

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.565 of 1999

Date of decision : July 05, 2016.

Smt.Birmati and another

.... Appellants

Vs.

Ramesh Kumar and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

1. To be referred to the Reporters or not? yes
2. Whether the judgment should be reported in the Digest?

Present : Mr. Gurinder Pal Singh, Advocate,
for the appellants.

Mr. Chirag Kundu, Advocate,
for respondent No.2.

Mr. Neeraj Khanna, Advocate,
for respondent No. 3.

AMOL RATTAN SINGH, J.

This appeal has been filed by the parents of a 10 year old child, Anup Kumar, who unfortunately died in a motor vehicle accident on 20.11.1994. The claim petition filed by the appellants herein, was dismissed by the learned Motor Accidents Claims Tribunal, Jind, vide the impugned Award dated 07.09.1998.

2. The facts, as taken from the Award, are that on 20.11.1994 the deceased Anup Kumar, alongwith his family members, including appellant No.1, i.e. his mother, one Samundar Singh, Surender Singh and Narender is stated to have been coming from his fields, going to village Nirjan, Tehsil and District Jind. When this party of 5 people reached near the village, on the

Jind-Gohana road, at about 5:30 to 6:00 PM, a mini bus bearing registration No.DL-2CC-4588, came from the side of Safidon, allegedly at a high speed, driven by respondent No.1 herein. The bus is stated to have hit Anup Kumar, leading to his death on the spot.

Consequently, the claim petition was filed, with respondents No.1, 2 and 3 herein, i.e. the driver, owner and insurer of the bus respectively, impleaded as respondents No.1 to 3.

3. Upon notice issued, the 1st respondent, i.e. the driver, put in his appearance initially but thereafter absented himself and was proceeded against *ex parte*, vide order dated 25.08.1995.

The owner and insurer of the vehicle contested the petition and denied the accident all together, even denying that the appellants-claimants were legal heirs or dependents of deceased Anup Kumar. (Obviously, the deceased being a child, his parents could not have been dependent on him).

Other than that, the usual preliminary objections with regard to maintainability of the petition etc. were taken by the said respondents before the Tribunal, other than a contention of respondent No.3 that respondent No.1 was not holding a valid driving licence on the day of the accident and consequently, the insurance company could not be held liable to pay any compensation awarded.

4. The following issues were framed by the Tribunal:-

“1. Whether Anup Kumar died as a result of injuries sustained by him in motor vehicular accident on 20.11.1994 in the revenue estate of village Nirjan on Jind-Safidon road near abadi of village Nirjan due to rash and negligent driving of mini bus No.DL-2CC-4588 driven by Ramesh Kumar? OPP

2. Whether the petitioners are legal heirs/dependents of

deceased Anup Kumar?

3. How much amount the petitioners are entitled to realise as compensation and from whom? OP.
4. Whether respondent No.3 is not liable for the reasons stated in the written-statement? OPR-3
5. Whether respondent Ramesh Kumar was not holding a valid and effective driving licence at the relevant time?
6. Relief.”

5. Upon appraising the evidence before it, the learned Tribunal held that the appellants could not prove that the child had died in an accident specifically with bus bearing registration No.DL-2CC-4588.

As regards any compensation payable, the learned Tribunal held that even if the issue of negligence had been held in favour of the appellants-claimants, the appellants not being dependent upon the ten year old child, who was studying in class 3, no compensation in any case was payable.

As regards the liability of the insurance company, it was eventually held that licence number R/4506/84, dated 25.12.1984, had not been issued to respondent No.1 by the Licencing Authority, Hyderabad, as per the report received from the said authority, vide letter Ex.R5.

The Licensing Authority, Karnal, vide Ex.R6, had also stated that the said licence was never renewed by them between 10.08.1988 to 09.08.1991.

Hence, it was held that even if the accident had been caused by respondent No.1, the insurance company could not have been held liable to pay any compensation.

Eventually, having held that there was no proof of the accident having been caused allegedly with the “offending vehicle”, the claim petition

was dismissed.

6. Before this Court, Mr. Gurinder Pal Singh, learned counsel appearing for the appellants, submitted that the Tribunal wholly erred in both respects, i.e. firstly in coming to the conclusion that the bus bearing registration No.DL-2CC-4588 had not hit Anup Kumar, leading to his death and further holding that the parents of the deceased boy, not being dependent upon him, were not entitled to any compensation.

7. On the issue of negligence, learned counsel pointed out that the FIR in respect of the accident was lodged at 9:05 p.m. as obvious from the copy of the said FIR, (Ex.P1 before the learned Tribunal), produced in Court today by learned counsel. The accident is shown to have taken place between 5:30 p.m. to 6:00 p.m. Therefore, the submission of the learned counsel is that the FIR was lodged with the police, within three to four hours of the death of the child, mentioning the number of the bus, as corroborated from a perusal of the FIR.

He further submitted that the driver of the bus did not step into the witness box to deny the accident. The Tribunal has only disbelieved the testimony of the witnesses on the ground of discrepancies pointed out between the testimonies of PW1 and PW2, i.e. appellant No.1 and Samundar Singh and further, because the bus is shown to be standing behind the body of the child who was unfortunately killed in the accident. The reasoning of the Tribunal was that had the bus struck the child, it could not have been seen behind the body, but with the body either underneath it or behind the bus.

Learned counsel further submitted that the said finding of the Tribunal is wholly presumed, in view of the fact that even if the bus had

struck the child and he had fallen down as a result of the impact and died on the spot, and the bus driver had already applied the brakes, the bus would obviously be standing behind the child. Further, in view of the fact that the driver did not step into the witness box at all to refute the claim, the accident in question, in the manner depicted by the appellants, would have to be accepted to be correct, especially as it was not a criminal trial but summary proceedings before the Tribunal.

8. Mr. Chirag Kundu, learned counsel for respondent No.2, i.e. the owner of the bus, reiterated the stand taken by the said respondent, before the Tribunal, to the effect that the accident never took place at all with the bus in question and in any case, there is a huge discrepancy between the testimony of the two alleged eye witnesses, i.e. the mother of the deceased and one Samunder Singh, due to which the learned Tribunal had eventually held that the negligence of respondent No.1, in driving the vehicle, was not proved.

9. Having considered the arguments of learned counsel, as also having considered the impugned Award, though of course, Mr. G.P.Singh, learned counsel for the appellant, may otherwise be correct in submitting that it is not necessary for the body of the deceased to have been under or behind the bus if the bus had struck from the front, however, the following finding of the learned Tribunal needs to be referred to, before deciding whether the Tribunal was correct or had erred in deciding the issue of negligence against the claimants:-

“Well, after going through their testimony, reply to this question has to be in the negative. Reason being that the statements of these witnesses are discrepant on material points. According to PW-2 Birmati, it were she and Anup Kumar who were going from their fields towards their house on the day in question, a

corner of the road, whereas PW3 Samunder Singh deposed that he, Surinder, Narender, Birmati and Anup were coming from their fields when a bus came from Safidon side and struck against Anup Kumar. If we have a look on the contents of FIR, copy Ex.P1, the version contained therein is totally different as it is recorded in that that Anup was walking 15-20 paces ahead of Samunder Sinnggh etc. at the relevant time and the bus struck against him when he tried to cross the road. Another material point on which there is total contradiction in the testimony of Birmati and Samunder PWs, is regarding the place where the bus had stopped after causing the accident. According to Birmati PW, the bus stopped at quite some distance from the place of accident whereas Samunder Singh PW deposed that the bus stopped at the spot itself and the driver ran away. There are, thus, material discrepancies in the testimony of both the witnesses, who were produced to prove the factum of accident, and presence of such type of discrepancies leads to the only conclusion that correct facts regarding the accident have not been brought before the Court.”

(From paragraph 5 of the Award)

Thus, an appraisal of the aforesaid evidence, as referred to by the learned Tribunal, does show discrepancies in the testimonies of the alleged two eye witnesses, with the mother of the deceased, Birmati, stating that she and her son were going from their fields towards their home, whereas the other witness deposed that he alongwith four other people (including Birmati), were coming from fields, when the accident happened.

Even if part of the aforesaid is taken to be a minor discrepancy, inasmuch as Birmati may not have given the details of those accompanying her son and her, what is material, in the opinion of this Court, is the fact that whereas Birmati stated that after the accident the bus stopped at quite a distance from the place of accident, Samunder Singh testified that the bus

stopped at the spot itself and the driver ran away.

Therefore, if Birmatis' version is to be accepted, then the Tribunals' findings that the bus could not have been behind the body of the child, is wholly logical, whereas if Samunder Singhs' version is to be accepted, then, of course, it is possible that the bus stopped immediately upon hitting the child and therefore, was still behind the child, whereas he (the victim) fell a little ahead of the bus.

10. Other than that, the Tribunal also noticed that whereas in the claim petition, it was stated that the body of the child was crushed by the bus, the photograph did not corroborate that version.

Yet, that particular issue need not be given much importance because it was not the post mortem report which stated that the child's body was crushed, but only a statement made by the claimant, which does not change the fact that the boy died after sustaining injuries.

11. However, what does need special attention of this Court is that firstly, the bus driver is shown to have run away, which version of the appellants-claimants did not stand rebutted by any evidence led to the contrary. Hence, an inference, most definitely in the opinion of this Court, needs to be taken against the respondents, with respondent No.1 not even having stepped into the witness box to rebut that averment, though he initially appeared in response to the notice issued in the claim petition, but thereafter absented himself and was proceeded against *ex parte*.

12. Before proceeding to eventually decide this issue, it needs to be noticed here that the other reason for dismissal of the claim petition, given by the Tribunal, was for the reason that the claimants (present appellants, with the second claimant now represented through his LRs), being the parents of

the deceased, could not be dependent upon the child who was not even their eldest child, but was aged 14 years (according to appellant No.1 but otherwise stated to be 10 years old in the claim petition).

Obviously, the aforesaid reasoning of the Tribunal is wholly unsustainable, inasmuch as, it is well settled that the claimants need not be dependent on the victim but can otherwise be simply his legal heirs, though as regards the father, even if his son was earning, he cannot be treated to be dependent on his son, for the purpose of claiming compensation under the head of loss of dependent income. That claim can only be made by a mother/widow and children (or unmarried siblings of a deceased victim, if the father of the victim had already predeceased him and his siblings were also dependent upon him/her). In the present case, of course, the victim being a child, neither of the parents could be dependent upon him, but nevertheless, in terms of the judgment of the Supreme Court in **R.K.Malik v. Kiran Pal, (2009) 14 SCC 1**, they would still be entitled to pecuniary compensation, taking into account the prospects of future earnings of their child.

By virtue of the judgment of the hon'ble Supreme Court in **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121** (Reference para 31), though, as already noticed, a father is not entitled for compensation under the head of loss of dependent income; however, in the opinion of this Court, read with aforesaid judgment of the hon'ble Supreme Court in *Maliks' case* (supra), whether or not the father would in future become dependent on his child is an imponderable, and as such, both parents would be entitled to compensation for pecuniary damages.

13. As regards non-pecuniary damages, such as loss of love and affection of their child, in any case both the parents would be entitled to

compensation.

They would also be entitled to compensation for expenses incurred on the last rites of the deceased.

14. Now coming back to the issue of alleged negligence of respondent No.1 in driving the bus in question, leading to the death of the deceased.

As regards the factum of the accident with the bus in question, I do not see as to how that stands not proved, in view of the fact that respondent No.1 is stated to have run away from the spot, leaving the bus behind, which evidence, as already noticed, was never rebutted by the respondents. However, in view of the discrepancy in the two eye witness account, of Birmati and Samunder Singh, it is very possible that only one of them actually saw the accident taking place, or that neither of them actually witnessed it, with the child going on to the road ahead of his mother/other persons with whom he was going.

If that were so, then it was contributory negligence on the part of the child also and in any case, with the contradiction in the version given by the eye witnesses, it would have to be taken as such, in the opinion of this Court, but having accepted that the accident did take place with the bus in question, on account of the driver having run away after the accident, leaving his bus behind, with no rebuttal to that evidence.

15. On the aforesaid reasoning, with the accident having taken place more than 21 years ago, equities may need to be balanced, but very much keeping in view the fact that the appellants lost their child in a motor vehicle accident, as per the discussion hereinabove.

Consequently, the child being a student of Class-III, studying in

a village school, it may, perhaps, have been that he continued to study in the village, with no brilliant academic record shown up to that point, but on the other hand, of course, he may have also gone on to achieve greater heights. Those imponderables cannot be answered.

Hence, in the opinion of this Court, the accident having taken place on 20.11.1994 and the 2nd schedule to the Motor Vehicles Act, 1988, having come into force w.e.f. 14.11.1994, the best yardstick that can be applied for granting compensation in the present case, where the deceased was a child, i.e. a non-earning person as described in sub-clause (a) of clause 6 of the said Schedule, the possible future income of the child at that point of time, could at best be taken to be Rs.15,000/- per annum, and is accepted as such.

Since this Court has held that the possibility of contributory negligence cannot be ruled out in view of the contradictory testimonies of the eye witnesses, the said future income also, of the deceased, would have to be halved to Rs.7500/- per annum.

From that amount, again 50% is to be deducted, the deceased being a child and consequently, a bachelor, thereby leaving the dependent income of the two claimants in the original claim petition, to be only Rs.3750/- per annum.

However, to the aforesaid sum, a multiplier of 18 is to be applied, the child being between 10 to 14 years of age. Going by the aforesaid, the total loss of dependent income would work out to be Rs.67,500/- to claimants.

In addition to that, compensation by way of loss of love and affection of the child and towards funeral expenses, would also be payable to

the appellants. Thus, considering the fact that there was a discrepancy in the statements of the eye witnesses and as such, the negligence of respondent No.1 was not fully established, in the opinion of this Court, 21-22 years after the accident, it would be more appropriate to award a lump-sum amount of Rs.1,00,000/- to appellant No.1, i.e. the mother of the deceased, with claimant No.2, i.e. the father of the deceased child, having already died (though now being represented by his legal representatives).

Accordingly, the aforesaid sum of Rs.1,00,000/- is awarded as compensation to appellant No.1, alongwith interest thereupon @ 6% per annum, running from the date of the filing of the claim petition, till the date of realization thereof.

16. The question then arises with regard to the liability to pay the aforesaid compensation.

The learned Tribunal had determined while deciding issue No.5, i.e. the validity of the driving licence of respondent No.1, that his licence was never issued by the licensing authority at Hyderabad, as per a letter received from that office and further, it had never subsequently been renewed at Karnal, as had been claimed. Hence, the insurance company (presently respondent No.3), obviously cannot be foisted with any liability to pay compensation to appellant No.1 and the liability would therefore fall on respondents No.1 and 2, i.e. the driver and owner of mini bus No.DL-2CC-4588, as on the date of the accident. Accordingly, the said two respondents are held liable to pay the compensation aforesaid, to appellant No.1.

The appeal is accordingly, allowed as above, with no order as to costs.

July 05, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE