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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 17.08.2017

1. FAO-356-2006

Balwant Kaur (deceased through LRs) and others

... Appellant(s)

Versus

Anamika and others

... Respondent(s)

2. FAO-3353-2005

Anamika and others

... Appellant(s)

Versus

Het Ram Sharma and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vijay Sharma, Advocate &
Mr. G.S. Bains, Advocate
for the appellant(s) in FAO-356-2006 and
for respondent Nos.2 to 5 in FAO-3353-2005.

Ms. Alisha Arora, Advocate
for the appellant(s) in FAO-3353-2005 and
for respondent Nos.1 to 5 in FAO-356-2006.

None for respondent No.6-Mohinder Singh and
respondent No.7-Het Ram Sharma.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing ***FAO***

others V/s Anamika and others” and *FAO No.3353 of 2005* titled as *“Anamika and others V/s Het Ram Sharma and others”*. preferred by the appellant(s) against the findings rendered by the Motor Accident Claims Tribunal, Patiala (in short 'the Tribunal').

Mr. Vijay Sharma and Mr. G.S. Bains, learned counsel appearing on behalf of the appellant(s) in FAO-356-2006 and for respondent Nos.2 to 5 in FAO-3353-2005, submits that the deceased-Dr. Vipin Kumar, while riding on scooter bearing Registration No.CH-01H-7888, struck with a truck bearing No.PJP-8255, which was driven in a rash and negligent manner. As a result of which, he suffered multiple injuries and succumbed to the death. At the time of accident, the deceased was 32 years' old and working as a Veterinary Doctor in the Veterinary Hospital, Patiala. The accident had taken place on 17.04.1995, however, vide affidavit dated 18.08.1994 (Ex.R-7), the aforementioned truck was sold to Mohinder Singh son of Jagan Nath resident of House No.141, Sector 19, Panchkula and the factum of the sale has been admitted in paragraph 16 of the written statement filed on his behalf. Even the claimants also did not deny the sale of the vehicle. Owing to the registration of an FIR, the truck was taken into custody. An application seeking release of the truck on *superdari* had been proved through the testimony of RW-3. All these factors lead to an irresistible conclusion that the appellant-Sham Singh was not the owner of the vehicle, but has been fastened with the liability on account of fact that subsequent vendee did not get the vehicle transferred, despite the fact that the various other documents i.e. Form 29 etc., had already been signed and handed over. The truck in question at the time of accident was not insured

and therefore, the liability was fastened upon Mohinder Singh, who after filing the written statement, did not appear and was proceeded *ex parte*. Even the appellant(s) were also proceeded *ex parte*. It is only in the execution proceedings, acquired the knowledge of the award, resultantly, an application for setting aside *ex parte* award in a revision petition was allowed by this Court, subject to deposit of ₹ 4,90,000/-. The evidence brought on record unclinchingly proved that the conscious possession and custody of the vehicle as way back on 18.08.1994 with Mohinder Singh i.e. much before (almost eight months) the date of accident. All these factors have not been appreciated or noticed.

Ms. Alisha Arora, learned counsel for the appellant(s)/Claimants submits that the Tribunal has wrongly applied multiplier of 15, whereas it should have been 16, by taking into consideration the age of the deceased as 32. He was earning ₹ 6,824/- and left behind widow, two minor children and parents. The Tribunal has wrongly applied the deduction 1/3rd, whereas it should have been 1/4th. Even no future prospects have been granted. No compensation under the head of loss of consortium, love and affection and funeral expenses has even been granted. The Tribunal also deducted the pension @ ₹ 1200/-, which is against the settled cannon of laws and therefore, amount of compensation is liable to be enhanced.

There is no representation on behalf of respondent Nos.6 and 7, Mohinder Singh and Het Ram Sharma, respectively. They have been proceeded *ex parte* before the Tribunal and no appeal on their behalf has been preferred. Be that as it may, the appeals are of the year 2006 and 2005,

I proceed to decide the same on merits.

I have heard the learned counsel for the parties and appraised the paper book.

The question raised before this Court "whether a liability against the registered owner, who had parted with the possession/custody of the vehicle, can be fastened by taking into consideration the provisions of Sections 166 and 50 of the Motor Vehicles Act, 1988 (in short 'the 1988 Act') or not?"

For deciding the aforementioned question, it would be apt to reproduce the following categoric piece of evidence, which according to the appellants, leaves no manner of doubt that possession of the vehicle was handed over to Mohinder Singh, which reads as under:-

"i) Paragraph 16 of the written statement filed on behalf of respondent No.6/Mohinder Singh :-

16. Para No.16 of the petition is not correctly drafted. However, later on Mohinder Singh has purchased the truck in question.

Paragraph 16 of the written statement filed on behalf of respondent No.7/Het Ram Sharma

16. Para No.16 of the petition is not correctly drafted. However, later on Mohinder Singh has purchased the truck in question.

Application dated 21.04.1995 (Ex.R-1) submitted by Mohinder Singh to the Judicial Magistrate, First Class, Rajpura, for taking the release of the truck on superdari:-

"The applicant respectfully submits a under:-

- 1) That the applicant is the onwer of the Truck in question.*
- 2) That the Truck in question has been taken into custody by the Police of Police Station, Dera Bassi (Lohgarh).*

3) That the applicant wants to get the truck in question released on superdari.

It is, therefore, prayed that truck No.PJP-8255 may kindly be ordered to be released on superdari to the applicant in the interest of justice."

Order dated 22.04.1995 (Ex.R-2), passed thereon:

Present: Applicant with counsel.

Heard. Police report seen. According to police report, Sh. Mohinder Singh S/o Jagan Nath is the owner of Truck No.PJP 8255. Further the local police has no objection to release the said truck on superdari to the applicant. No useful purpose will be served the truck in question idle in police station. So in these circumstances, I ordered to release of the truck on superdari to the applicant on his furnishing superdari bond in the sum of ₹ Four Lacs with one surety of the like amount with an undertaking to produce the same on each and every date of hearing without any further notice with further undertaking not to change the appearance of the car and transfer of the same without prior permission of the Court."

Sohan Lal Agnihotri, Advocate appeared as RW-3 and in examination-in-chief, admitted that he had moved an application on behalf of the Mohinder Singh for release of the truck on *superdari*. The relevant portion of the same reads as under:

"The application was signed by Mohinder Singh in my presence and it bears my signatures also which I identify. After getting the report of the police the Court of JMJC Rajpura ordered the release of the aforesaid truck on furnishing superdari bond in the sum of ₹ 4 Lacs with one surety of the like amount vide order dated 22.4.95, the certified

copy of which is Ex.R-2. Sh. Rajinder Singh S/o Darbara Singh r/o village Dakoli furnished the requisite surety bond, certified copy of which is Ex.R-3 and Mohinder Singh aforesaid submitted his duly signed and attested superdari bond for ₹ 4 Lacs, certified copy of which is Ex.R4, accompanied with his affidavit, certified copy of which is Ex.R5."

In view of such position, I am of the view that the provisions of Sections 166 and 50 of the 1988 Act would strictly apply while fastening the liability upon a registered owner. The aforementioned controversy came to be debated upon before the Hon'ble Supreme Court in **"P.P. Mohammed V/s K. Rajappan and others" 2008 (17) SCC 624**, wherein, while considering the aforementioned provisions, it was held that the findings of the Courts below on fastening the liability on the registered owner was not required to be interfered with, but with all humility and respect, the provisions of Section 19 of the Sale of Goods Act, 1930 (in short 'the 1930') were not brought to the notice. For the sake of brevity, Sections 166 & 50 of the 1988 Act and Section 19 of the 1930 Act, which read as under:-

"166. Application for compensation. (1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made--
(a) by the person who has sustained the injury; or
(b) by the owner of the property; or
(c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
(d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the

deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made at the option of the claimant either to the Claims Tribunal having jurisdiction over the area in which the accident occurred, or to the Claims Tribunal within the local limits of whose jurisdiction the defendant resides, and shall be in such form and shall contain such particulars as may be prescribed:

Provided that where any claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) Omitted.

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-Section (6) of Section 158 as an application for compensation under this Act.

50. Transfer of ownership. *(1) Where the ownership of any motor vehicle registered under this Chapter is transferred,--*
(a) the transferor shall,-- (i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and
(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)--

*(A) the no objection certificate obtained under section 48; or
(B) in a case where no such certificate has been obtained,--
(I) the receipt obtained under sub-section (2) of section 48; or
(II) the postal acknowledgement received by the transferrer if
he has sent an application in this behalf by registered post
acknowledgement due to the registering authority referred to
in section 48,*

*together with a declaration that he has not received any
communication from such authority refusing to grant such
certificate or requiring him to comply with any direction
subject to which such certificate may be granted;*

*(b) the transferee shall, within thirty days of the transfer,
report the transfer to the registering authority within whose
jurisdiction he has the residence or place of business where the
vehicle is normally kept, as the case may be, and shall forward
the certificate of registration to that registering authority
together with the prescribed fee and a copy of the report
received by him from the transferor in order that particulars of
the transfer of ownership may be entered in the certificate of
registration.*

*(2) Where-- (a) the person in whose name a motor vehicle
stands registered dies, or*

*(b) a motor vehicle has been purchased or acquired at a public
auction conducted by, or on behalf of, Government,*

*the person succeeding to the possession of the vehicle or, as
the case may be, who has purchased or acquired the motor
vehicle, shall make an application for the purpose of
transferring the ownership of the vehicle in his name, to the
registering authority in whose jurisdiction he has the residence
or place of business where the vehicle is normally kept, as the
case may be, in such manner, accompanied with such fee, and
within such period as may be prescribed by the Central
Government.*

(3) If the transferor or the transferee fails to report to the registering authority the fact of transfer within the period specified in clause (a) or clause (b) of sub-section (1), as the case may be, or if the person who is required to make an application under sub-section (2) (hereafter in this section referred to as the other person) fails to make such application within the period prescribed, the registering authority may, having regard to the circumstances of the case, require the transferor or the transferee, or the other person, as the case may be, to pay, in lieu of any action that may be taken against him under section 177 such amount not exceeding one hundred rupees as may be prescribed under sub-section (5):

Provided that action under section 177 shall be taken against the transferor or the transferee or the other person, as the case may be, where he fails to pay the said amount.

(4) Where a person has paid the amount under sub-section (3), no action shall be taken against him under section 177.

(5) For the purposes of sub-section (3), a State Government may prescribe different amounts having regard to the period of delay on the part of the transferor or the transferee in reporting the fact of transfer of ownership of the motor vehicle or of the other person in making the application under sub-section (2).

(6) On receipt of a report under sub-section (1), or an application under sub-section (2), the registering authority may cause the transfer of ownership to be entered in the certificate of registration.

(7) A registering authority making any such entry shall communicate the transfer of ownership to the transferor and to the original registering authority, if it is not the original registering authority.

Section 19 of the Sales of Goods Act, 1930

19. Property passes when intended to pass.—

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer."

On conjoint reading of the aforementioned facts, particularly the admission of the owner, it goes beyond doubt that the vehicle was sold by the appellant(s) to Mohinder Singh, thus, the exhibition of the affidavit dated 18.08.1994 even if not proved, would be inconsequential. As an upshot of my observations, the findings of the Tribunal with regard to the fastening the liability upon the registered owner are hereby set aside. Accordingly, the liability is fastened jointly and severally upon the Owner-Mohinder Singh/respondent No.6 and Driver-Het Ram Sharma/respondent No.7.

As regards the enhancement of the amount of compensation, I will take the income of the deceased as ₹ 6,824/- and apply a deduction of 1/4th. I will take the multiplier of 16 and provide ₹ 1 lac for loss of consortium to the wife, ₹ 1 Lac each to the two children and ₹ 50,000/- each to the parents for loss of love and affection and ₹ 25,000/- for funeral

expenses. I also add 50% future prospects. The various heads of claim are tabulated as under:-

FATAL ACCIDENT			
Age	32 years		
Occupation	Vaterinary Doctor		
Claimants	Widow, son, daughter and parents		
	Heads of claim	Tribunal	High Court
Sr. No.		Amount(₹)	Amount (₹)
1	Income	6824	6824
2	Add, % of increase 50%		3412
3	Less Deduction (1/3 rd) & Pension ₹ 1200/- per month	3350	7677 (1/4 th)
4	Multiplicand (annualized by multiplying 12)	40200	92124
5	Multiplier	15	16
6	Loss of dependence	603000	1473984
7	Medical Expenses & Transportation		--
8	Loss of Consortium		1,00,000
9	Loss of love and affection @ ₹ 1,00,000/- to child & ₹ 50,000 each to the mother and father	--	3,00,000
10	Loss to estate		
11	Funeral expenses		25000
	Total	6,03,000	18,98,984

The total compensation payable shall be ₹ 18,98,984/-. The amount in excess over what has already been provided by the Tribunal shall also attract interest @ 6% from the date of filing of the appeal till the date of realization.

The appellant(s) in FAO No.356 of 2006 shall be entitled to seek the refund of the amount of ₹ 4,90,000/-, stated to have been deposited in pursuance to the order dated 26.04.2004 passed by this Court.

The appellant(s)/claimant(s) in FAO No.3353 of 2005 are entitled to seek the execution of the Award against the Owner-Mohinder Singh and Driver-Het Ram Sharma.

With the aforesaid observations, the appeals are allowed and the award is modified to the aforementioned extent.

17.08.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No