

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(i) FAO No.2289 of 2001 (O&M)
Manjeet Singh Appellant
Versus

Surinder alias Sind and others Respondents

(i) FAO No.2290 of 2001 (O&M)
Naib Singh and others Appellants

Versus
Surinder alias Sind and others Respondents

Date of Decision : September 5th, 2017

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Arvind Bansal, Advocate
for the appellants.

Mr. Manish Mehta, Advocate
for respondent Nos.1 and 2.

Mr. D.P.Gupta, Advocate
for Mr. Aseem Aggarwal, Advocate
for respondent No.3.

RAJ SHEKHAR ATTRI, J. (Oral)

By this order, I shall dispose of above captioned FAO Nos.2289 and 2290 of 2001 as both of them have been originated from a same accident.

On 12.08.1998, minor claimant Manjeet Singh (appellant in FAO No.2289 of 2001) alongwith his mother Smt. Nirmala Devi, grand mother Smt. Rukmani Devi and other persons were riding in jeep No.HR31-A/0452 which was being driven by Surinder alias Sind (respondent herein) in a rash and negligent manner and on excessive speed. It had gone out of

persons including Smt. Nirmala Devi and Smt. Rukmani Devi had died and appellant Manjeet Singh alongwith other passengers had suffered multiple injuries. It is a common case of all the claimants that accident had taken place due to the rash and negligent driving of respondent Surinder alias Sind while driving abovesaid jeep.

It is further a case of minor Manjeet Singh that he was student of second standard. He remained admitted in the hospital for a long time i.e. w.e.f. 12.08.1998 to 14.08.1998, he could not attend the school and compelled to abandon the studies due to the injuries suffered in the accident. He claimed an amount of Rs.4,00,000/-in total as compensation on account of the injuries suffered by him. However, learned Motor Accident Claims Tribunal (herein referred as 'the Tribunal') has awarded him Rs.15,000/- as compensation.

So far as Smt. Rukmani Devi (deceased) is concerned, she was 66 years of age. Her legal representatives Manjit Singh and others (appellant in FAO No.2290 of 2000) raised a demand of Rs.2,50,000/- as compensation and learned Tribunal has awarded an amount of Rs.55,000/- in total.

On account of death of Smt. Nirmala Devi, her legal representatives namely Naib Singh (husband) and Kulvinder Singh & Manjit Singh (sons) (appellants in FAO No.2289/90 of 2001) have preferred separate claim petition No.49 of 1999 and demanded an amount of Rs.4,00,000/-. However, learned Tribunal has awarded an amount of Rs.1,80,000/-.

All the three claim petitions have been contested by respondent

Nos.1 and 2 on the grounds inter alia that accident had taken place due to the act of God. According to them, when the jeep was running on the road, suddenly a stray animal (blue bull) came in front of the jeep and hit with the jeep due to which jeep turned turtle and accident caused without any fault of the driver.

The Insurance Company also contested all the claim petitions, inter alia, on the ground that the driver was not holding an effective driving licence and all the occupants of the jeep were gratuitous passengers, as such, the Insurance Company is not liable to compensation.

However, the respondent Nos.1 and 2 have admitted the factum of accident.

All the claim petitions were consolidated and disposed of with a common award.

From the pleadings of the parties, following issues were framed for the petitioners:-

- (i) Whether the accident dated 12.08.1998 resulting into the injuries to claimant Manjeet Singh, deaths of Smt. Rukmani and Nirmala took place due to rash and negligent driving of Jeep No.HR-31-A/0452 ? OPP
- (ii) Whether injured Manjeet Singh is entitled to compensation on account of injuries and if so to what amount and from whom ? OPP
- (iii) Whether claimants Mahavir etc. are entitled to compensation on account of death of Rukmani and if so to what amount and from whom ? OPP

(iv) Whether claimants Naib Singh etc. are entitled to compensation on account of death of Nirmala Devi if so to what amount and from whom ? OPP

(v) Whether the offending vehicle was being driven without driving licence; as alleged ? OPR

(vi) Whether the insurance company is not liable as alleged ? OPR

(vii) Relief.

The learned Tribunal had afforded adequate opportunities to the parties to adduce evidence.

On appreciation of evidence, issue Nos.1 to 4 were decided in favour of claimants-appellants in FAO Nos.2289 and 2290 of 2001 and remaining issues were decided against respondent No.3 and thus, the three claim petitions were partly allowed as aforesaid.

I have heard learned counsel for the parties and have gone through the record.

Learned Tribunal has given a specific finding that accident had taken place due to rash and negligent driving of respondent Surinder alias Sind while driving the above numbered jeep. No appeal has been preferred by any of the respondents against the impugned award.

Learned counsel for the respondent-Insurance Company has submitted that the petitions have been filed under Sections 166 and 163-A of the Motor Vehicles Act (herein referred as 'the Act'), therefore, the same be not maintainable being filed in two distinct provisions of law.

This Court has considered this contention but it carries no

weight. Although, it is very much mentioned in the claim petition that the same be filed under Sections 166 and 163-A of the Act yet a specific issue No.1 has been framed by the learned Tribunal with regard to negligence. This issue is reproduced as under:-

Whether the accident dated 12.08.1998 resulting into the injuries to claimant Manjeet Singh, death of Smt. Rukmani and Nirmala took place due to rash and negligent driving of Jeep No.HR-31-A/0452 ? OPP

None of the respondents have raised an objection with regard to framing of the issues.

It seems that both the parties as well as the learned Tribunal have treated these petition under Section 166 of the Act.

Under this issue, the learned Tribunal has observed that accident had taken place due to the rash and negligent driving of respondent No.1 Surinder alias Sind. Thus, this petition be treated under Section 166 of the Act.

The claimants also asked for enhancement of compensation on various grounds. Firstly, that the learned Tribunal has failed to appreciate the facts and evidence available on the record and assessed highly meagre amount of compensation to injured Manjeet Singh (appellant in FAO No.2289 of 2001). It has been argued before this Court that the claimants are rustic persons and Manjeet Singh was minor, therefore, they could not maintain record with regard to the medical expenses and this Court can take into consideration the relevant facts and circumstances of the present case. However, it has come into evidence that Manjeet Singh was a student of second standard. The discharge card (Annexure P6) transpires that he

remained admitted in the hospital from 12.08.1998 to 14.08.1998 due to the head injuries suffered in the accident. However, it has been reported that he did not suffer from any fracture in any part of the body. Learned Tribunal has awarded only Rs.15,000/- in lump sum but to the mind of this Court, Manjeet Singh is entitled to compensation under the following heads:-

(i) Pain and suffering	Rs.20,000/-
(ii)Special diet	Rs.3,000/-
(iii)Medical expenses	Rs.10,000/-
(iv)Transportation charges	Rs.1500/-

The enhanced compensation comes to Rs.34,500/-

Regarding death of Nirmala Devi (in FAO No.2290 of 2001), in the post-mortem report, the age of deceased is mentioned as 30 years. Naib Singh, husband of the deceased, also testified this age of deceased. However, there is no documentary evidence with regard to her age. The age mentioned in the postmortem report is as per approximation not the actual age. In this view of the matter, this Court considers the age of deceased as between 30 to 35 years.

Now coming to the income of the deceased, she was running the household chorus and in this view of the matter, she was contributed towards the family not less than Rs.24,000/- per annum. However, learned Tribunal has assessed her income as Rs.15,000/- per annum. In the claim petition, it is stated that the deceased was doing agricultural activities and also maintaining the household chorus and her monthly income was Rs.3,000/-. To substantiate this plea, the claimant Naib Singh himself has appeared as PW3 and testified that deceased Smt. Nirmala used to do

domestic work as well as performing agricultural activities and earning Rs.3,000/- per month and having good health. The said witness has been cross-examined on this point. In the cross-examination he has stated that Smt. Nirmala had not been maintaining any bank account and he denied if Smt. Nirmala why not doing any work.

After analysis of the evidence, it reveals that Smt. Nirmala was looking her house which includes her mother-in-law, her husband and children and she was also doing agriculture work. This Court is of the considered view that the income as assessed by the learned Tribunal is on the meagre side. At the time of death, she might have contributed Rs.2400/- per month which comes to Rs.28,800/- per annum. Out of this income, 1/3rd is deducted on account of her personal expenses. Therefore, loss of dependency is Rs.19,200/- per annum. After applying a multiplier of 17, the compensation comes to Rs.3,26,400/-. Besides this, Rs.2500/- as funeral expenses and Rs.2500/- as loss of estate are also added. By following the ratio decidendi laid down by Hon'ble Apex Court in case **Rajesh and others versus Rajbir 2013 (3) RCR (Civil) 170**, this Court is of the considered opinion that Naib Singh, being the living spouse of deceased, is also entitled to Rs.1,00,000/- as consortium. The total enhanced compensation comes to Rs.4,31,400/- (in FAO No.2290 of 2001) and Rs.34,500/- in (FAO No.2289 of 2001) payable to appellants with interest @ 8% per annum from the date of filing of the petition till its realization. All the respondents shall be liable jointly and severally to pay compensation.

Both the appeals stand disposed of accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

September 5th, 2017
mamta-M

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No