

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-3651-2006

Date of decision : 19.10.2016

Harun

... Appellant

Versus

Babar and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: None.

AMOL RATTAN SINGH, J.

This appeal has been filed by the claimant (hereinafter also referred to as “claimant”) before the learned Motor Accident Claims Tribunal, Karnal, (hereinafter referred to as “Tribunal”), seeking enhancement of the compensation of Rs.8000/- awarded to him vide the impugned Award dated 07.06.2006, on account of the death of his mare, in a motor vehicle accident that is stated to have taken place on 11.10.2003 at about 11 AM.

As per the claimant, (the facts being taken from the impugned Award), he was going to his fields on his white mare on the aforesaid date at the aforesaid time and while the mare was standing on the side of the road, while the claimant was talking to one Amar Hasan, a tractor bearing registration no.HR-05A-2402, driven by respondent no.1 herein, came on to the wrong side of the road and struck against the standing mare, due to which it sustained injuries and died on the spot.

An FIR is also stated to have been lodged at Police Station Gharaunda on 14.10.2003, after which the claim petition was filed on 05.05.2004, seeking a compensation of Rs.90,000/-, along with interest upon it

@ 24% per annum.

2. Upon notice issued to the respondents, i.e. the driver and owner respectively of the tractor, they filed a joint written statement taking preliminary objections with regard to maintainability and locus, as also for “multifariousness of parties”.

It was denied that the accident had taken place, and further, that respondent no.1 had been falsely involved in the criminal case.

3. Upon the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

“1. Whether the mare of the petitioner died in a motor vehicle accident with vehicle no.HR-05A-2402 being driven by its driver so rashly and negligently?OPP

2. If issue no.1 is proved, whether the petitioner is entitled for compensation if so to what amount and from whom?OPP

3. Whether the respondent no.1 was not holding any valid and effective driving licence on the date of accident?OPR

4. Relief.”

4. In support of his claim, the claimant testified as PW1 and also examined the aforesaid Amar Hasan as PW2.

The respondents examined one Yasin as RW1, the first respondent, i.e. the driver of the tractor, as RW2 and Umar Deen as RW3. They also examined the additional Ahlmad of the court as RW4.

5. Upon appreciating the evidence and considering the pleadings and arguments of the parties, the learned Tribunal found that the matter was earlier attempted to be settled through the village Panchayat but with no settlement having been reached, the accident was reported to the police, leading to the

registration of the FIR.

It was further found that even though the registration number of the tractor was not initially given to the police, there was no cross-examination 'worth its name', as regards the testimony of the claimant's witnesses and that a report against respondent no.1 had also been submitted by the police, under Section 173 Cr.P.C.

Thus, in view of the above, the issue of negligence was held in favour of the claimant and against the respondents, against which no appeal is seen to have been filed. Hence, this Court is not required to go into that issue any further, except to reproduce the findings of the Tribunal as hereinabove.

6. On the issue of the quantum of compensation, though Rs.90,000/- was claimed and a receipt showing the purchase of the mare for a sum of Rs.60,000/- was also produced by the claimant, however, the said receipt was not exhibited, as the person who had issued it, one Gafoor son of Alimmudin, from whom the claimant purchased the mare, was not examined and therefore the receipt was simply shown as 'Mark A'.

The post mortem report, Ex.P4, showed the value of the mare to be Rs.32,000/- as assessed by the Veterinary Surgeon, with the age of the mare given to be 4 ½ years.

However, as the Veterinary Surgeon was also not examined by the claimant, hence the value of the mare as assessed by him was also not accepted by the Tribunal.

7. Eventually, with no other evidence having been led at all as regards the value of the mare, the Tribunal simply awarded Rs.8000/- as compensation, with interest @ 6% per annum upon that sum, running from the date of the filing of the claim petition till realisation of the amount.

Consequently, the claimant is in appeal, seeking enhancement of the amount.

8. It needs to be stated here, that after this appeal was filed in year 2006, the records of the case were completely burnt in a fire accident that took place in record room of this Court in January 2011 and though a copy of the impugned Award and the grounds of appeal has been reconstructed and submitted to this Court by learned counsel, the evidence recorded by the Tribunal has not been reconstructed.

In fact, due to non-availability of the pleadings and the records, with initially no input in that regard from learned counsel for the claimant, the appeal had been dismissed in default on 21.02.2014, with liberty to revive it as and when an application for restoration was filed along with the paper book of the main case.

That having been done, the appeal was ordered to be restored to its original number vide an order dated 24.04.2015.

At the time when the appeal was restored, Mr. Rajinder Singh Rana, Advocate, is shown to have been present, appearing for respondent no.1, along with counsel for the claimant, but none appeared for respondent no.2, i.e. the owner of the tractor involved in the accident. The matter having been thereafter adjourned and none having appeared thereafter also for either of the respondents, either on 25.05.2015 or 07.01.2016, respondent no.2 was proceeded against ex-parte, but as counsel had earlier put in appearance for respondent no.1, the said respondent was not proceeded against ex-parte, and the matter was adjourned to 05.04.2016, on which date, on request of learned counsel for the appellant-claimant, it was adjourned for the next date, i.e. 06.04.2016. On that date, the turn of the case did not come up and it was

adjourned to 25.04.2016.

On that date none appeared for the parties and consequently, after considering the grounds of appeal, the judgment was reserved; but even in the past almost since six months, no application has been filed seeking recalling of that order in order to enable the counsel to address arguments on either side.

Consequently, upon considering the written grounds of appeal, this judgment is now being delivered.

9. It has been stated in the grounds of appeal that the receipt, Mark A, was 'wrongly discarded' by the learned Tribunal, by which it was shown that the claimant had purchased the mare for a consideration of Rs.60,000/-.

Similarly, it has been contended that the assessment made by the veterinary surgeon in the post-mortem examination and report, assessing the value of the mare to be Rs.32,000/-, has also been wrongly discarded, especially as the mare was shown to be only 4 ½ years old, with the life expectancy of a horse / mare being 30 years.

It is still further contended that “as on the date of filing of the appeal”, i.e. 25.07.2006, the market value of the mare was about Rs.90,000/- to Rs.1,00,000/- and consequently, the appeal deserves to be allowed.

10. Having considered the grounds of appeal, as also the impugned Award of the learned Tribunal, I found no error in the Tribunal having ignored both, the receipt allegedly issued by the seller of the mare to the claimant (stated to be one Gafoor as already noticed), as also the value of the mare assessed by the learned veterinary surgeon, in view of the fact that neither of these persons was examined by the appellant-claimant, therefore, there obviously also being no opportunity with the respondents to cross-examine those persons, on the issue of the actual value of the mare etc.

Further, with no evidence before this Court with regard to either the general health and 'ability' of the mare in question, nor even with the regard to how much an ordinary mare would have cost in the year 2003, i.e. the year in which the accident in question took place, no assessment in that regard can be made by the Court.

Of course, horses used for breeding and professional races etc. are valued in lakhs. Obviously, the animal in question in the present case was not such a horse, as not even a whisper of an averment in that respect was made before the Tribunal.

Though, as per information on the internet, an ordinary female horse (mare) is available for approximately Rs. Thirty to Forty thousand as of today, what would have been the price of any ordinary horse 13 years ago cannot be even guessed by this Court, which in any case it would not do in the absence of any admissible evidence led, to hold that the value was anything other than what was awarded by the Tribunal.

11. Hence, with nothing shown to this Court that the value of the mare was more than the amount of Rs.8000/- awarded by the Tribunal vide the impugned Award, I find no ground to enhance the compensation awarded.

The appeal is therefore dismissed, with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

October 19, 2016.

Davinder Kumar

Whether speaking / reasoned

Yes

Whether reportable

Yes