

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

(1)

FAO No.288 of 2013

Date of decision : 01.12.2016

Jiwan Kumar

.....Appellant

Versus

Malkiat Kaur and others

...Respondents

(2)

FAO No.3099 of 2013 (O&M)

Date of decision : 01.12.2016

Malkiat Kaur and others

.....Appellants

Versus

Dara Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. D. S. Malwai, Advocate for appellant in FAO No.288 of 2013 and for respondent No.2 in FAO No.3099 of 2013.

Mr. Hardeep Singh, Advocate for respondents No.1 to 5 in FAO No.288 of 2013 and for appellants in FAO No.3099 of 2013.

Mr. Vinod Chaudhary, Advocate for respondent No.7 in FAO No.288 of 2013 and for respondent No.3 in FAO No.3099 of 2013.

DARSHAN SINGH, J.

CM-13510-CII-2013 in
FAO-3099-2013

For the reasons mentioned in the application, same is allowed and the delay of 106 days in filing the appeal is hereby condoned.

Main Appeals

This judgment shall dispose of both the appeals captioned above, which have been arisen out of the same award dated 04.10.2012 passed by the learned Motor Accidents Claims Tribunal, Patiala (hereinafter called the “Tribunal”), whereby the claim petition filed by the appellant-claimant of FAO No.3099 of 2013 under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) for grant of compensation on account of death of Satgur Singh in the motor vehicular accident which took place on 18.08.2010 has been allowed and they have been awarded compensation to the tune of ₹6,58,000/- along with the interest at the rate of 7.5% per annum from the date of filing the claim petition till realization.

2. FAO No.288 of 2013 has been filed by Jiwan Kumar, the owner of the truck bearing registration No.PB-10F-0656 (respondent No.2 in the claim petition) to assail the award and FAO No.3099 of 2013 has been preferred by the appellants-claimants for enhancement of the amount of compensation.

3. I have heard learned counsel for the parties and

have gone through the record of the case meticulously.

4. Mr. D. S. Malwai, Advocate, learned counsel for the owner contended that the deceased was himself negligent for the accident. He had come from the wrong side and hit with the truck in question. He contended that Dara Singh the driver of the truck has appeared as RW-1. They have also examined RW-2 Sarabjit Singh and RW-3 Jasbir Singh, the witnesses of the occurrence. All the three witnesses have consistently deposed that the deceased had taken the wrong turn for going to Bhawanigarh side, due to which the accident has taken place. He contended that this evidence has not been discussed at all by the learned Tribunal. There was no reason to ignore the consistent testimonies of these witnesses. He further contended that Hazara Singh the father of the deceased has lodged the FIR but he has not stepped into the witness box, which raises an adverse inference against the claimants. Thus, he contended that the negligence on the part of the driver of the truck is not established.

5. He further contended that mere this fact that the driver was not having the valid driving licence is no ground to grant the recovery rights in favour of the Insurance Company. He relied upon case ***The New India Assurance Company Limited Vs. Dayal Singh and others 2011(1) RCR (Civil) 339.***

6. Learned counsel for the claimants contended that the story put forward by the owner and driver of the truck with respect to the

manner of the accident is an afterthought. They have not disputed the accident. The presence of RW-2 Sarabjit Singh and RW-3 Jasbir Singh is not established at the spot. The criminal case was also registered against respondent Dara Singh the driver of the truck. No representation was moved either by the owner or the driver with respect to the false implication of the truck and its driver. Thus, he contended that from the evidence adduced by the claimants it was established that the driver of the truck was negligent for causing this accident.

7. He further contended that the learned Tribunal has not awarded just amount of compensation. The deceased was an agriculturist. He was having 74 Kanal and 15 Marla of land. He has also taken on lease 20 Kanal of land. He also used to sell the milk which is evident from the documents Ex.P1 to Ex.P19 but the learned Tribunal has wrongly taken the income of the deceased to be ₹6000/- per month. In fact he was earning ₹45,000/- per month. He further contended that the learned Tribunal has not awarded the future prospects to the income of the deceased and less amount has been awarded towards other conventional heads.

8. Mr. Vinod Chaudhary, Advocate, learned counsel for the respondent-Insurance Company contended that the driver of the truck was not having the valid driving licence, so the Insurance Company has been rightly granted the recovery rights by the Tribunal. Case the ***The New India Assurance Company Limited Vs. Dayal Singh and others*** (supra),

relied upon by the owner of the vehicle is not applicable to the facts of the case.

9. In reply to the contentions raised by the claimants, learned counsel for the owner further contended that the compensation awarded by the learned Tribunal is just and appropriate. The deceased was just helping his father in agricultural work. He was not having any independent income. The compensation awarded under the other conventional heads is also just and appropriate.

10. I have duly considered the aforesaid contentions.

11. As per the case of the claimants on 18.08.2010 deceased Satgur Singh was coming to Nabha from his village Ramgarh on motorcycle bearing registration No.PB-34-7756. He was being followed by his father Hazara Singh on his scooter, which was being driven by PW-2 Bahadur Singh. Deceased was driving the motorcycle at a normal speed and on the correct side of the road. At about 10:00 a.m., when Satgur Singh reached near the bridge opposite I.T.I., Nabha, then a truck bearing registration No.PB-10F-0656 came from behind in a rash and negligent manner. It overtook the scooter driven by PW-2 Bahadur Singh without giving any horn. Thereafter, the said truck rammed into the motorcycle of Satgur Singh the deceased. The motorcycle was entangled in the front wheel of the truck. Deceased Satgur Singh fell down from the motorcycle and was crushed under the truck. Many persons collected at the spot. Bahadur Singh started taking care of the injured. The

offending truck was stopped. The name of the driver of the truck was enquired who disclosed his address. The criminal case was registered on the statement of Hazara Singh the father of the deceased against Dara Singh for causing this accident.

12. In the written statement filed by the driver and owner of the vehicle the factum of the accident is not disputed. However, they pleaded that the deceased after taking the wrong turn from the railway crossing towards Bhawanigarh side *i.e.* the side from which the truck was coming, lost his control and balance and after reaching near the truck, fell down and came under the rear wheel of the truck. Thus, as per the plea raised by the owner and driver, the accident has taken place due to negligence of the deceased as he had taken a wrong turn on the road.

13. The claimants have examined PW-2 Bahadur Singh the witness of the occurrence whose presence cannot be doubted as his name even figures in FIR Ex.P20 got registered by Hazara Singh the father of the deceased within one and half hour of the accident. This prompt lodging of the FIR containing the name of PW-2 Bahadur Singh establishes his presence at the spot. If Hazara Singh the father of the deceased along with Bahadur Singh would not have been following the deceased on their scooter it was not possible that the statement of Hazara Singh on the basis of which the criminal case has been registered would have been registered within one hour of the accident. PW-2 Bahadur Singh has deposed in detail with respect to the manner of the accident

and has categorically stated that the truck in question came from behind in a very rash and negligent manner and over took their scooter without giving any horn and thereafter, it rammed into the motorcycle of deceased Satgur as a result of which the motorcycle was entangled in the front wheel of the truck. Satgur Singh fell down and was crushed by the said truck. The testimony of PW-2 Bahadur Singh is also corroborated from the mode of accident mentioned in the FIR Ex.P20. Mere non-appearance of Hazara Singh, informant of the criminal case, is no ground to discard the evidence brought on record by the claimants on the issue of negligence.

14. Dara Singh the driver of the truck has stepped into the witness box as RW-1. He has admitted the factum of accident in his testimony but alleged that the deceased who was coming from Dhuri side on a motorcycle took the wrong turn for going towards Bhawanigarh *i.e.* village Ramgarh towards his right side instead of crossing underneath the bridge, which was still under construction, for going to the left side of the road. He further deposed that deceased lost his control and balance and fell down and came under the rear wheel of the truck. RW-2 Sarabjit Singh and RW-3 Jasbir Singh have also supported the version of Dara Singh the driver of the truck with respect to the mode of accident, but their presence at the spot is not established. RW-2 Sarabjit Singh has stated in his affidavit that he has heard the thud and scratching sound from a distance of 100-150 yards away from the other side of the bridge

and, thereafter, he stopped and went to see the accident. Thus, as per these averments in his affidavit, he was at a distance of 100/150 yards from the place of occurrence on the other side of the bridge and his attention was only attracted when he heard the noise of the impact and thereafter, he went to the spot. Thus, he has not himself seen the accident taking place. So, it is not expected that he would be able to tell the manner in which the accident has taken place. RW-3 Jasbir Singh deposed that he was having a factory at Focal Point Nabha and he was going to the said factory when he saw that the deceased had taken the wrong turn on the road for going towards Bhawanigarh. He admitted that the accident has taken place at a considerable distance from the railway crossing. Thereafter, he reached at the spot to see the accident. He further deposed that the rider of the motorcycle was lying at the spot with his head towards Bhawanigarh. So, this witness, as per his statement, has also reached at the spot after the accident has taken place. Moreover, in the cross-examination he stated that he has not brought any record to show that his factory is situated at Focal Point Nabha. He further deposed that he has not given any information to the police regarding the accident and has given his affidavit for the first time in the Court and prior to that he had not reported the matter to any authority. Thus, the presence of these witnesses is not established at the spot at the time of the accident.

15. The factum of accident has been admitted even by the owner and driver of the vehicle, but they have alleged the negligence of

the deceased as he had taken the wrong turn. The onus to prove that deceased had taken the wrong turn was upon them. They were required to produce the site plan of the place of occurrence prepared during the investigation of the criminal case to show that deceased has come on the wrong side of the road, but they have not done so, for the reasons best known to them.

16. It is an admitted fact that the criminal case was registered against respondent Dara Singh the driver of the truck for causing this accident. There is no material on record to show that he has moved any representation to any higher police authority with respect to his false implication. It is settled principle of law that in the claim petition filed under the provisions of the Act the claimants are not required to establish the issue of negligence like a criminal charge beyond the shadow of reasonable doubt. Thus the statement of PW-2 Bahadur Singh which is fully corroborated from the copy of FIR Ex.P20 and factum of registration of criminal case against respondent Dara Singh the driver of the truck, it can be safely concluded that the accident has taken place due to rash and negligent driving of truck bearing registration No.PB-10F-0656 by respondent Dara Singh. Thus, the findings of the learned Tribunal under this issue are affirmed.

17. I found substance in the contentions raised by learned counsel for the claimants that the claimants have not been awarded the just compensation by the learned Tribunal. However, the learned Tribunal

has rightly taken the income of the deceased to be ₹6000/- per month as the agricultural land was in the name of the father of the deceased. Even the record regarding sale of milk stands in the name of his father. So, the income of the deceased as determined by the learned Tribunal i.e. ₹6000/- is quite reasonable. The learned Tribunal has not added any future prospects towards the income of the deceased. The learned Tribunal has also taken the age of the deceased to be 40 years at the time of his death without any material on record. The learned Tribunal has mentioned that the age of the deceased has been mentioned to be 35 years in the claim petition. Even in the postmortem report the age of the deceased has been mentioned to be 35 years, so there was no reason for the learned Tribunal to form the opinion that the age of the deceased was 40 years. Thus, the age of the deceased shall be taken to be 35 years as mentioned in the postmortem report Ex.P21. As the deceased was below 40 years of age, so 50% of his income shall be added towards the future prospects which comes to ₹9000/- per month *i.e.* ₹1,08,000/- per annum. The present claim petition has been preferred by the widow, two minor children and parents of the deceased. Even if the father of the deceased is excluded the deceased was having four dependent family members, so 1/4th of his income shall be deducted towards his living and personal expenses. The remainder comes to ₹81,000/-.

18. In view of the age of the deceased, the multiplier of 16 shall be applicable. Reference can be made to case ***Smt.Sarla Verma and***

others Vs. Delhi Transport Corporation and another, 2009(3) RCR

(Civil) 77. The multiplicand comes to ₹12,96,000/-. The learned Tribunal has only awarded ₹5000/- towards funeral expenses which are enhanced to ₹25,000/-. Appellant-claimant No.1 Malkiat Kaur the widow of the deceased has been granted only ₹5000/- on account of loss of consortium, which is also enhanced to ₹1,00,000/-. Appellants-claimants Simranjit Kaur and Hussanpreet Singh the minor children of the deceased shall be entitled to ₹1,00,000/- on account of loss of love, care and guidance of their father. Appellant-claimant Sukhdev Kaur, the mother of the deceased shall also be entitled to ₹1,00,000/- on account of loss of love and affection of her son. In this way, the total amount of compensation comes out to ₹16,21,000/-.

19. As per the findings recorded by the learned Tribunal on the basis of oral as well as documentary evidence, the original of the licence Ex.R2 brought on record by the driver owner of the vehicle was fake and its subsequent renewal will not make it genuine. The learned Tribunal has rightly relied upon case ***M/s United India Insurance Company Limited Vs. Davinder Singh 2008(1) Apex Court Judgments 605 (SC)*** and ***Oriental Insurance Company Limited Vs. Prithvi Raj 2008(2) Apex Court Judgments 488 (SC)***.

20. Thus, it is established that Dara Singh the driver of the truck was not holding the valid driving licence which is clearly a violation of the terms and conditions of the insurance policy. Case ***The***

New India Assurance Company Limited Vs. Dayal Singh and others

(supra) relied upon by learned counsel for the owner is of no help to him as in that case this Court has held that if the accident was on account of say, mechanical defect in the vehicle, the issue of the validity of licence will have no relevance. But in the instant case the accident has taken place due to rash and negligent driving of truck bearing registration No.PB-10F-0656 by the driver. The owner of the vehicle has not stepped into the witness box to establish that he had made the *bona fide* inquiry with regard to the possession of the valid driving licence by respondent Dara Singh before employing him on his vehicle. Thus, the learned Tribunal has rightly granted the recovery rights to the Insurance Company.

21. Thus, keeping in view my aforesaid discussion, FAO No.288 of 2013 filed by appellant Jiwan Kumar, the owner of the offending vehicle has no merits and the same is hereby dismissed. FAO No.3099 of 2013 filed by the appellants-claimants is hereby partly allowed. The amount of compensation payable to the appellants-claimants is enhanced to ₹16,21,000/- from ₹6,58,000/- as awarded by the Tribunal. The appellants-claimants shall also be entitled to interest on the enhanced amount of compensation at the rate as determined by the learned Tribunal from the date of filing the petition till realisation, except the period of 106 days i.e. the delay caused by appellants-claimants in filing the appeal. The liability to pay the enhanced amount of

compensation and the apportionment amongst the claimants shall remain same as determined by the learned Tribunal in the main award.

22. As the matter with respect to future prospects has been referred to the Larger Bench of the Hon'ble Apex Court in case ***National Insurance Company Vs. Pushpa, (2015) 9 SCC 166***, in order to safeguard the interest of respondent No.3-Insurance Company, the amount of compensation under the head future prospects shall be disbursed to the claimants against adequate security in the form of sufficient indemnity bonds to the satisfaction of the learned Tribunal/executing Court, wherein the claimants will undertake that if the Hon'ble Apex Court adjudicates that the casual labourers/persons not holding the permanent jobs will not be entitled to the future prospects, then they will be bound to refund the amount of future prospects received by them on moving the requisite application by the respondent-Insurance Company and the learned Tribunal will be competent to take the steps without making any reference to this Court.

01.12.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No