

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1040 of 1999 (O&M)
Date of Decision : 21.07.2016

Dalbir and others

.....Appellants

Versus

Smt. Kamlesh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Adarsh Jain, Advocate
for the appellants.

Mr. Aman Dhir, Advocate
for Ms. Smriti Dhri, Advocate
Court Guardian/Amicus curiae for respondent no. 2 (minor).

Surinder Gupta, J.

This is appeal filed by driver-Dalbir, Lekha and Gir Raj Singh, owners of tractor-trolley bearing registration no. HR-30-1637 (later referred to as 'the offending vehicle') against award dated 01.09.1998 allowing compensation of ₹3,13,125/- for death of Raj Kumar (later referred to as 'the deceased') in accident with the offending vehicle. As the offending vehicle was not insured, appellants were held liable to pay amount of compensation.

2. Case of claimant in brief is that on 02.06.1995 at about 08.15 p.m., the deceased was going from village Bamni Khera to Palwal on his scooter bearing registration no. HR-30-8727. Vinod Kumar was pillion rider on the scooter. When they reached near sugar mills, Palwal, the offending vehicle loaded with fodder had been parked on the road without any sidelight, backlight, indication or indicator. As the trolley was not visible in darkness, scooter of the deceased hit against the trolley resulting in injuries to the deceased, who was taken to B.K. Hospital, where he succumbed to his injuries.

3. Appellants contested the plea raised by claimants with averments that the deceased, who was driving scooter no. HR-30-8727 was rash and negligent. He could not control the speed of scooter and hit the parked tractor-trolley. It was admitted that tractor-trolley was owned by respondents-appellants no. 2 and 3 and was being driven by respondent-appellant no. 1. Other averments of claimants were also denied and contested by appellants.

4. In order to prove their plea, claimants examined Sanjiv Sharma as PW-2, who has stated that on the date of accident he was 10/15 paces behind the scooter of deceased. Near Sugar Mill, the offending vehicle loaded with fodder had been parked without indicator and light. Scooter of the deceased struck against stationary tractor-trolley and he received multiple injuries. While the deceased was being taken to hospital, he died on the way. Vinod Kumar, pillion rider with the deceased on his scooter, appeared as PW-3. He has also stated that the offending vehicle had been parked on wrong side of the road without any indicator. Due to darkness, scooter of the deceased hit the dangerously parked tractor-trolley resulting in injuries to him as well as Raj Kumar.

5. Dalbir Singh driver of tractor-trolley appeared as RW-1 and stated that he had parked his tractor-trolley on the *kachha* berm of the road. The deceased alongwith pillion rider came on scooter which slipped due to applying of brakes and both fell on the road. He stopped a jeep coming from behind and took the injured to hospital. He had put some stones and tree branches as indicator and parking lights were also on. He, however, admitted that there was no indicator on trolley and except putting tree branches and stones, he had not made any arrangement of light behind the

6. The Tribunal on appraisal of evidence observed in para 14 and 15 as follows:-

“14. After giving my careful thought to the arguments advanced by both the sides I am of the view that the plea taken by RW-1 Dalbir Singh that he had put the stones and tree branches as indicators while parking the tractor-trolley hardly inspires any confidence as the same does not find mention in his written statement. Likewise, his plea that the parking lights of the tractor-trolley were on and that the tractor-trolley were visible on account of the lights from the sugar mills hardly inspires any confidence in the light of the statement made to the contrary by Sanjiv Sharma PW-2, who appears to be a wholly dis-interested person. Moreover, in the written statement it was not even specifically pleaded that the scooter of the deceased had slipped while applying brakes as claimed by RW-1 Dalbir before this Tribunal.

15. On factual side I, therefore, conclude that the tractor-trolley was dangerously parked by Dalbir Singh respondent no. 1 and the accident took place when scooter of the deceased struck against the same from behind.”

7. With above observations, the Tribunal found it to be a case of contributory negligence and assessed negligence of the deceased as 25% and of respondent-appellant no. 1 as 75%.

8. Income of the deceased, aged 29 years, was assessed as ₹3000/-

per month out of which 1/3rd was deducted towards his personal expenses

and by applying the multiplier of 17, amount of dependency was assessed as ₹4,08,000/- to which ₹2000/- were added towards funeral expenses, ₹5000/- towards loss of consortium and ₹2500/- towards loss of estate. Out of total compensation of ₹4,17,500/- assessed by the Tribunal, ₹3,13,125/- being 75% of the liability of driver and owner of the offending vehicle, was allowed to claimants as compensation.

9. I have heard learned counsel for the parties and perused the record of Tribunal and paper-book with their assistance.

10. Learned counsel for appellants has argued that the Tribunal has admitted that it was a case of contributory negligence but instead of assessing contributory negligence of the deceased as 50%, held that it was 25%. It was the deceased, who had struck against the stationary tractor-trolley, as such, his negligence was more than the negligence of driver of the offending vehicle, who had parked the same on road or on the side of road. He has further argued that income of the deceased assessed as ₹3000/- per month is without basis or evidence on record, as such, is on higher side.

11. On giving a careful thought to submissions of learned counsel for appellants, I find that the Tribunal has quite generously assessed contributory negligence on the part of the deceased despite concluding that tractor-trolley was dangerously parked by respondent-appellant no.1. If a vehicle has been wrongly parked in middle of the road and accident is caused during night hours as the vehicle coming from behind could not see the parked vehicle in the absence of any light, the negligence is of driver and owner of the vehicle, who has dangerously parked it on the road. However, keeping in view the fact that claimants are not in appeal, the quantum of negligence of the deceased and respondent-appellant no. 1 as assessed by the

Tribunal calls for no interference. However, this argument of learned

counsel for appellants that the deceased as well as driver of the offending vehicle were equally liable for accident calls for outright rejection.

12. As per claimant no. 1-Kamlesh, wife, the deceased was in the business of manufacturing tractor-trolley, harrow and other agricultural implements. Though, there is no documentary evidence regarding income of the deceased, statement of Kamlesh, wife of the deceased, that her husband was earning ₹3500/- to ₹4000/- per month is unrebutted in cross-examination. The Tribunal has, however, assessed income of the deceased as ₹3000/- as he was an able bodied person. Even if, the deceased be taken as skilled labourer, the assessment of income of ₹3000/- per month in the year 1995 is not on higher side and the arguments of learned counsel for appellants to this effect are discarded.

13. As a sequel of my above discussion, the instant appeal has no merit and the same is dismissed.

July 21, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No