

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-205-2016 (O&M)
Date of decision: 28.09.2017

NEW INDIA ASSURANCE COMPANY LTD ...Appellant

Versus

SURINDER KAUR AND ORS ...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.C. Kapoor, Advocate
 for the appellant.

 Mr. Piyush Sharma, Advocate
 for respondents No.1 to 3.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 19.10.2015 passed by the Motor Accidents Claims Tribunal, Ferozepur whereby compensation to the tune of Rs.14,41,000/- has been awarded in regard to death of Nirmal Singh in a motor vehicular accident that took place on 16.04.2014 though Nirmal Singh succumbed to the injuries on 23.04.2014.

Counsel for the appellant has submitted that findings of the Tribunal on issue No.1 are not based on correct appreciation of testimony of ASI Mehal Singh RW-2 and inquiry report Ex.R1 submitted by the Deputy Superintendent of Police whereby Surinder Singh, driver of the alleged offending vehicle was exonerated of indictment in FIR no.56 dated 19.04.2014 lodged at the behest of Harpreet Singh PW2. It is further argued

that the occurrence in question took place on 16.04.2014 but the FIR was lodged after delay of 3 days on 19.04.2014. Till date, Harpreet Singh or the claimants did not file any criminal complaint in the Court against Surinder Singh. It is argued with vehemence that Harpreet Singh PW2, a relative of deceased Nirmal Singh came forward to lodge a false FIR against respondent No.1 and thereafter supported cause of the claimants that Nirmal Singh sustained injuries in a motor vehicular accident due to rash and negligent driving of Indigo Car bearing No.HR-26-AK-5826 by Surinder Singh.

Counsel representing the claimants, on the other hand, has supported findings of the Tribunal on issue No.1 with the submission that the Tribunal, on a detailed consideration of the matter, has rightly arrived at the conclusion that Surinder Singh is the author of accident in question. Further argued that Surinder Singh opted to remain absent from the proceedings, therefore, allegations put forth by the claimants attributing rashness and negligence to Surinder Singh remain uncontroverted and un rebutted. Another submission made by counsel is that as Surinder Singh did not appear in the witness box to counter testimony of Harpreet Singh PW2 or deny his liability in regard to occurrence in question, an adverse inference is liable to be drawn against him. The last submission made by counsel is that till date the police has not submitted any cancellation report in the FIR registered at the behest of Harpreet Singh and for this reason the claimants did not think it appropriate to file a criminal complaint.

Counsel for the claimants has submitted that compensation assessed by the Tribunal is liable to be enhanced as the Tribunal has not awarded compensation for loss of love and affection, care and guidance for minor children of the deceased, held entitled to get compensation.

Counsel for the insurance company, in reply, has submitted that as the claimants have not preferred an appeal seeking enhancement of compensation, they cannot press their claim for enhancement in the appeal preferred by the insurance company.

I have heard counsel for the parties, perused the paper book and the records.

It is undisputed position of the case that Nirmal Singh sustained injuries on 16.04.2014 but he succumbed to the injuries on 23.04.2014. FIR No.56 dated 19.04.2014 was lodged by Harpreet Singh PW2 on 19.04.2014 and for that reason offences for which the FIR was registered were under Sections 279, 337, 338 and 427 IPC but later offence under Section 304-A IPC was added as the injured victim passed away. Harpreet Singh PW2 tendered into evidence his duly sworn affidavit Ex.PB. In Para No.2 of the affidavit, he has given a detailed account as to how the accident in question took place on 16.04.2014 at about 8.00 pm. A relevant extract from his testimony reads as follows:-

“On the fateful day i.e. 16.04.2014 at about 8.00 pm, the deceased Nirmal Singh was coming on his motorcycle bearing R.C. No.PB-05-G-7544 and deponent was also coming on his scooter bearing R.C. No.PB-05-J-8008 and the deponent was coming on the back of deceased Nirmal Singh and when the deceased

reached near Jhoke Raod, Near Church Ground, Ferozepur Cantt, then a car bearing No.HR-26-AK-5826 was coming from Sadiq side in a very high speed without blowing any horn and in a very rash and negligent manner, which was driven by respondent No.1 and struck with the motorcycle of the deceased from the backside, due to the accident, the deceased Nirmal Singh fell down on the road and received multiple injuries and then the deponent took the injured to Civil Hospital, Ferozepur. Firstly the deceased Nirmal Singh was admitted in Civil Hospital, Ferozepur and he was referred to G.G.S. Medical College and Hospital, Faridkot and was admitted in the hospital on 16.04.2014 and he was referred to Daya Nand Medical College, Ludhiana on 22.04.2014 and he spent an amount of Rs.60,000/- and later on he was died on 23.04.2014 at Daya Nand Medical College, Ludhiana. The postmortem of the deceased was conducted by the doctor of Civil Hospital, Ferozepur. Had the driver of the indigo car taken precaution measure the accident would have been avoided. The FIR No.56 dated 19.04.2014 P.S. Cannt Ferozepur under Sections 279, 337, 338 and 427 IPC was lodged at P.S. Cantt. Ferozepur against respondent No.1 on the statement of deponent and later on an offence under Section 304-A of IPC was added.”

The witness was cross examined by counsel representing the insurance company before the Tribunal but nothing tangible and material has been broughtforth in his cross-examination to discard or disbelieve his testimony or his presence in the hospital even though his name does not find reference in the records of the hospital and admit card. There is nothing in the testimony of Harpreet Singh that he had any ill will or enmity against Surinder Singh to lodge a false FIR against him. On the contrary, there is nothing on record suggestive of the fact that Surinder Singh, driver and owner of the offending vehicle colluded with the claimants in order to lend his vehicle involved in the occurrence for

supporting cause of the claimants to seek compensation. Counsel for the insurance company would inform that Surinder Singh filed an application before the police on the basis whereof, an inquiry was conducted by the DSP. Under the circumstances, there are no materials on record to discard or disbelieve testimony of Harpreet Singh PW2.

Surinder Singh, despite his having approached the police authority in regard to the FIR registered against him, neither contested the proceedings nor appeared in the witness box to say that the accident was not caused by the vehicle in question. There is no plea by the insurance company that the offending vehicle was not owned by Surinder Singh. The very fact that Surinder Singh neither filed the written statement to controvert the allegations raised by the claimants nor appeared in the witness box to rebut testimony of Harpreet Singh PW2, allegations raised by the claimants and version brought forth by Harpreet Singh are to be taken as correct.

Now coming to the statement of ASI Mehal Singh RW-2, he has admitted in his cross examination that no cancellation report has been submitted in the Court. He has further deposed that photographs of the place of accident were taken. As per the photographs, registration number of the car depicting in the photograph is HR-26AK-5826. The car shown in the photographs is stated to be the offending vehicle by the claimants. There is no explanation from Surinder Singh as to how his car was available at the place of accident of which photographs were taken by the

police during the course of investigation. In view of the above, testimony of ASI Mehal Singh is not sufficient to rebut the statement of Harpreet Singh PW2.

So far as the report Ex.R1 prepared by DSP Vibhor Kumar, author of the report did not appear in the witness box to prove the same with an opportunity to the claimants to contest the findings recorded in the report. In this background, the appellant cannot derive any advantage to its contentions from testimony of ASI Mehal Singh or report Ex.R1.

Perusal of the findings recorded by the Tribunal on issue No.1 makes it evident that findings recorded by the Tribunal are neither the result of mis-appreciation of evidence nor ignoring any materials on record. As such, I do not find any reason to interfere in the well founded findings recorded by the Tribunal answering issue No.1 in favour of the claimants and against the respondents therein.

The Tribunal has not awarded any compensation for loss of love and affection to children of the deceased. Counsel for the insurance company has contested plea of the claimants for additional compensation on the premise that no appeal has been preferred for enhancement of compensation. There cannot be any denial that provisions of the Motor Vehicles Act, 1988 dealing with grant of compensation are benevolent social legislation enacted with a view to make good the loss the victim family has suffered as far as the money can do. Strict principles of Code of Criminal Procedure or Law of Evidence Act are not applicable in the

proceedings before the Tribunal. Rather proceedings before the Tribunal are summary in nature. It has been consistently held in catena of judgments by Hon'ble the Supreme Court that the Tribunal has an obligation to assess just and reasonable compensation. The Court in appeal can re-appreciate the evidence, examine all the aspects involved in the matter and pass a judgment that ought to have been passed by the trial Court/Tribunal. That being so, contention raised by counsel for the insurance company that compensation cannot be enhanced for want of a separate appeal being preferred by the claimants is misconceived and deserves to be rejected.

The claimants have prayed for grant of compensation qua loss of love and affection to minor children of the deceased. Counsel for the insurance company would argue that Hon'ble the Apex Court in **Rajesh and others Vs. Rajbir Singh and others, (2013) 9 SCC 54** has awarded an amount of Rs.1 lakh for loss of care and guidance to the minor children, therefore, the claimants cannot be allowed compensation more than Rs.1 lakh under this head. The judgment in **Rajesh's case (supra)** pertains to an accident that occurred in the year 2007. Hon'ble the Supreme Court has not laid down any ratio as to what amount of compensation can be awarded for loss of love and affection to children of the deceased. I have gone through various judgments of Hon'ble the Apex Court dealing with grant of compensation under Section 166 of the Motor Vehicles Act, 1988. With due regards, in none of the judgments, the Court has laid down as a principle in law as to what compensation can be granted under conventional heads. The

judgment in **Rajesh's case (supra)** was rendered by three Judges Bench and one of the Lordships was Hon'ble Mr. Justice G.S. Singhvi, the Senior most Judge on the Bench. Later, a two Judge Bench, one of their Lordships was Hon'ble Mr. Justice G. S. Singhvi in **Vimal Kanwar and others Vs. Kishore Dan and others, 2013(2) RCR (Civil) 945**, awarded Rs.1 lakh for loss of estate, Rs.2 lakh for loss of love and affection for the daughter, Rs.1 lakh each for loss of love and affection to the widow and the mother and Rs.25,000/- for funeral expenses. Taking a clue from the aforesaid judgments, it is in the fitness of things that the minor children are awarded an amount of Rs.1.5 lakh (to be shared equally) for loss of love and affection, care and guidance of their father. The additional amount of Rs.1.5 lakh shall carry interest @7.5% per annum from the date of petition till realization, to be deposited in FDRs till the children attain the age of majority or for a period of three years, whichever is later. The claimants shall not be entitled to raise any loan against the FDRs.

For the foregoing reasons, the appeal filed by the insurance company is dismissed. However, compensation payable to the claimants is enhanced in the aforesaid terms.

No order as to costs.

28.09.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No