside and the appeal is allowed.

(K. KANNAN)
JUDGE

March 15, 2016
Pankaj*