

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 4945 of 2012 (O&M)

DATE OF DECISION: 8.5.2017

Gurnam Singh

.....Appellant

Versus

Sudesh Kumari and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ashok Singla, Advocate
for the appellant.

Mr. Arvind Rajotia, Advocate
for respondents No.1 to 4.

Mr. Vinod Chaudhri, Advocate
for respondent No.7.

DAYA CHAUDHARY, J.

Appellant-Gurnam Singh, owner of the offending vehicle has filed the present appeal to challenge the award dated 24.7.2010 passed by Motor Accidents Claims Tribunal, Rupnagar (hereinafter referred to as 'the Tribunal'), vide which, the claim petition filed by the claimants under Section 166 of the Motor Vehicle Act has been allowed and compensation to the tune of ₹4,78,000/- has been awarded to claimants No.1 to 3. The owner and driver of the offending vehicle were held jointly and severally liable to pay compensation, whereas, Insurance Company was exempted to pay any compensation as the driver of the offending vehicle was not holding valid driving licence at the time of accident.

Briefly, the facts of the case are that claimants, who are widow, minor children and father of deceased-Gian Singh filed petition under Section 166 of the Motor Vehicle Act for grant of compensation by stating

that on 10.9.2008, Gian Singh along with his son Ravi Kumar were going towards Katcha Machhiwara for their domestic work on motorcycle. The motorcycle was being driven by Gian Singh and Ravi Kumar was pillion rider. When Gian Singh reached near Baba Flahi Chowk in revenue limits of village Sherpur Bet, a bus bearing registration No. PB-31-F-0391 being driven in rash and negligent manner by the driver came from the side of Sherpur Bet and hit against the motorcycle of Gian Singh, as a result of which Gian Singh and his son Ravi Kumar fell on the road and sustained serious multiple injuries. Gian Singh died at the spot and Ravi Kumar was shifted to Civil Hospital, Machhiwara in an injured condition. Deceased was 48 years of age and he being ex-serviceman was doing job in S.C.L. (Fire Brigade) Coy, Phase-8, Mohali and was earning ₹4500/- per month.

The claim petition was contested by owner, driver and Insurance Company by raising various grounds and by filing separate written statements. In the written statement filed by the respondent-Insurance Company, it was mentioned that the Insurance Company was not liable to pay compensation as neither the driver of the offending vehicle was holding valid and effective driving licence nor the offending vehicle was holding valid and effective route permit. Respondent-Insurance Company also raised an objection that no accident had taken place with the offending vehicle and at the most, it could be a case of contributory negligence but still the claim petition filed by the claimants under Section 166 of the Motor Vehicle Act was allowed.

Learned counsel for the appellant contends that there was no evidence on record to connect the offending vehicle with the accident as no eye witness was present. Learned counsel further contends that negligence

was on the part of deceased and learned Tribunal should have applied the principle of *res ipsa loquitor* to hold that deceased-Gian Singh was negligent due to which accident had taken place and he should have been held liable for contributory negligence. Learned counsel also contends that as per claim of the claimants, the accident had taken place when the deceased was crossing the chowk but as per the examination-in-chief of alleged eye witness PW-2, deceased had almost crossed the Plahi Chowk at the time of accident. There was no direct evidence available with the claimants to prove that accident had taken place when the deceased was trying to cross the chowk. It is also the argument of learned counsel for the appellant that no evidence was there to show that the rashness and negligence was on the part of driver of bus only. The Tribunal has wrongly relied upon the statement of PW-2 Satpal Singh by saying that he is author of the FIR, whereas, the FIR was registered on the statement made by one Surinder Pal Singh, who was not examined. Said Satpal Singh is a made up witness as he is resident of village of the claimants and entire story has been concocted just to get amount of compensation. At the end, learned counsel for the appellant submits that Insurer had wrongly been exonerated from the liability, whereas, the entire liability should have been fastened upon the insurer as the offending vehicle was fully insured. There was a valid route permit and driver was also holding a valid driving licence. The amount of compensation awarded is on the excessive side as multiplier has wrongly been applied. The age of the deceased has wrongly been considered as 48 years, whereas, at the time of filing of claim petition, wife of the deceased has mentioned her age as 57 years. The amount of compensation awarded towards consortium, loss of estate and funeral

expenses is also on the higher side as there was no loss of estate as the property left by the deceased is with the claimants only.

Learned counsel for claimants-respondents No.1 to 4 submits that the award passed by the Tribunal is well reasoned and the same has been allowed on proper appreciation of evidence led by both the parties.

Similarly, learned counsel for Insurance Company submits that it was a case of contributory negligence and fault was with the deceased as he was not going on the left side and the liability has rightly been fixed upon the owner and driver of the offending vehicle.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned Award passed by the Tribunal and other documents available on file.

It is also relevant to mention here that the present appeal was filed after a delay of 656 days as the award was passed on 24.7.2010 and the appeal was filed on 8.8.2012. The only ground, which has been taken in the application for condonation of delay, is that the appellant is a poor rustic villager, who was not keeping good health and was not aware about passing of the impugned award as his counsel did not inform him. The appellant contacted his counsel in the month of May, 2012 to know about the status of the case and only then he came to know that the case was decided in the year 2010. Thereafter, the appellant engaged a counsel for filing appeal and delay of 656 days had occurred in filing the present appeal, which is neither intentional nor willful. The delay has also not been explained properly as it has not been mentioned as to when the appellant came to know about passing of the award by the Tribunal. Even it has not been mentioned in the application that the appellant ever asked his counsel about the status of the

case or not. The delay has been said to be on the part of lawyer, condonation of which has been prayed only on the ground that the appellant is a rustic villager and fault was on the part of the lawyer as he did not inform him.

It has been held in various judgments of this Court as well as of Hon'ble the Apex Court that in case a person himself approaches the Court at a belated stage and without giving any satisfactory explanation, he cannot blame anyone else for the same. It has also been held that delay and laches has been considered to be very important factor in exercising the discretionary relief. If a person is not vigilant about his right, he is not entitled for the discretionary relief to be granted by the Court in favour of that person. In case, a person approaches the Court after a long delay the reasons are necessary to be mentioned in the application but no such reasons have been mentioned in the present case. Simply it has been mentioned that appellant came to know about passing of the award in May, 2012 and thereafter he engaged a lawyer to file appeal. It cannot be presumed that a person would not bother to contact his Advocate or would not like to get the status of the case for a period of about two years and thereafter to file appeal without mentioning any sufficient cause for condonation of delay.

Even on merits, the appellant is not having a good case as the most forceful argument raised by learned counsel for the Insurance Company is that it was a case of contributory negligence but no rebuttal thereof has been put forth. Counsel for the appellant has not referred to any material evidence to show that the deceased was also negligent and it cannot thus be said that the deceased was also responsible for causing the accident. There is a significant difference between the contributory negligence and

the composite negligence. The contributory negligence is where the person who is claimant or a representative had himself contributed to the accident, whereas, in case of composite negligence the same is attributed on drivers of two vehicles involved in the accident. In the present case also, neither any evidence has come on record nor any argument has been raised that it was a case of negligent driving/contributory negligence.

Negligence always does not mean absolute carelessness but want of such a degree of care as is required in particular circumstances. In case a party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligent act/omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. The contributory negligence is applicable solely to the conduct of a person who is negligent. In the present case, neither negligence on the part of the deceased has been proved on the basis of evidence led by the parties nor anything has been brought to the notice of the Court during arguments. The appellant has failed to prove his case not only on delay but on merits as well. The findings recorded by the Tribunal are well reasoned and are based on proper appreciation of evidence. The copy of driving licence of the driver was produced as Exhibit R-1, which shows that he was holding driving licence which was valid upto 16.9.2011 and was eligible to drive motorcycle as well as light motor vehicle. The driving licence was issued on 17.9.2008 and even before issuing regular driving licence he obtained learner's driving licence which was also placed on record as Exhibit R-5 and that was valid from 11.1.2008 to 10.7.2008.

RW-1-Surinder Kumar-Clerk of DTO office Ludhiana proved the validity of the licence. It was also proved on record that the licence was prepared on the basis of learner's driving licence. It was for the Insurance Company and owner of the offending vehicle to prove that the driver of the offending vehicle was not holding valid and effective driving licence at the time of accident. The learned Tribunal has also given a finding that the said bus was used for school purposes and was to be operated within area of 25 kilometers. The route permit was issued by the District Transport Officer, Mansa and the accident took place in the area of Flahi Chowk of Village Sherpur Bet in Distt. Ludhiana and as such, the bus was on the route for which no permit was given by the Transport Authorities. It was a case of breach of terms and conditions of the Insurance cover note and insurance Company was not held liable to pay compensation. The amount of compensation paid to claimants cannot be said to be on the higher side keeping in view the age of the deceased, dependency and the amount of compensation awarded towards different heads.

In view of the facts and law position as explained above, there is no merit in the contentions raised by learned counsel for the appellant and the appeal being devoid of any merit is hereby dismissed.

8.5.2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes