

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.5258 of 2011
Date of Decision.15.12.2017

Navdeep Singh and anotherAppellants

Vs

Arwinder Kaur and othersRespondents

2. **FAO No.3344 of 2012**

Navdeep Singh and anotherAppellants

Vs

Pushpa Devi and othersRespondents

3. **C.R. No.4060 of 2012**

Navdeep Singh and anotherAppellants

Vs

Arwinder Kaur and othersRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.C. Chhabra, Advocate
for the appellants in FAO No.5258 of 2011 and 3344 of 2012
and for the petitioners in C.R. No.4060 of 2012.

Mr. A.S. Cheema, Advocate
for the respondents-claimants.

:-

AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals preferred on behalf of Navdeep Singh and Jaswinder Singh i.e. driver and owner of vehicle bearing registration No.PB-31C/3265 and one revision petition preferred on behalf of Navdeep Singh, driver of the aforementioned vehicle. FAO Nos.3344 of 2012 and 5258 of 2011 have been preferred against the award rendered in MACT Case No.13 dated 27.2.2010 titled as “Pushpa

titled as “Arwinder Kaur and others Vs. Geer Singh and others” respectively. The civil revision bearing No.4060 of 2012 has been filed against the order passed by the Executing Court in MACT Case No.11 dated 16.02.2010 whereby the salary of the petitioner-Navdeep Singh, being an employee of the Bank was attached but there has been a modification of the impugned order by this Court vide order dated 25.09.2012.

Mr. S.C. Chhabra, learned counsel appearing on behalf of the appellants submits that an accident had taken place on 5.11.2009 at about 7.15 AM between two vehicles i.e. Marshal Jeep bearing registration No.PB-31C/3265 and truck bearing registration No.PB-31C/8182. As per the version brought on record, Geer Singh was the driver of the truck, who after occurrence of the accident, ran away from the spot. The Tribunal determined the liability jointly and severally against the owner and driver of both the vehicles without apportioning the extent of liability. The aforementioned finding of the Tribunal is against the documentary evidence brought on record inasmuch as Pushpa Devi when appeared as PW1 had unequivocally and candidly stated that she was not the eye witness but the contents of the FIR were not disputed, thus, prima facie the negligence for causing the accident was of driver of the truck. Unfortunately, both the vehicles involved in the accident were not insured. Despite extensive cross-examination of Pushpa Devi and as well as Navdeep Singh, RW2, it surfaced that the accident was a “Head on Collision”, therefore, the extent of liability is required to be apportioned between both the vehicles involved in the accident.

He further argued that in the earlier instituted claim in the case of Pushpa Devi Vs. Geer etc. neither the owner nor driver of the Marshal

Jeep i.e. Navdeep Singh and Jaswinder Singh were impleaded. However, on the application under Order 6 Rule 17, they were impleaded as respondent Nos.4 and 5 at their back. In this regard, he has drawn attention of the Court to the zimni order dated 10.08.2011.

As regards the revision petition, he submits that attachment of the salary of Navdeep Singh, driver of the Marshal Jeep was against the provisions of 60(1)(i) CPC, which puts an embargo upon the attachment of entire salary of an employee as the attachment can only continue for 12 months only. In pursuance of the execution order, a sum of Rs.6 lacs approximately has already been paid in execution of the award passed in the claim petition preferred by Arwinder Kaur and others, thus, urges this Court for modification of the award in the aforementioned terms.

Per contra, Mr. Cheema, learned counsel appearing on behalf of the respondents-claimants submits that it was not a case of “Head on Collision” but on account of negligence of the driver of the Marshal Jeep and therefore, the award of the Tribunal cannot be tinkered or faulted with. He had drawn attention of the Court to the cross-examination of Navdeep Singh where he admitted the factum of head on collision. No eye witness to the aforementioned accident had been examined and the factum of Geer Singh having died during the pendency of the criminal is not denied, thus, urges this Court for upholding the award under challenge.

There is no representation on behalf of the owner and driver of the truck despite service.

I have heard learned counsel for the parties, appraised the paper book and of the view that the Tribunal instead of determining the liability of owner and driver of both the vehicles jointly and severally, ought to have

fixed the liability to some extent in view of the law laid down by Division Bench of this Court in Narinder Pal Singh Vs. Punjab State through Secretary Transport Punjab, Government, Chandigarh and others 1989 ACJ 708. I would be committing a fallacy if I do not advert to the statement of PW1, RW2 and order dated 10.08.2011, which are reproduced as under:-

“PW-1 Pushpa Devi, aged 52 years, widow of Jasbir Singh son of Kessar Singh, resident of Ralla District Mansa on SA.

I tender into evidence my affidavit Ex.PW-1/A. It may be read as my examination-in-chief.

xxx by Sh. S.S. Dandiwal, Advocate for respondent No.1.

It is correct that I have not been to the spot nor I have visited the spot. I am not eye-witness to the accident in question. I cannot tell whether Geer Singh was having a valid and legal licence. It is also wrong to suggest that I have deposed falsely.

xxxx by Sh. A.S. Pandher counsel for respondent No.2.

It is wrong to suggest that I am deposing falsely just to grab easy money from the respondent. It is wrong to suggest that my version as contained in a claim petition is false.

xxxx by Sh. P.N. Singla, Advocate for respondent Nos.4 and 5.

I was not present at the spot at the time of alleged accident. I cannot tell the name of the person who told me alleged accident occurred due to the negligence of both the vehicles. It is correct that FIR was registered on the statement of Navdeep Singh, who also received injuries. It is correct that the accident occurred because truck driver Geer Singh struck the truck in the jeep. It is correct that the driver of truck was driving rashly and negligently. It is correct that Navdeep Singh made a correct statement before the police regarding the accident and correct FIR was registered against respondent no.1 at the statement of Navdeep Singh. Post Mortem of deceased Jasvir Singh was not conducted in my presence nor

do I know about the doctor who conducted the post mortem. I do not know as to what has been written by the doctor in his post mortem report. It is wrong to suggest that Rs.50,000/- was not spent on the last rites and bhog ceremonies. We own four bighas of land in village Ralla. I have one daughter, aged about 30 years and she has been married. I am illiterate. It is correct that I am about 60 years of age. It is correct that my husband Jasvir Singh deceased used to take liquor. It is wrong to suggest that my husband did not use to spend any money on me. It is also wrong to suggest that he used to spend whole of his earning on himself. It is wrong to suggest that I have deposed falsely.

ROAC
RTI Pushpa Devi

sd/-
MACT
09.01.2012

RW2-on SA

Statement of Navdeep Singh aged 37 years son of Major Singh son of Mal Singh, Field Officer in Bank, resident of Guru Arjan Dev Nagar, Gali No.1, Link Road, Mansa.

I tender into evidence my duly sworn affidavit Ex.RW2/A. It may be read as part of my evidence. I have brought my original driving licence and tender into evidence the attested copy of the same as Ex.R-1.

xx cross-examination by S.S. Dandiwal, counsel for respondent No.1.

It is wrong to suggest that the accident occurred due to my negligence. It is wrong to suggest that there was dense fog on that day.

xxx cross-examination by Sh. A.S. Pandher, counsel for respondent No.2.

Nil.

(Opportunity given).

xxx cross-examination by Shri Randeep Sharma, counsel for claimant.

It is wrong to suggest that in my statement made in the Court earlier in case titled Arwinder Kaur Vs. Geer Singh I

had deposed that the accident took place due to head on collision. It is further wrong to suggest that both the vehicles involved in the accident were coming on the same speed from opposite directions i.e. 40/45 km per hour. I was never deputed as a driver by any higher authority of our bank.”

RO&AC

sd/-Navdeep Singh

sd/-

(H.P.S. Mahal)

MACT, Mansa

16.02.2012.

Order dated 10.08.2011

“Counsel for respondents made statements, recorded separately that they have no objection if the application moved by the claimant u/o 6 Rule 17 CPC is allowed. Amended petition is already on file. Now notice to newly impleaded respondents be issued for 07.09.2011 on filing of RC/AD and copies. Amended written statement by respondents No.1 & 2, if any, be also filed on the adjourned date.”

The application under Order 6 Rule 17 CPC whereby a request was made to implead the owner and driver of the Marshal Jeep i.e. Navdeep Singh and Jaswinder Singh as respondent Nos.4 and 5 was allowed. The original claim petition was filed on 27.02.2010 whereas the amended petition was filed on 06.06.2011. Be that as it may.

On examination of PW1, it surfaced that the driver of the truck was driving rashly and negligently and whatever statement has been made by Navdeep Singh in the FIR is correct but the fact of the matter is that she was admittedly not an eye witness. RW2, Navdeep Singh, in cross-examination in the case of “Pushpa Devi Vs. Geer Singh” had stated that it was wrong to suggest that in his statement made in case titled “Arwinder Kaur Vs. Geer Singh”, the factum of accident on account of head on collision was admitted.

on Collision”, therefore, contributory negligence is to be apportioned to the extent of 50:50. In my view, the Tribunal has committed illegality and fallacy in not apportioning the liability instead of fastening the same on the driver and owners of both the vehicles jointly and severally.

Accordingly, the finding rendered by the Tribunal on issue No.1 is modified and it is held that driver and owner of both the vehicles i.e. Marshal Jeep and truck were negligent in causing death of the passengers of the jeep to the extent of 50:50. Mr. Chhabra had been very fair in saying that whatever amount had already been received by Arwinder Kaur, his client would not seek refund of the same.

However, I am of the view that the Executing Court has not taken into consideration the provisions of Section 60(1)(i) CPC, which reads as under:-

“60(1)(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree maintenance:

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree;

Therefore, the impugned order is set aside and the matter is remitted back to the Executing Court to decide the matter with regard to attachment of the salary of Navdeep Singh afresh.

The appeals and the revision petitions are disposed of in the
aforementioned terms.

(AMIT RAWAL)
JUDGE

December 15, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No