IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1. FAO No. 2216 of 2010 (O&M)
Date of Decision : 08.02.2016

SBS Financers Bathinda ....Appellant

Versus

Narinder Jeet Kaur and others ....Respondents

2. FAO No. 3174 of 2011 (O&M)

Narinder Jeet Kaur and another ....Appellants

Versus

Harvinder Singh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Manish Bansal, Advocate
for the appellant in FAO No. 2216 of 2010 and
for respondent no. 3 in FAO No. 3174 of 2011.

Mr. Divyadeep Walia, Advocate
for the appellants in FAO No. 3174 of 2011 and
for respondents no. 1 and 2 in FAO No. 2216 of 2010.

Surinder Gupta, J.

Both the appeals mentioned in head-note above arise from the award dated 27.02.2010 passed by Motor Accident Claims Tribunal, Bathinda (later referred to as 'the Tribunal') whereby claim petition filed by Narinder Jeet Kaur and Surinder Pal Singh for the death of their daughter Preet Kamal in accident with truck No. RJ-13-1G-0464 (later referred to as 'the offending vehicle') was allowed. As the truck was not insured, driver, owner as well as financer of the truck were held jointly and severally liable to pay the amount of compensation.

2. In FAO No. 2216 of 2010, financer of the offending vehicle has challenged the award so far as it relates to fixing his

liability jointly and severally with owner and driver of the offending vehicle. In FAO No. 3174 of 2011, claimants have sought enhancement of compensation as awarded by the Tribunal.

3. Both the appeals have been taken up together for decision by this common judgment as these arise from the same award passed by the Tribunal.

Brief Facts:

4. Case of claimants, in brief, is that on 06.10.2006, their daughter Preet Kamal aged 21 years was going for her studies on her bike bearing registration No. PB-3-G-6823 on Bhatti road Bathinda, when the offending vehicle came from behind and tried to overtake the bike from wrong side and in the process struck against the bike as a result of which Preet Kamal was crushed under the wheels of truck and died at the spot. The offending vehicle was being driven by respondent no. 1-Harvinder Singh (respondent no. 3 in FAO No. 2216 of 2010) at the time of accident in a rash and negligent manner. The deceased was studying in B.Sc. final in Government Rajindra College, Bathinda. She used to help in domestic work and was contributing ₹3000/- per month to her family.

5. In reply, respondent no. 2-Kulwant Singh (respondent no. 4 in FAO No. 2216 of 2010) owner of the offending vehicle denied that any accident had occurred out of the use of offending vehicle. The deceased had died due to her own negligence/rashness and negligent driving of her bike. He also took a plea that truck in question was hypothecated with SBS Financers and liability to pay the amount of compensation is of

financer as they have been charging insurance premium from him.

6. In separate reply filed by SBS Financers, it was pleaded that finance company was neither owner nor in possession of the offending vehicle. A small loan of ₹19,000/- was advanced to respondent no. 2 i.e. owner of the offending vehicle against security of truck and the loan was repaid within one year i.e. in June, 2005 and the documents were returned to respondent no. 2, as such, no liability of respondent no. 3-SBS Financers (appellant in FAO No. 2216 of 2010) to pay any compensation is attracted.

7. The offending vehicle was admittedly not insured, as such, insurance company impleaded as respondent no. 3 (to be disclosed by owner and driver of the offending vehicle before the Tribunal) was ordered to be deleted.

8. Respondent no. 1-driver of the offending vehicle appeared through counsel but did not file any written reply.

9. On appraisal of evidence, the Tribunal recorded the finding that accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1. Monthly income of the deceased was assessed as ₹4200/- and after making deduction of 1/3rd towards her personal expenses, annual dependency of claimants was assessed as ₹ 33,600/-. The Tribunal applied multiplier of 6 while calculating the amount of dependency to which ₹2000/- was added towards funeral expenses and ₹2500/- towards loss of estate and total compensation of ₹2,06,100/- was allowed.

FAO No. 2216 OF 2010 (LIABILITY OF FINANCER)

10. The Tribunal made the financer liable on the grounds

that registration certificate of the offending vehicle was returned to owner in the year 2007. The accident had taken place on 06.10.2006. At the time of accident, registration certificate of the offending vehicle was with the financer who was under liability to get the offending vehicle insured. The Tribunal relied on the statement made by RW-3 Kulwinder Singh partner of the finance company that the financer is responsible for insurance of the vehicle.

11. Learned counsel for the appellant has argued that the vehicle was hypothecated for a small loan of ₹19,000/- taken by owner of the offending vehicle in June, 2004. He had not purchased the offending vehicle with this loan amount. The offending vehicle was hypothecated with the finance company as security for the return of loan amount. However, the offending vehicle remained under control of the owner. It was his responsibility to get the vehicle insured. The liability of financer to pay the compensation amount is not attracted in any eventuality.

12. Learned counsel for respondents no. 3 and 4 (in FAO No. 2216 of 2010) has argued that registration certificate of the offending vehicle was with the financer. It is proved on record that the same was returned in January, 2007 i.e. after the accident and intimation about the return of registration certificate of the offending vehicle was also sent to the DTO office in January, 2007, as such, liability was of the finance company to get the vehicle insured and for the lapse on their part to pay the amount of compensation as awarded by the Tribunal.

13. As to whether the financer with whom a vehicle was

hypothecated for the loan advanced to owner of the vehicle is liable to pay the compensation amount awarded by the Tribunal or enhanced thereafter is the question which requires answer in this appeal.

14. To find answer to the above question, it will be relevant to refer to Section 2 (30) of the Motor Vehicles Act, which defines owner as follows:-

> *(30) "owner" means a person in whose name a motor vehicle stands registered and, where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement."*

15. The plain reading of aforesaid definition demonstrate that in relation to a motor vehicle, which is subject to an agreement of hypothecation, the person in possession of the vehicle under that agreement is the owner. In this case, the vehicle was hypothecated for a small loan of ₹19,000/- taken in the year 2004. It is not a case where the vehicle was purchased with the loan amount. Either way, this fact is not disputed that the vehicle was in control and possession of the registered owner at the time of accident. Hon'ble Supreme Court in the case of ***HDFC Bank Ltd.* vs. *Kumari Reshma*, 2015 (3) SCC 679,** on perusal of law and citations on this point observed as follows:-

> *"24. On a careful analysis of the principles stated in the foregoing cases, it is found that there is a common*

thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner.........

25. ....When the intention of the legislature is quite clear to the effect, a registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control and there is evidence on record that the respondent no.2, without the insurance plied the vehicle in violation of the statutory provision contained in Section 146 of the 1988 Act, the High Court could not have mulcted the liability on the financier. The appreciation by the learned Single Judge in appeal, both in fact and law, is wholly unsustainable."

16. The principle of law as settled in the case cited above answers the legal proposition with regard to question as to whether financer or the registered owner of the vehicle is liable to pay the compensation in this case. Learned counsel appearing on behalf of owner and driver could not refute the legal proposition as discussed above by referring to any citation or law to the contrary.

17. In the facts and circumstances discussed above, the liability to pay the compensation is of owner and driver of the offending vehicle and not of the finance company. The appeal filed by finance company has merits and is accepted. The award passed by the Tribunal is set aside to the extent that it holds the appellant liable to pay the compensation jointly and severally with the driver and owner of offending vehicle.

FAO No. 3174 of 2011 (ENHANCEMENT OF COMPENSATION)

18. Learned counsel for the appellants has argued that the deceased was 21 years of age. The Tribunal has assessed her monthly income as ₹4200/- but has applied multiplier of 6 while assessing the amount of dependency. The Tribunal has allowed only ₹2000/- towards funeral expenses and ₹2500/- towards loss of estate, which are on lower side. Referring to the observations in the case of ***Sarla Verma and ors. vs. Delhi Transport Corporation and another, 2009 (6) SCC 121***, he has argued that the multiplier applicable to this case is 18. The claimants are also entitled to 50% addition in income of the deceased towards her future prospects.

19. Submissions made by learned counsel for the appellants have merits. Keeping in view the age of deceased, multiplier applicable, while calculating the amount of compensation, is 18 as per observations in case of ***Sarla Verma (supra).*** As per observations in ***Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447*** and ***Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54***, claimants are also entitled to 50% addition in income of the deceased towards her future prospects. At the same time 50% of income of the deceased is to be deducted towards her personal expenses instead of 1/3rd as deducted by the Tribunal. Claimants are also entitled to compensation of ₹1 lac towards loss of estate, love and affection and ₹25000/- towards funeral expenses.

20. The amount of compensation to which claimants are entitled, is tabulated as follows:-

Sr. No.	***Heads***	***Calculation***
(i)	Income of the deceased Preet Kamal	₹4200 per month (as assessed by Tribunal)
(ii)	50% of (i) above to be added as future prospects	₹4200 + ₹2100 = ₹6300 per month
(iii)	1/2nd of (ii) deducted as personal expenses of the deceased	₹6300 - ₹3150 = ₹3150 per month
(iv)	Compensation after multiplier of 18 is applied	(₹3150X12X18) = ₹680400
(v)	Loss of estate, love and affection	₹100000
(vi)	Funeral expenses	₹25000
	Total	₹805400

21. In view of my above discussion, appeal filed by SBS Financers (FAO No. 2216 of 2010) is accepted and the award passed by the Tribunal against the appellant is set aside. The appeal filed by claimants (FAO No. 3174 of 2011) is also accepted. Award of the Tribunal is modified and the compensation allowed to claimants for death of Preet Kamal is enhanced from ₹2,06,100/- to ₹8,05,400/-. The enhanced amount of compensation will carry interest @ 7.5% per annum from the date of filing of the claim petitions till actual realization. Respondents no. 1 and 2 are held liable jointly and severally to pay the amount of compensation.

A copy of this judgment be placed in file of connected appeal.

February 08, 2016 **(SURINDER GUPTA)**
jk **JUDGE**

Whether to be referred to the Reporters? Yes/No