

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 4219 of 2011
Date of Decision : 08.01.2016

Lilawati

....Appellant

Versus

Fateh Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rakesh Lathwal, Advocate
for the appellant.

Mr. Vishal Goyal, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal against award dated 25.02.2011 passed by the Motor Accident Claims Tribunal, Sonapat (later referred to as 'the Tribunal') whereby claim petition filed by Lilawati for the death of her son Subhash @ Ganga in a motor accident with truck (container) bearing registration No. HR-47A-3781 (later referred to as 'the offending vehicle') was dismissed.

2. Case of the claimant, in brief, is that on 17.07.2009, Subhash @ Ganga (deceased) alongwith one Bijender Singh son of Thanan Singh was going to Singhola, Delhi from Prem Colony, Kundli, Sonapat on a motorcycle bearing registration No. DL-8SND-1059. The motorcycle was being driven by Subhash @ Ganga. When they reached near Batra Petrol Pump on main G.T. Road at about 06.00 a.m., the offending vehicle came from opposite side, which was being driven by respondent no. 1 in a rash and negligent manner. The offending vehicle dashed against the motorcycle of deceased as a result of which he fell on left side

of the road while Bijender Singh fell on right side of the road. Front wheel of the offending vehicle ran over the body of deceased who died at the spot. The dead body of deceased was taken to Babu Jagjivan Ram Samarak Hospital, Delhi where his postmortem was conducted. Injured-Bijender Singh was shifted to Raja Harish Chander Hospital, Narela where he was medico-legally examined and was later discharged.

3. The claimant alleged that deceased was 22 years of age and was running a shop which he had taken on rent from Dharambir Khatri of Sonapat. He was earning ₹12,000/- per month and was contributing ₹10,000/- for household expenses. The claimant suffered mental agony, shock and was deprived of love and affection, guidance and services of the deceased.

4. Respondents no. 1 and 2 i.e. driver and owner of the offending vehicle did not appear to contest the claim petition and were proceeded *ex parte*.

5. In the written statement filed by respondent no. 3- Insurance Company, insurer of the offending vehicle, claim petition was contested *inter alia* pleading that no accident as alleged had ever taken place. False FIR was got registered by the claimant in collusion with police and respondents no. 1 and 2 in order to extract compensation from respondent no. 3. Plea was also taken that respondent no. 1 was not having a valid and effective driving licence to drive the offending vehicle at the relevant time, as such, no liability of the Insurance Company to pay the compensation is attracted for breach of terms and conditions of the insurance policy. It was also averred that the

offending vehicle was being used for the purpose other than that specified in the policy and respondent no. 2 was also not having a valid registration certificate, route permit and fitness certificate etc. In the event of accident is proved, respondent no. 3 took the plea of contributory negligence of the deceased in causing the accident.

6. Pleadings of the parties led to framing of the issues as follows:-

- (1) Whether death of deceased Subhash @ Ganga was caused in a road accident which took place on 17.07.2009 allegedly due to rash and negligent driving of Truck/Container No. HR-47-A-3781 allegedly being driven by respondent no. 1 at the time of accident? OPP
- (2) If issue no. 1 is proved, to what amount of compensation the petitioner is entitled to and from whom? OPP
- (3) Whether respondent no. 1 was not holding a valid and effective driving licence and the truck was being driven in violation of the terms and conditions of the insurance policy at the time of accident? OPR-3
- (4) Relief.

7. The Tribunal disbelieved the statement of PW-1 Bijender Singh eye-witness of the occurrence on the grounds as follows:-

- (i) That driver of the truck had fled away from the spot and he had not noted the number of the truck anywhere;
- (ii) that the truck was coming on the road meant for coming from Delhi to Sonapat and it was duty of driver of the vehicle which was to cross the road

to see as to whether any vehicle was coming from Delhi side or not;

- (iii) that it was the deceased who was crossing the road on his motorcycle without caring of the truck coming from Delhi side and was responsible for the accident;
- (iv) that Bijender Singh did not get the FIR registered;
- (v) that in the FIR which was registered on the statement of ASI Hari Om, there is no mention of the name of driver of the truck or the truck number;
- (vi) that no report under Section 173 Cr.P.C. was placed on record to show that the offending vehicle and respondent no. 1 were involved in the accident.

8. Learned counsel for the appellant has argued that in the accident Bijender Singh had also received injuries and was taken to the hospital where he was medically examined. Investigating Officer had contacted him in the hospital but he was not in proper frame of mind to make any statement and requested the police that he will make statement at later stage. The testimony of Bijender Singh proved that the accident had taken place and there was no reason to disbelieve him. It was for the Tribunal to enquire as to whether police has presented the challan in case bearing FIR No. 229/09 dated 17.07.2009, registered at Police Station Alipur with regard to accident in question. In fact the police had presented the challan on 04.11.2009 against the accused. The offending vehicle was also confiscated and was given on *superdari* to one Saudan. The duty is cast upon the Tribunal to collect all the facts relating to the FIR instead of disbelieving the statement of eye-witness and injured in accident on flimsy

grounds.

9. Learned counsel for the respondent no. 3-Insurance Company has argued that the Tribunal on the basis of evidence before it has rightly reached the conclusion that the accident resulting in death of Subhash @ Ganga was not caused due to rash and negligent driving of the offending vehicle by its driver-Fateh Singh-respondent no. 1. Bijender Singh the alleged eye-witness of the occurrence has not given any version to the police at the time of registration of First Information Report (FIR), which shows that the offending vehicle was later on involved in this case to get the compensation. The award is based on proper appreciation of evidence on record and calls for no interference in this appeal.

10. The claimant in order to prove her case has examined Bijender Singh as PW-1. He has stated that on the fateful day he was pillion rider on the motorcycle of deceased. When they reached near Batra Petrol Pump on the main G.T. Road, the offending vehicle bearing registration no. HR-47-A-3781 came from the opposite side. It was being driven in a rash and negligent manner by its driver and hit the motorcycle of deceased who fell on left side of the road while he himself fell on right side of the road. The deceased was run over by the offending vehicle as a result of which he received grievous injuries and died at the spot. He was shifted by PCR van to Raja Harish Chander Hospital, Narela where he was medico-legally examined and discharged. He has further stated that on 17.07.2009, the police recorded his statement in Raja Harish Chander Hospital, Narela at about 10.00

a.m. From the testimony of this witness it is apparent that he is injured as well as eye-witness of the occurrence. In his affidavit (Ex. PW-1/A) he has given number of the offending vehicle. No suggestion was given to him that the accident as stated by him had not taken place or he is not witness to the accident. He was rather enquired about the mode of accident. Even in the FIR which was recorded on the statement of ASI Hari Om, this fact was recorded that on reaching the spot the investigating officer came to know that Bijender Singh had been sent to hospital in a PCR van. Thereafter, he reached the hospital and met Bijender Singh who was in disturbed state of mind and did not get his statement recorded. The statement of this witness is un-rebutted and support the version of accident as recorded in the FIR. Driver of the offending vehicle has not turned up to rebut the statement of this witness. FIR in this case was not recorded on the statement of Bijender Singh rather it was got recorded by ASI Hari Om who had reached the spot. In his statement Bijender Singh had given number of the offending vehicle. His mere saying that the offending vehicle was not stopped and was taken away from the spot and he had not seen registration number of truck at the time of accident or had noted the same anywhere, could not be the reason for discarding his testimony with regard to accident. The statement of this witness that the offending vehicle had caused the accident is un-shattered and there was no reason for the Tribunal to discard the same.

11. From the testimony of eye-witness Bijender Singh this fact is proved that the accident took place with the offending

vehicle.

12. The second question which arises for consideration is as to whether accident had taken place due to rash and negligent driving of the offending vehicle by its driver. PW-1 Bijender Singh has stated that in front of petrol pump there is double road, one meant for going to Delhi and other for coming from Delhi and the said road is very wide. The accident took place on the road having traffic coming from Delhi to Sonapat side. The deceased was crossing the road after getting petrol from the petrol pump and at the time of accident he was still on the road coming from Delhi to Sonapat side. It was a head on collision between the vehicles. The truck was coming from Delhi to Sonapat side and was on the road meant for coming to Sonapat side. The above statement shows that it is a case of contributory negligence. The deceased had not taken due precautions while crossing the road. At the same time the offending vehicle was at such a high speed and was being driven in a rash and negligent manner that its driver could not control the speed even after witnessing the motorcycle and hitting it. The offending vehicle ran over the deceased who had fallen on the road. Keeping the above fact into consideration, it will be appropriate to assess the contributory negligence of both the vehicles in the ratio of 50:50.

13. The Tribunal has not assessed the quantum of compensation. It was incumbent upon the Tribunal to record a specific finding on issue no. 2, even if it has reached the conclusion that the accident had not taken place due to rash and negligent driving of the offending vehicle by its driver.

14. Learned counsel for respondent no. 3-Insurance Company has sought remand of the case to the Tribunal on this point. However, I find no reason to allow his submission as the parties have led entire evidence and the quantum of compensation can be assessed in this appeal.

15. I have heard learned counsel for the parties in detail on the point of quantum of compensation to be allowed in this appeal.

16. The deceased was 22 years of age. Lilawati mother of the deceased has stated that he was running a *karyana* shop which was taken by him on rent from Dharambir Khatri resident of village Nangal Kalan, Sonapat and used to earn ₹12,000/- per month from the shop. However, no evidence to corroborate the testimony of Lilawati was produced. Dharambir Khatri was not examined to prove that he had let out the shop to deceased. No bills for the purchase of material or account book of business of the deceased were produced on record. In these circumstances, it will be appropriate to assess the income of deceased as that of a labourer. In the year 2009, a labourer could earn around ₹4000/- to ₹4500/- per month. The income of deceased, as such, is assessed as ₹4000/- per month. As observed in case of **Rajesh and others vs. Rajbir and others, 2013 (9) SCC 54** and **Munna Lal Jain vs. Vipin Kumar Sharma, 2015 (6) SCC, 347**, a sum equal to 50% is to be added in the income of the deceased towards future prospects. Even otherwise we are living in inflationary trend where the prices of articles of daily needs are increasing day by day. The prices of wheat, milk and other essential items of daily use have more than doubled during the last two decades.

17. The claimant being mother of the deceased is also entitled to compensation of ₹1 lac towards loss of estate and loss of love and affection for the death of her son and ₹25,000/- towards funeral expenses. In view of above discussion, the amount of compensation to which the claimant is entitled, works out to be as follows:-

Sr. No.	Heads	Calculation
(i)	Income of the deceased	₹4000 per month
(ii)	50% of (i) above to be added as future prospects	(₹4000+ ₹2000)= (₹6000 per month)
(iii)	1/2 nd of (ii) deducted as personal expenses of the deceased	(₹6000-₹3000)= ₹3000 per month
(iv)	Compensation after multiplier of 18 is applied	(₹3000X12X18)= ₹648000
(v)	Loss of estate and loss of love and affection	₹100000
(vi)	Funeral expenses	₹25000
Total		₹773000

18. The offending vehicle was insured with respondent no. 3-Insurance Company. As per statement of RW-1 Anal Bihari, driver of the offending vehicle was having valid driving licence to drive the heavy goods vehicle. No evidence was produced by respondent no. 3-Insurance Company to prove any violation of terms and conditions of insurance policy.

19. Learned counsel representing respondent no. 3-Insurance Company has sought opportunity to the insurance company to produce evidence with regard to route permit of the offending vehicle as respondents no. 1 and 2 were *ex parte* before the Tribunal. The above submission of learned counsel for

respondent no. 3 cannot be allowed at this stage. Perusal of record of claim petition shows that the Insurance Company was allowed six adjournments to conclude its evidence. It has summoned only the licence clerk of the Licencing Authority, Mathura and no other witness. The opportunity was available with the Insurance Company to call owner of the offending vehicle to produce route permit or the relevant record from the concerned authority which it failed to produce.

20. Keeping the above facts in view, it is observed that being insurer of the offending vehicle, respondent no. 3-Insurance Company has to indemnify the insured and consequently, has liability to pay the amount of compensation.

21. In view of my above discussion, this appeal has merits and is allowed. The claimant is held entitled to a sum of ₹3,86,500/- being 50% of the amount of total compensation as assessed in para 16 above. The claimant shall also be entitled to interest @ 7.5% per annum from the date of filing of the claim petition till the date of actual payment. Being the insurer of the offending vehicle, the amount of compensation shall be paid by respondent no. 3-Insurance Company within six weeks by way of demand draft.

January 08, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No