

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1456 of 1999

Date of Decision: 28.02.2017

Surjit Kaur

...Appellant

Vs.

Prem Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. R. S. Mamli, Advocate,
for the appellant.

None for respondent No.2.

Amol Rattan Singh, J.

This is an appeal filed by the claimant before the learned Motor Accident Claims Tribunal, Kurukshetra, after her claim petition seeking compensation for the death of her husband in a motor vehicles accident, was dismissed by the Tribunal, vide the impugned Award dated 17.12.1998.

2. As per the claim petition, the petitioners' husband, Mohan Singh, was standing near the bus-stand at Shahabad on 19.08.1994 at about 11:20 am, waiting for the arrival of a bus. While he was doing so, a truck bearing registration No.HNC-1415, allegedly driven in a rash and negligent manner by respondent no.1, Prem Singh, came from the side of Pipli and without blowing any horn, struck against Mohan Singh, after coming onto the wrong side of the road, resulting in him receiving fatal injuries. He is stated to have died on the spot.

As per the claim petition, deceased Mohan Singh was 55 years

old, earning Rs.5000/- per month by selling milk, with the appellant (claimant) fully dependent upon him.

Consequently, she claimed Rs.5,00,000/- as compensation.

3. In response to notice issued, respondent no.1 filed a written statement denying the allegations made in the petition and stating that his truck was not involved in the accident in any manner and that he had also been involved falsely in the criminal case registered against him, and that further, he had also been acquitted by the trial Court vide a judgment dated 29.01.1997, in the criminal proceedings.

It was further averred in the written statement that the deceased was actually 70 years old at the time of his death and not 55 and that he was not doing any business of selling milk and was therefore, not earning Rs.4000/- per month.

4. Respondent no.2, i.e. the insurance company with which the truck was insured, also filed its written statement again denying the allegations made in the claim petition and taking the same stand as was taken by respondent no.1.

5. On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

- “1. Whether Mohan Singh son of Teja Singh, resident of village Lakhmari, Tehsil Thansesar, District Kurukshetra, died in a road side accident on 19.08.1994 in the area of Shahabad due to the rash and negligent driving of respondent no.1 driver of truck No.HNC-1415? OPP
2. If issue No.1 is proved in affirmative, what amount of compensation the claimant is entitled to and from whom? OPP
3. Whether respondent no.1 was holding a valid driving

licence at the time of accident, if so, what effect? OPR

4. Relief.”

6. The appellant examined herself as PW1 and K.S. Malik, Assistant Ahlmad in the Court of the learned Additional Chief Judicial Magistrate, Kurkshetra, as PW2. She also tendered into evidence the FIR registered and the post-mortem report as Exs. P1 and P2 respectively. The report submitted under Section 173 Cr.P.C. and the copy of the driving licence of respondent no.1 are also shown to be led by way of evidence, as seen from the record of the learned Tribunal.

7. The respondents examined respondent no.1, Prem Singh, as RW1 and Sukhbir, a Clerk in the office of SDM, Kaithal, as RW2.

The first respondent also tendered his original driving licence in evidence as Ex.R1. A copy of the judgment acquitting him in criminal proceedings, was tendered as Ex.R2 and the relevant entry in respect of the driving licence of the said respondent, in the office of the licensing authority/SDM, Kaithal, was tendered as Ex.R3.

8. The learned Tribunal found that other than stating that one Shamsher Singh, Rickshaw-puller, had told her about the accident having been caused due to the rash and negligent driving of respondent no.1, the appellant-claimant could not lead any other evidence to prove such negligence. Hence, even though the FIR, Ex.R1, indicted respondent no.1 as being negligent in causing the accident, it was held by the learned Tribunal that simply registration of an FIR was not sufficient evidence to hold him guilty, especially as vide the judgment, Ex.R2, he had been acquitted of the charge of negligence.

Consequently, as regards the first issue framed with regard to the

negligence of respondent no.1 in causing the accident, that was decided against the appellant-claimant.

9. Thereafter, despite having held respondent no.1 not guilty of causing the death of deceased Mohan Singh due to any rash and negligent driving, the Tribunal still went on to assess the compensation that may have been payable to the appellant-claimant.

Since in the post mortem report the age of Mohan Singh was given to be 65 years, that was accepted to be his true age rather than the age given in the claim petition (55 years) and the statement of the appellant-claimant in her testimony, to the effect that her husband was 60 years old when he died.

Further, as regards his income, the appellant having testified that her husband was earning Rs.3000/- per month by taking land on contract, that was found contradictory to the stand taken by her in her petition wherein it was stated that he was running a dairy. With no evidence having been led with regard to Mohan Singh having pursued either of the two vocations, he was taken to be a labour earning Rs.1500/- at the time of his death in 1994.

From that income a 1/3rd amount was deducted towards his personal expenses, thereby taking his contribution to the family to be Rs.1000/- per month or Rs.12,000/- per annum.

Having accepted the deceased to be 65 years, a multiplier of 5, as given in the schedule to the Motor Vehicles Act, 1988, was applied, thereby coming to a total loss of income of Rs.60,000/- to the claimant (appellant herein).

That, in fact, was the total compensation assessed by the Tribunal, but having held that the negligence of respondent no.1 in causing

the accident had not been proved, even the aforesaid amount was held to be not payable and consequently, the claim petition was dismissed.

10. Even having dismissed the claim petition, as regards the issue of any liability to pay compensation had it been so payable, it was held that the genuineness of the driving licence of respondent no.1 had not been challenged by the respondent insurance company and though it had tried to show that another driving licence was possessed by him, which was a forged one, the driving licence, Ex.R1, having been held to be a valid driving licence issued to respondent no.1, the insurance company was held to be not absolved of its liability, if any fell upon it to pay the compensation.

11. In this appeal, Mr. R.S. Mamli, learned counsel for the appellant, first submitted with regard to the issue on negligence, that once an FIR was shown to have been registered against respondent no.1, then in terms of the judgment of a co-ordinate Bench of this Court in **Girdhari Lal v. Radhey Shyam and others** 1993(2) PLR 109, an inference was needed to be taken against him and in this case especially all the more so, with even a report under Section 173 Cr.P.C. having been filed by the police, arraigning respondent no.1 as an accused therein, with charges also framed against him by the trial Court.

He further submitted that in fact even the FIR was lodged at the instance of Shamsher Singh, who had informed the appellant about the accident in question.

12. Mr. Mamli next contended that Rs.60,000/- in any case was inadequate compensation, with no amount having been assessed towards loss of consortium, love and affection, loss of estate and towards funeral expenses of the deceased.

Yet further, he submitted that the multiplier of 5 applied was also inadequate.

13. It is to be noticed that though this appeal was admitted to regular hearing by a Division Bench on 24.04.2001, on which date the insurance company, i.e. respondent no.2, was duly represented, (as it was even before the learned Lok Adalat before whom the matter had been initially placed to try and reach a settlement), and even thereafter learned counsel is seen to have appeared for respondent no.2; however, none appeared on the final date of hearing.

14. Having heard learned counsel for the appellant and having also perused evidence led before the Tribunal, it is seen that as regards the appellants' own testimony, she deposed to the effect that she had been told about the accident resulting in the death of her husband by the aforementioned Shamsher Singh, with that person also allegedly having told her that the accident had been caused due to the negligence of respondent no.1.

She is also seen to have stated to the effect that her husband was earning Rs.3000/- per month by taking land on contract, as noticed by the Tribunal.

Other than that, she testified that she had two sons, both of whom were married and living separately and that she herself had no source of income, yet further deposing that she had spent Rs.5000/- on the last rites of her husband.

15. The Assistant Ahlmad from the court of the learned ACJM, Kurukshetra, is seen to have testified in respect of the criminal case registered

against respondent no.1, for the alleged commission of offences punishable under Sections 279, 427 and 304-A IPC. This witness also testified to the correctness of the report submitted under Section 173 Cr.P.C. (Ex.P3).

He also testified to the veracity of the photocopy of the driving licence of respondent no.1, which he stated was as per the original.

16. Respondent no.1 on the other hand, is seen to have testified as per his stand in the written statement. In cross-examination in respect of the two driving licences stated to be belonging to him, as regards the photocopy of the driving licence led by way of evidence by the insurance company, Ex.R3, respondent no.1 deposed that it was a forged document and that other than the driving licence produced as Ex.R1, he did not actually have any other licence.

The Clerk from the office of the SDM, Kaithal, as RW2 is seen to have testified to the effect that Ex.R3 was in fact issued to Prem Singh son of Subhash Chand, i.e. respondent no.1 and that it had never been renewed after 1991, though in the original licence, it was made to look as if the licence was valid till 1994.

Thus, as regards the respondents' driving licence, there was a doubt on its authenticity, though not pressed by the insurance company.

17. From the judgment of the learned trial Court, by which respondent no.1 was acquitted of the criminal charges framed against him, it is seen that one Kasturi Lal was examined as PW2, who denied being an eye witness to the accident and was therefore declared hostile. PW3 before the trial court in the criminal proceedings, was the son of the appellant, Karnail Singh, who simply testified with regard to identifying his fathers' body. The other two witnesses, i.e. PWs 1 and 4 before that Court, are seen to be only

formal witnesses who proved two recovery memos with regard to the documents recovered.

18. The first question therefore in this appeal, is whether the issue of negligence was correctly decided by the Tribunal, or the judgment cited by Mr. Mamli, in *Girdhari Lals'* case (supra), is applicable, by which it was held that the Motor Vehicles Act, being a piece of beneficial legislation, once a person was being tried for rash and negligent driving upon an FIR registered against him, it was *prima-facie* enough to say, for the purpose of a claim petition, that he was negligent in driving thereby leading to the accident in question.

19. Having considered the aforesaid argument, I find myself unable to interfere in the judgment of the learned Tribunal, in view of the fact that it has been held by their Lordships of the Supreme Court in **Surender Kumar Arora** vs. **Dr. Manoj Bisla** (2012) 4 SCC 552, that once a petition is filed under Section 166 of the Motor Vehicles Act, the onus to prove that the negligence in causing the accident was that of the person alleged to have so caused it, was upon the claimant. That is to say, that simply because an FIR had been registered against the driver of the “offending vehicle” that is alleged to have caused the accident, it was not sufficient discharge of the onus cast upon the claimant in proving the negligence. Of course, if the claim petition is filed under Section 163-A of the Motor Vehicles Act, then the only onus upon the claimant is to show that the accident actually took place with the vehicle that it is alleged to have taken place with, with no further need to prove any negligence.

In the present case, the claim petition is seen to have been filed under Section 166 of the Motor Vehicles Act 1988, also invoking Sections

150 and 141 thereof.

Neither of the aforesaid two provisions, i.e. Sections 141 and 150, are seen to obviate the need for proving that the negligence in causing the accident was that of the person whom it is alleged had caused it.

20. Consequently, possibly because the appellant was a somewhat aged lady herself, with her husband being about 65 years old, she could not gather evidence and examine the witness who would prove the negligence of respondent no.1 in causing the accident; yet, even if that is so, in the absence of even examining the person who had got the FIR registered, Shamsheer Singh, I find myself unable to interfere with the Award of the learned Tribunal.

21. It needs to be stated, of course, that if the issue of negligence had been proved against respondent no.1, then compensation of Rs.60,000/- was undoubtedly inadequate, inasmuch as, the multiplier should have been 7 and not 5, in terms of the ratio of the judgment in Smt. Sarla Verma and others vs. Delhi Transport Corporation and another, (2009) 6 SCC 121 and secondly, compensation towards loss of consortium and funeral expenses would also have been awardable to the appellant.

Yet, with the basic issue of negligence in causing the accident not proved against respondent no.1, I find no ground to interfere with the impugned Award and consequently, this appeal is dismissed, with no order as to costs.

February 28, 2017
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(AMOL RATTAN SINGH)
JUDGE

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |