

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 6020 of 2014 (O&M)
Date of Decision : 20.10.2016

Amar Singh and others

....Appellants

Versus

Sunita Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Navneet Singh, Advocate
for the appellants.

Mr. Amit Jain, Advocate
for the respondents.

Surinder Gupta, J.

This is appeal by driver and owner of tractor bearing registration no. HR-26-AE-7729 (later referred to as 'the offending vehicle') against award dated 16.01.2014 passed by Motor Accident Claims Tribunal, Gurgaon, whereby claimants were allowed compensation for death of Naresh Kumar (later referred to as 'the deceased') in accident on intervening night of 31.03.2004/01.04.2004 with the offending vehicle.

2. Claimants have given detail of accident in para 25 of claim petition, filed under Section 166 of the Motor Vehicles Act, which reads as follows:-

“That on the intervening night of 31.03.2012/01.04.2012, Sh. Naresh Kumar (since deceased) was going to pick up his real brother Dinesh Kumar from Khoontpuri turning from his house by his motorcycle bearing registration no. HR-72-A-0664. At about 11.30 p.m./12.30

a.m., when he reached ½ k.m. ahead to Khoontpuri turning, the offending tractor no. HR-26-AE-7729 being driven by its driver respondent no. 1 at a very high speed, rashly, negligently, carelessly came from opposite side and straightly dashed into the motorcycle of the deceased. As a result of the accident the deceased alongwith his motorcycle struck into a safeda tree nearby the road side and sustained serious, grievous and fatal injuries on his person and succumbed to his injuries at the spot of the accident. This accident was witnessed by Dinesh Kumar, the real brother of the deceased who was at a little distance from the spot of the accident at that time. The respondent no. 1 got down from the tractor and Dinesh Kumar identified him as Amar Singh son of Ram Chander of village Billaka being of neighbourhood village. Thereafter, Dinesh Kumar became busy in taking care of his brother and respondent no. 1 fled away from the spot of the accident alongwith his tractor with attached trolley. At the same time Dinesh Kumar also informed his family members as well as police about the said accident. Police visited the spot of the accident and recorded the statement of Dinesh Kumar and accordingly lodged FIR No. 106 dated 01.04.2012 U/Ss 279/304-A IPC with P.S. Sohna against respondent no. 1 for causing the said accident.”

3. FIR was registered on statement of Dinesh Kumar, who appeared as PW-1. The Tribunal relied on his statement, which was corroborated by the testimony of investigating officer and the fact that

police after investigation had presented challan against appellant no. 1-Amar Singh in which he was facing trial and held that the accident had taken place due to rash and negligent driving of the offending vehicle by appellant no. 1-Amar Singh.

4. Learned counsel for appellants has argued that the accident took place during night time. Number of the offending vehicle does not find mention in the FIR. Testimony of Dinesh Kumar, the alleged eye-witness, cannot be believed as it finds no independent corroboration. He has stated that due to darkness he could not read registration number of the tractor. He has further stated that while coming from Sohna he had given a telephone call to his brother Naresh Kumar (deceased) to pick him from Khoontpuri turning but no call record was produced.

5. Above submission by learned counsel for appellants raise a question about proof of involvement of the offending vehicle and that it was being driven by appellant no. 1-Amar Singh at the time of accident.

6. Claimants examined Dinesh Kumar as PW-1, who has stated that his brother was called to pick him from Khoontpuri turning as he was late while returning from Sohna where he had gone to know about his result. On reaching Khoontpuri turning by private vehicle he found that his brother had not turned up, as such, he started moving towards his village on foot and covered distance of ½ kilometer. At that time the offending vehicle came from Khoontpuri turning side, which was being driven in a rash, negligent and careless manner. He saved himself by coming left hand side. The offending vehicle passed by his side while being driven in a rash and negligent manner and at a little distance hit a motorcycle. On reaching the

spot he identified driver of the offending vehicle, who got down from the tractor. He was Amar Singh son of Ram Chander, caste Gujjar resident of village Bilaka, known to him being from the neighbouring village. Thereafter, he went ahead and found that victim in this accident was his brother. He started taking care of his brother and in the meanwhile appellant no. 1-Amar Singh slipped away from the spot alongwith tractor-trolley. The matter was reported to the police at about 01.10 a.m. and immediately thereafter police reached the spot and recorded the FIR wherein name of appellant no. 1 is specifically mentioned. This witness has also given colour of the trolley as blue but has not described its registration number in the FIR. From the testimony of this witness it is clear that Amar Singh was driving the vehicle which caused the accident. Nothing has come on record or was suggested to Dinesh Kumar that he had got any enmity with appellant no. 1-Amar Singh or reason to depose against him. Testimony of this witness finds support and corroboration from testimony of ASI Surender Singh, who at the relevant time was posted at Police Station, Sohna. On receiving telephonic information he reached the spot where he met Dinesh Kumar and recorded his statement. On spot inspection he lifted iron *patti* and broken indicator of the vehicle involved in accident. Then he visited house of appellant no. 1-Amar Singh where he was not present. On receiving information about the tractor-trolley, he reached house of Begraj @ Begu, who informed that his tractor-trolley was being driven by appellant no. 1-Amar Singh. On taking the offending vehicle into possession, he observed that its iron *patti* was in broken condition and matched with the strip (iron *patti*) taken into possession from the spot. Thereafter, he investigated the case and found the offending

vehicle driven by appellant no. 1-Amar Singh involved in the accident and presented the challan. He has stated that registration number of the offending vehicle was not printed on the tractor. Testimony of this witness proves that the offending vehicle was involved in the accident as it was in damaged condition and iron strip recovered from the spot matched with broken iron strip of the tractor-trolley. Though, Dinesh Kumar is brother of the deceased but the Tribunal has committed no error by relying on his statement, which is quite natural and finds corroboration from the testimony of PW-5 Surender Singh. Accident took place at night time and FIR was recorded immediately after accident wherein appellant no. 1-Amar Singh was named. In facts and circumstances of the case, testimony of Dinesh Kumar is credible even in the absence of any independent corroboration. The mere fact that mobile call details of Dinesh Kumar or the deceased were not produced on file is no reason to discard statement of Dinesh Kumar. Regarding call details of Dinesh Kumar, RW-2 Chander Singh, Nodal Officer from Vodafone had appeared and stated that as per rules they maintain commercial record with regard to call details for a period of one year only. Non-production of call details to prove that Dinesh Kumar had called his brother to pick him from Khoontpuri turning, casts no show of doubt about veracity of statement of Dinesh Kumar. This fact that number of the offending vehicle did not find mention in FIR is also not relevant because appellant no. 1-Amar Singh was identified at the spot. Registered owner of the offending vehicle had disclosed to ASI Surender Singh that it was Amar Singh, who was driving the offending vehicle at the relevant time. Registration number was not inscribed on the vehicle and when ASI Surender Singh took into possession the offending vehicle, he

found the same in damaged condition. All these facts indicate towards involvement of the offending vehicle in the accident with motorcycle of the deceased resulting in fatal injuries and his death at the spot. Appellants have not come up with any plea that this vehicle was involved in any other accident.

7. Admittedly, appellant no. 1-Amar Singh is facing trial in Court regarding this accident and the police after investigation found version as contained in FIR regarding the accident as correct. Keeping in view above facts and circumstances, Tribunal has committed no error of law and fact while observing that accident in question was caused by appellant no. 1-Amar Singh due to rash and negligent driving of offending vehicle.

8. Learned counsel for appellants has further argued that the Tribunal has relied on the statement of PW-4 Vinod Kumar, who has virtually fabricated the record regarding salary and job of the deceased. He has stated that the deceased was being paid ₹14,000/- per month but had not produced any salary register. He has also not shown salary being paid to the deceased in his income tax returns. He has fabricated the record of three months prior to death of the deceased and deposed that he was working in his travel agency. No record prior to December, 2012 was produced despite his statement that the deceased was employed with him from 01.04.2010. The statement of this witness is shaky and cannot be relied upon.

9. Learned counsel for respondents has argued that statement of PW-4 Vinod Kumar is reliable. He has produced salary certificate and copy of attendance register, which prove that the deceased was working with him and getting the salary of ₹14,000/- per month.

10. On perusal of record, I find statement of PW-4 Vinod Kumar as unreliable and documents produced by him in Court to prove employment of deceased as supervisor in his travel agency appear to be not genuine. Claimants while examining PW-4 Vinod Kumar, proprietor of Shri Sham Travels, 911/A, Gali No. 1, near Apna Enclave, Laxman Vihar, Phase-I, Gurgaon, have forgotten that in claim petition they have taken plea that the deceased was working as supervisor in 'Camviba Call Centre, Sector 34, near Hero Honda Chowk, Gurgaon'. His wife, Sunita Devi while appearing as PW-2 has also stated on oath that her husband was working as Supervisor in Camviba Call Centre, Sector 34, near Hero Honda Chowk, Gurgaon. Neither it was pleaded nor stated that the deceased was employed with travel agency of Vinod Kumar and he had placed his services at disposal of Comviba Call Centre. No evidence has come on file that Comviba Call Centre was paying salary of deceased to the account of Vinod Kumar (PW-4). Statement of PW-4 Vinod Kuamr is beyond pleadings and statement of wife of the deceased. Even otherwise, he has stated that salary bills (Ex. P-5 to Ex. P-7) produced by him do not bear any date. Copy of attendance register for the months of January to March, 2012 show that four employees were shown as his employees and none of them had initialed attendance register, rather their presence have been marked by writing word 'P'. No register of payment of salary was produced. As per record produced by PW-4 Vinod Kumar, he was paying salary of ₹46,000/- to four employees but strangely enough he has not disclosed their salary in his income tax returns till date. He has further stated that he does not possess any record with regard to employment and salary of the deceased from 01.04.2010 to 31.03.2012. Despite his statement that the deceased was

employed in April, 2010 and remained in job with him upto 31.03.2012, this witness has stated that the deceased was not known to him personally and he was not aware about his education or experience. He possessed no proof of payment of salary to the deceased except salary bills (Ex. P-5 to Ex. P-7). Even in these registers, salary was not paid and signatures were not obtained on revenue stamps. Vinod Kumar while appearing as PW-4 has stated that he provides 'employee transportation' to Comviba Technologies. Naresh Kumar was employed as Supervisor in his travel agency and not as driver. Though, he tried to cover up the assertion made in claim petition and in the statement of wife of the deceased but documents produced by him nowhere show that the deceased was having any link, concern or employment with Comviba Call Centre. He has nowhere stated that salary of deceased was paid to him by 'Comviba Call Centre' and he had been disbursing it to deceased. As per him, one Vikas had also joined his firm in August, 2012 but his name do not find mention in salary register or attendance register. In these circumstances, the Tribunal has committed grave error while relying on statement of PW-4 Vinod Kumar with regard to income of the deceased. On discarding his statement, there remains no evidence or document regarding income of deceased.

11. In the absence of any document regarding educational qualification and experience of the deceased, his salary can be taken as that of unskilled labourer and is assessed as ₹9000/- per month. As per observations in case of **Rajesh and others vs. Rajbir Singh and others, 2013 (9) SCC 54** and **Munna Lal Jain and others vs. Vipin Kumar Sharma and others, 2015 (3) RCR (Civil) 447**, 50% addition is allowed in income of the deceased towards future prospects and deduction of 1/4th is

applied towards personal expenses (as applied by the Tribunal). Claimants no. 2 and 3, who are minor children of the deceased, are entitled to compensation towards loss of love and affection, care and guidance, which is quantified as ₹1 lac. Compensation allowed by the Tribunal on other conventional heads is maintained.

12. In view of above, the amount of compensation to which claimants are entitled, is reassessed as follows:-

<i>Sr. No.</i>	<i>Heads</i>	<i>Calculation</i>
(i)	Name of the deceased	Naresh Kumar
(ii)	Age of the deceased as assessed by the Tribunal	28 years
(iii)	Income of deceased	₹9000 per month
(iv)	50% of (iii) added towards future prospects	(₹9000+₹4500)= ₹13500 per month
(v)	1/4 th of (iv) deducted as personal expenses of the deceased	(₹13500-₹3375)= ₹10125 per month
(vi)	Amount of dependency after applying multiplier of 17.	(₹10125X12X17) = ₹2065500 per annum
(vii)	Loss of consortium for wife as allowed by the Tribunal	₹100000
(viii)	Loss of love and affection for minor children	₹100000
(ix)	Loss of estate for parents as assessed by the Tribunal	₹10000
(x)	Funeral expenses as allowed by the Tribunal	₹25000
<i>Total</i>		₹2300500

13. As a sequel of my discussion above, the appeal is partly allowed. Award of the Tribunal is modified and compensation allowed to claimants for death of Naresh Kumar is reduced from ₹33,48,000/- to

₹23,00,500/-. The amount of compensation will carry interest @ 7.5% per annum from the date of filing of claim petition till actual realization. As the offending vehicle was not insured at the time of accident, appellants will deposit amount of compensation in bank accounts of claimants or pay the same through demand draft. The share of claimants No. 2 and 3, who are minor, will be deposited in some nationalized bank as fixed deposit till the period they attain majority. It is, however, made clear that the bank may take the documents regarding age of minor as required at the time of deposit of the amount and they shall not be asked to bring fresh order from the Tribunal to get the payment of the amount deposited in their names after the date of their attaining majority. The above direction has been issued to save claimants from unnecessary harassment caused due to directions, the bank usually give to bring the order of Tribunal to get the payment even after attaining the age of majority. Claimant-respondent no. 1-Sunita Devi, being mother and natural guardian of minor claimants shall be entitled to get interest on the share of minors deposited with bank, on monthly, quarterly, half yearly or annual basis, as per her convenience to meet expenses of their brought up. Amount of compensation shall be apportioned amongst claimants as per award.

14. In the event of demise of any of the claimants before or after passing of award, compensation of his/her share shall be paid to surviving claimants.

October 20, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No