

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

FAO No. 4557 of 2016 (O&M)

Date of Decision: 08.12.2016

Lakhbir Singh

.....Appellant

Vs.

Charan Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mrs. Gursharan K. Mann, Advocate,
for the appellant.

AMOL RATTAN SINGH, J.

This is an appeal of the owner of a motor-cycle involved in an accident, leading to the death of Shamsher Singh, leading up-to the filing of a claim petition by the parents of Shamsher Singh before the learned Motor Accidents Claims Tribunal, Amritsar. The claim petition was instituted under Section 163-A of the Motor Vehicles Act, 1988 and not under Section 166 thereof.

2. The facts, as taken from the impugned Award, are that as per the claimants, Shamsher Singh was travelling on a motorcycle bearing registration no. PB-18-S-8500 on 19.03.2013, going from Ghuman to village Udhanwal and at about 12.00 noon, when he reached the area of Bhainiwal, a motorcycle bearing registration no. PB-58-A-3570, driven by one Davinder Singh, came from the opposite side and hit the motor-cycle of Shamsher Singh. Davinder Singh is stated to have unfortunately died on the spot,

whereas Shamsher Singh, i.e. the son of the claimants, was taken to the Johal Navjeevan Hospital, Batala, where he remained admitted up-to 23.03.2013 but died on that date, on account of the injuries suffered by him in the accident.

It was contended in the claim petition that a sum of Rs. 70,000/- was spent on his treatment and transportation etc.

It was further contended that the accident took place “on account of use of motorcycle No. PB-58-A-3570” driven by the deceased Davinder Singh.

The motorcycle having been owned by the present appellant, Lakhbir Singh, both he and the unnamed insurance company with which the motorcycle was presumed to be insured, were impleaded as respondents in the claim petition. The claimants (respondents no. 1 and 2 herein) sought a compensation of Rs. 20,00,000/-, along with interest @ 18% per annum thereupon.

3. Upon notice issued to him, the present appellant, (respondent no. 1 in the claim petition), appeared and filed his written statement, taking various preliminary objections, including maintainability, the petition being an abuse of the process of law, on *locus standi* etc., further stating that no accident had actually taken place involving his motorcycle and thereafter, stating that it had taken place solely due to the rash and negligent driving of Shamsher Singh and not that of Davinder Singh, who it was stated was the father of the present appellant-respondent no. 1.

4. No replication having been filed by the claimants, the following issues were framed by the learned Tribunal:-

“1. *Whether Shamsher Singh died due to*

accident took place with the vehicle, i.e. motorcycle bearing No. PB-58-A-3570 driven by Davinder Singh since deceased and owned by respondent No. 1? OPP.

2. To what amount, the claimants are entitled to compensation? OPP.

3. Whether the present petition is not maintainable? OPR.

4. Relief.

5. The first claimant (respondent no. 1 herein), Charan Kaur, deposed in terms of the claim petition and also proved the post-mortem report of Shamsher Singh, as Ex. P-1, the report of the Johal Navjeevan Hospital as Ex. P-2 and police proceedings as Exs. P-3 to P-10.

6. Though it was argued before the learned Tribunal that the accident had taken place due to the rash and negligent driving of deceased Shamsher Singh himself, and as such his parents were not entitled to any compensation, it was held by the Tribunal that since the petition had been filed under Section 163-A of the Motor Vehicles Act, the negligence of the driver was not to be gone into by it. It was also held that what was actually to be seen was whether the accident in question had taken place by the use of the vehicles concerned and as regards that aspect, it was not disputed by the present appellant-respondent no. 1, that motorcycle bearing No. PB-58-A-3570 was being driven by the late Davinder Singh and the accident had taken place with the motorcycle driven by the late Shamsher Singh. In fact, the plea of the present appellant was that the fault was that of Shamsher Singh himself.

It was further found by the Tribunal that the DDR lodged, Ex. P-9, revealed that the accident had taken place per chance and that no one was at fault. Hence, holding that since the accident itself, involving the two

described vehicles and named drivers (both deceased), was not denied by the present appellant, the claimants were entitled to receive the compensation.

7. As regards the quantum of compensation, the deceased was held to be 26 years of age (wrongly recorded as 24 years at one point in the Award) and that he was working as a labourer, earning Rs. 3,300/- per month and therefore, upon deduction of 1/3rd of that amount towards his personal expenses, his contribution to the family came to Rs. 2,200/- per month or Rs. 26,400 per annum.

A multiplier of 17 was applied to the aforesaid sum, to arrive at a loss of income of Rs. 4,48,800/-.

Additionally, the respondents-claimants were also held entitled to Rs. 2,000/- towards funeral expenses and Rs. 2,500/- for loss of estate. Consequently, the claim petition was allowed to the extent of a compensation of Rs. 4,53,300/-, payable to the claimants by the appellant, no insurance company that had insured the motorcycle having been disclosed by the appellant.

The claimants were also held entitled to interest @ 8% per annum on the compensation amount, running from the date of the filing of the petition, till the realization of the amount.

8. When this appeal had initially came up for hearing on 09.08.2016, Ms. G.K. Mann, learned counsel for the appellant, had submitted that another appeal filed by the appellant along with other legal heirs of deceased Davinder Singh, i.e. the father of the appellant, had also been filed, against another Award passed by the same Tribunal on the same date, i.e. 05.05.2016, in a claim petition that had been filed by the present appellant and the other legal heirs of Davinder Singh, seeking compensation from the

present respondents no. 1 and 2 and the insurer of the motorcycle driven by the late son of the said respondents herein, for the death of Davinder Singh in the same accident.

9. Learned counsel had also submitted that not even a DDR was registered by respondents no. 1 and 2 herein, in respect of the accident, whereas the present appellant had got the DDR registered on the date of the accident itself, i.e. 19.03.2013.

Her contention had also been recorded to the effect that no eye witness ever deposed in respect of the accident and therefore, the finding on the issue of negligence in the impugned Award was wholly based on the conjecture of the learned Tribunal.

On the aforesaid arguments, notice had been issued in this appeal to the respondents, returnable on 06.12.2016.

10. On 06.12.2016, as per the report of the Registry, the notices issued had not been received back served or otherwise, but the appeal had been taken up out of turn on a request made on behalf of learned counsel for the appellant, on the ground that the stay upon the disbursement of compensation, as has been ordered at the time when notice was issued, was continuing only till that date, i.e. 06.12.2016 and was therefore, required to be continued at least till date when the respondents herein were served and had appeared.

This Court, upon having taken up the appeal on request of learned counsel for the appellant, had noticed that though the claim petition, culminating in the impugned Award, had been filed under Section 163-A, a stay had been granted by this Court on the contention of learned counsel that the issue of negligence had been decided by the Tribunal wholly on the

conjecture of the learned Tribunal.

It was further recorded in the order dated 06.12.2016, that this Court had obviously missed the import of the fact that once the accident itself was admitted by the parties, involving the same two vehicles, then in a claim petition filed under Section 163-A, negligence was not required to be proved in the first place.

On the aforesaid observations, the matter had been adjourned, to address arguments on why the stay order should be continued in the aforesaid circumstances.

It was also noticed that the case file of FAO No. 6234 of 2016, i.e. the appeal filed by the present appellant against the dismissal of the claim petition filed by him, had also been attached with the file of this appeal, i.e. FAO No. 4557 of 2016. Consequently, that appeal was also ordered to be heard along with this appeal on the next date of hearing, i.e. today.

11. In the aforesaid background, Mrs. Gursharan K. Mann, learned counsel for the appellant, has argued that no eye witness to the accident was examined, except the appellant himself.

Having considered the aforesaid argument, I see no ground to hold that the accident in question actually did not take place, in view of the fact that the appellant in his own claim petition (the Award in which is impugned in the connected appeal, i.e. FAO No. 6234 of 2016, arising out of MACT Case No. 123 of 11.05.2015), himself claimed compensation on account of the death of his father in the same accident.

In that claim petition, it was stated that Shamsher Singh was coming from the opposite side on his motor cycle bearing registration no. PB-18-S-8500, driving the said motor cycle in a rash and negligent manner, on

account of which the accident took place and Davinder Singh died on the spot, whereas Shamsheer Singh died a few days later.

Very obviously, the accident in question involving the two vehicles in question is admitted by the appellant in his own claim petition. Thus, in the claim petition filed by the parents of the aforesaid Shamsheer Singh, i.e. MACT No. 236 of 23.10.2013, the claim being one under Section 163-A of the Motor Vehicles Act, no negligence was needed to be proved for claiming compensation, and it was only the factum of the accident having taken place with the vehicles stated to be involved, that was to be proved.

13. Learned counsel for the appellant further submits that even the compensation awarded in the impugned Awarded is excessive.

However, I find no force in that contention, in view of the fact that the compensation has essentially been computed by taking the deceased, Shamsheer Singh, to be a labourer/unskilled worker, with the monthly income assessed at Rs.3,300/-, which in fact is less than the notified monthly wages of the Punjab Government in March 2013. Thereafter, 1/3rd of that amount having been deducted towards his personal expenses, the dependency was worked out to Rs.2,200/- per month or Rs.26,400/- per annum, to which a multiplier of 17 was applied, thereby coming to a total loss of income to the claimants in the claim petition to be Rs.4,48,800/-. To the aforesaid sum, Rs.2,000/- was added by way of funeral expenses and Rs.2,500/- was added by way of loss of estate, as already noticed.

Though actually in terms of the ratio of **Smt. Sarla Verma and others vs. Delhi Transport Corporation and another**, (2009) 6 SCC 121, 50% of the income of the deceased was to be deducted towards his personal expenses, he being a bachelor, yet considering that the minimum wages

notified by the Punjab Government in March 2013, are seen to be Rs. 5212/- per month for an unskilled labourer and 50% of that amount works out to Rs.2606/-, whereas the Tribunal took the loss of dependent income to be Rs.2200/- per month, I see no ground to interfere in the impugned Award, even on the issue of quantum of compensation awarded. This is also to be further seen with the fact that no compensation at all was awarded towards medical expenses of the deceased though he remained admitted in hospital for about 4 days before he died.

14. Consequently, finding no merit in the appeal, it is dismissed in *limine* but with no order as to costs.

(AMOL RATTAN SINGH)
JUDGE

December 08, 2016
nitin

Whether speaking/reasoned	Yes
Whether Reportable	Yes.