

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

FAO No.3836 of 2010

Date of decision : May 20, 2016.

Kamaljit Singh Walia

.... Appellant

Vs.

Harbhajan Kaur and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Present : Mr.Anurag Chopra, Advocate,
for the appellant.

Mr. N.S.Diwana, Advocate,
for the respondents.

AMOL RATTAN SINGH, J.

This is an appeal by the owner of a Tata truck-709 bearing registration No.CH-01P-9291, against the Award of the learned Motor Accident Claims Tribunal, Mohali, dated 28.07.2009, by which the claimants (respondents herein) were awarded compensation of Rs.6,12,000/- alongwith interest @ 8% per annum thereupon, running from the date of filing of the petition till its realization, on account of the death of Gurcharanjit Singh, who died in a motor vehicle accident on 08.01.2004, at Mohali.

2. As per the claim petition filed by the respondents herein, the deceased, alongwith one Jaswant Singh, were coming back from Phase 3B-1 towards the PTL Chowk, Mohali, in an Indica car bearing registration No.HR-37A-8040 at about 11:30 pm, after dropping off passengers. The car

is stated to have been driven by the deceased with proper care and caution on the left side of the road but when it reached the aforesaid chowk, the Tata vehicle belonging to the present appellant, came from the side of Franco Hotel, allegedly driven in a rash and negligent manner, on the wrong side of the road, due to which it hit the car, resulting into the car turning turtle and being damaged.

Both Gurcharanjit Singh and Jaswant Singh were taken to the PGIMER, Chandigarh, with multiple injuries, where Gurcharanjit Singh unfortunately died, 8 days after the accident.

It was contended that the claimants had spent Rs.1,00,000/- on his treatment and last rites and that he was only 26 years old at the time of his death, and otherwise was in good health.

He was stated to have been working as a driver, an electrician and a milkman, earning Rs.6000/- per month.

The claimants are his widow, aged 23 years at the time of filing of the claim petition, his two minor children, aged 2½ and one year old and his parents aged 60 and 57 years.

Rs.15,00,000/- compensation was claimed by the respondents herein.

3. Upon notice issued to the present appellant (respondent before the Tribunal), he filed a written statement denying the accident itself and stated that his vehicle had been falsely involved, as according to him, on that day, the vehicle was parked with M/s C & S Motors for repairs at the Motor Market Complex, Manimajra, Chandigarh.

It was further contended that the Tata truck was actually owned by M/s Commando Caterers Private Limited and not by the present appellant

in his personal capacity, though, before the Tribunal he was shown to be sole “proprietor” of the aforesaid company, in the memo of parties.

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

- “1. Whether Gurcharanjit Singh had died due to injuries sustained in a motor vehicle accident dated 08.01.2004 near ICV Truck Union, PCL Chowk Mohali, caused due to rash and negligent driving of truck bearing No.CH-01-P-9291 by its driver? OPP
2. Whether the claimants are the legal representatives of deceased Gurcharanjit Singh and are entitled to get compensation? If so, to what amount and from whom? OPP
3. Relief.”

5. The claimants examined the first claimant (present respondent No.1), Harbhajan Kaur, as PW1, and the aforesaid Jaswant Singh as PW2, whereas the present appellant examined himself as RW1 and one Chhote Lal as RW2.

As regards the factum of the accident, PW2 Jaswant Singh, deposed as per the claim petition, with regard to the manner of the accident, further disclosing the name of the driver of the vehicle to be Yogesh Kumar (not impleaded). He also stated that the truck struck the car by going to its side and dragging it upto the road in front of the Punjab Tractors Limited Union, after which the truck itself over turned on the road.

PW2 further deposed that he came to know about the name of the driver after the registration of the FIR (Ex.P1), wherein the number of the truck was specifically mentioned.

6. The claimants further proved the report filed under Section 173

Cr.P.C. against the said Yogesh Kumar, as Ex.P2. Yogesh Kumar, it was contended, had been declared to be a proclaimed offender.

7. As regards the contention of the present appellant, as a respondent before the Tribunal, that the Tata vehicle had actually been parked for repairs at Manimajra, with Gogi Body Markers (and not M/s C & S Motors as contended in the claim petition), RW2, Chhote Lal, was examined as a Painter in the aforesaid shop.

However, on appraising the cross-examination of RW2, the learned Tribunal found that he was actually a procured witness as there was no cogent and convincing evidence at all even to prove that he was actually working as a Painter. It was also found that he had no electrical connection in his name and he claimed to have been using the connection of one M/s Jagdish Automobiles to light up his own shop and had kept his paint box on the main road adjoining the workshop. Though Chhote Lals' address was found to be that of M/s Gogi Body Makers, he himself never mentioned that name at all, in his deposition. Hence, the learned Tribunal found that if he was working with M/s Gogi Body Makers, there would be no reason for Chhote Lal to take an electricity connection from M/s Jagdish Automobiles. Further finding that he had no sales tax number and even the bill, Ex.RW2/B, that was produced, seem to be a procured one, the Tribunal held that no reliance could be placed upon the testimony of Chhote Lal and that the story taken up in defence was a concocted one, to avoid the payment of compensation.

8. Thus, considering the testimonies of the two witnesses for the claimants, and the testimonies against them, as also seeing that a report under Section 173 Cr.P.C. had been submitted in respect of the accident against the

driver of the truck, and that as per the post mortem report, the deceased had died due to the injuries received in the motor vehicle accident, the Tribunal held that the accident in question had taken place in the manner described in the petition and as deposed by PW2 and accordingly decided the first issue in favour of the claimants.

9. As regards the five claimants, they were found to be the legal heirs of Gurcharanjit Singh. On the quantum of compensation, it was found that though it was contended that Gurcharanjit Singh was an electrician, a driver and a milkman, however, there was no firm proof of his income; hence, it was assessed at Rs.5100/- per month.

A 1/3rd deduction was made from that amount towards the personal living expenses of the deceased, thereby bringing the monthly dependent income of the claimants to be Rs.3400/- and the annual dependent income to be Rs.40,800/-.

The date of birth of the deceased, as per his driving licence, was found to be 05.07.1978, thereby making him less than 26 years of age at the time of the accident and consequently, a multiplier of 15 was applied, thereby bringing the total loss of income to the claimants to be Rs.6,12,000/-.

In fact, that was the total compensation awarded, as stated at the outset, with nothing awarded to respondent No.1 herein by way of loss of consortium, towards funeral expenses as well as medical expenses for the days spent in the hospital (seemingly with no evidence led to that effect). Further, no amount was awarded to the 2½ year old daughter and one year old son of the deceased (respondents No.2 and 3 herein), for the loss of love and affection, care and guidance of their father for the rest of their life. Also, no amount was awarded to the parents of the deceased (respondents No.4 and

5 herein) for the loss of love and affection of their son at such a young age.

9. Mr. Anurag Chopra, learned counsel for the appellant, however submitted that the Tribunal had wholly erred in assessing the compensation to be paid by the appellant to the respondents-claimants, inasmuch as, the nature of employment of the deceased was not proved in any manner. Simply because he held a driving licence, was no proof that he was actually a driver earning Rs.5100/- per month. Thus, as per the learned counsel, the income of the deceased should have been assessed as that of a casual labourer and compensation accordingly determined.

He further submitted that the multiplier of 15 was also on the higher side and consequently an appropriate lower multiplier should be applied, thereby reducing the compensation significantly.

10. It needs to be noticed here that neither in the grounds of appeal, nor in the oral arguments of the learned counsel, has the factum of the accident, or the finding on negligence against the driver of the vehicle owned by the appellant, been challenged. Hence, that issue need not be gone into by this Court, which is only to, therefore, consider as to whether the compensation paid is excessive or not.

11. Mr. N.S.Diwana, learned counsel for the respondents-claimants, submitted that actually the compensation awarded is extremely low and should have been much higher. However, he has admitted that no appeal has been filed by the respondents herein, i.e. the claimants before the MACT, seeking enhancement of compensation.

12. Having heard learned counsel for the parties, in my opinion, learned counsel for the appellant is correct to the extent that the deceased was not proved to have been working as a driver anywhere. However, it is to be

accepted, in the absence of any challenge to that finding, that he and not Jaswant Singh (PW2), was driving the vehicle at the time of the accident. Even so, assessment of Rs.5100/- as the monthly income of the deceased, may be slightly on the higher side, keeping in view the fact that as per the minimum wages shown, in Punjab, in the year 2005, the monthly wages would be approximately Rs.2700/- for an unskilled labourer and about Rs.3000/- to Rs.3500/- for a skilled labourer. Factually though, a drivers' wages at that time are known by common knowledge, to have been between Rs.3500/- to Rs.4500/- in the Chandigarh-Mohali area, in the year 2004.

13. However, against that are to be weighed many factors, which have already been noticed hereinabove, i.e. the claimants were neither awarded any amount even towards funeral expenses of the deceased, nor any compensation was awarded towards loss of consortium and loss of love and affection to the respective claimants, as per their entitlement, which in the case of respondent No.1 would be Rs.1,00,000/- towards loss of consortium, and at least Rs.50,000/- each towards loss of love and affection of a young son, to the parents of the deceased. As regards minor children, conventionally, this Court has been awarding at least Rs.1,00,000/- to Rs.2,00,000/- to very minor children, for the loss of a parent.

Thus, even if the monthly income of the deceased was taken to be Rs.3000/-, i.e. Rs.36000/- annually, the deduction to be applied thereupon would be $\frac{1}{4}$ th of that income and not $\frac{1}{3}$ rd as was applied by the Tribunal, as he had 5 dependents, i.e. the claimants, who are his wife, two children and parents.

This would be so, in view of the ratio of the judgment in **Smt.**

Sarla Verma and others vs. Delhi Transport Corporation and another,

(2009) 6 SCC 121.

Hence, the loss of annual dependent income to the claimants would be Rs.27,000/- (Rs.36,000/- minus 1/4th thereof). To that, again as per the ratio of the aforesaid judgment, would be applied a multiplier of 17 and not 15 as applied by the Tribunal. Hence, the total loss of dependent income would be Rs.4,59,000/- even on minimum monthly wages of Rs.3000/-, whereas actually income earned by a driver in the year 2004, would be anything between Rs.3500/- to Rs.4500/-, as already said.

14. To the aforesaid sum of Rs.4,59,000/-, would be addable Rs.25,000/- by way of funeral expenses, in terms of the judgments of the hon'ble Supreme Court in **Rajesh and others vs. Rajbir Singh and others** (2013)(9) SCC 54 and **Vimal Kanwar and others vs. Kishore Dan and others** (2013)(7) SCC 476. After that, if Rs.1,00,000/- each is to be awarded to the widow and children of the deceased, and even Rs.50,000/- each to the parents of the young man who died, the total compensation awardable would be Rs.8,84,000/- which is Rs.2,72,000/- more than what was awarded by the Tribunal. Even if the compensation awardable to the 2 year old and one year old two children of the deceased, is to be reduced to a sum of Rs.50,000/- each (which it actually cannot be), the total compensation payable would still amount to Rs.4,59,000/- plus Rs.3,25,000/- which works out to be Rs.7,84,000/-.

15. However, this not being an appeal for enhancement of compensation by the respondents-claimants, this Court is not to enhance the compensation as awarded by the Tribunal.

Yet, in view of what has been noticed hereinabove, even though, strictly under the head of loss of income, the compensation of Rs.6,12,000/-,

as awarded by the Tribunal, may be reducible, however, simply by a change in the heads of income, the respondents are actually entitled to higher compensation. Therefore, the amount of Rs.6,12,000/- awarded to them for the death of a 26 year old young man, cannot be reduced, in the opinion of this Court.

16. Consequently, finding no merit in this appeal, it is dismissed; however, there is no order as to costs.

May 20, 2016
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(AMOL RATTAN SINGH)
JUDGE