

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

F.A.O. No. 9762 of 2014 (O&M)

Date of Decision:- 22.09.2017

Harjinder Kaur and others

....Appellants

vs.

Pushpinder Kumar and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. H.P.S. Ghuman, Advocate
for the appellants.

Mr.G.D. Gupta, Advocate for,
respondent No.2-Insurance Company.

Sudhir Mittal, J.

An accident took place on 17.11.2012 at about 1.00 p.m. in which one Gurpiar Singh son of Sukhdev Singh lost his life. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') was preferred by the mother, widow and three children of the deceased. Vide impugned award dated 7.7.2014, learned Motor Accidents Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal') has rejected the claim petition. Hence, the present appeal.

2. The case of the claimants is that on 17.11.2012, deceased-Gurpiar Singh was riding pillion behind Hardeep Singh (brother-in-law) on a motorcycle and they were returning after attending the marriage celebrations of a relative. They were being followed by Malkiat Singh @ Kala son of Garja Singh (cousin of the deceased) on a separate motorcycle.

The accident was caused by the offending vehicle bearing registration

No.PB-13AA-3946 make Maruti Wagon-R, while trying to overtake a truck, which was coming from a direction opposite to the one in which the deceased and his relatives, were going and on account of rash and negligent driving of the driver of the offending vehicle, the accident was caused resulting in death of Gurpiar Singh and injuries to Hardeep Singh. After the accident, the injured were transported in an ambulance to Rajindra Hospital, Patiala, from where Gurpiar Singh was referred to PGIMER, Chandigarh, but he died on the way to the said Hospital. FIR No.83 dated 17.11.2012 under Sections 279, 337,427 and 304-A IPC was lodged at P.S. Bhadson at 19:15 hours.

3. Pushpinder Kumar, the driver and owner of the offending vehicle, in his written statement, denied the factum of accident with his vehicle.

4. Learned Tribunal held that it was not proved that the accident took place due to rash and negligent driving of Pushpinder Kumar, owner and driver of the offending vehicle. While holding so, reliance has been placed upon Exhibit R-1 (statement of Hardeep Singh-AW-2, eye witness before the Criminal Court) wherein he stated that he could not tell the number of the car or its make or the name of the driver. Apart from this, reliance was placed on the fact that no evidence was led by eye-witness Hardeep Singh regarding his own injuries nor Malkiat Singh, who was allegedly following the motorcycle which was involved in the accident, was produced as a witness.

5. I have heard learned counsel for the parties and have minutely gone through the records of this case. It is on record that FIR No.83

(Exhibit A-2) was lodged without any delay at 19:15 hours. A perusal of the said FIR shows that the police official concerned went to the emergency ward of Rajindra Hospital, Patiala, for recording the statement of Hardeep Singh. Moreover, in the FIR itself, it is recorded that the accident was caused by the rash and negligent driving of Pushpinder Kumar and the number of the vehicle was also mentioned along with the make of the car. The post-mortem report of the deceased-Gurpiar Singh (Exhibit A-3) is on record, which reflects death of Gurpiar Singh having been caused due to injury No.2 “amputation of left leg at level of middle tibia and fibula exposing the underlying bone tendency and muscles.” It is also mentioned therein that Gurpiar Singh had died due to a road accident as reported by the Police. This evidence proves the fact that accident took place on 17.11.2012 with the car in question, due to rash and negligent driving of its driver, who was also its owner.

6. I have also gone through the statement Exhibit R-1 in which Hardeep Singh had stuck to his stand regarding the motor accident and the death of Gurpiar Singh due to the same. He mentioned that the accident took place with a car and reiterated the manner in which the accident is stated to have taken place in FIR Exhibit A-2. The same was his stand while appearing as a witness in the claim petition as AW-2. The only thing that he omitted in the statement, Exhibit R-1, is naming of the driver and mentioning the make of the vehicle. Exhibit R-5 is the statement of Malkiat Singh before the Criminal Court in which he corroborates the facts of the accident in material particulars. He also mentioned that the offending car was white in colour, which is proved by its Registration Certificate

Exhibit R-4. Thus, the entire evidence on record, if read as a whole, establishes a continuous and unbroken chain of events and leads to the irresistible conclusion that Gurpiar Singh died in an accident with a white coloured Wagon R being driven rashly and negligently by respondent No.1. Merely because the eye witness Hardeep Singh failed to name respondent No.1 before the Criminal Court and also did not mention the make of the vehicle, would not be sufficient to hold that no accident took place with the offending car. The finding to the contrary by the learned Tribunal is, thus, perverse and is liable to be set aside.

7. It is settled law that the Tribunal decides the claim cases on the basis of preponderance of probabilities and strict Rules of evidence are not applicable. It is further settled beyond any doubt that the outcome of a criminal trial is not binding on the Tribunal.

8. Hon'ble the Supreme Court in **N.K.V. Bros. (P.) Ltd. vs. M. Karumai Ammal and others etc., 1980(3) SCC 457** held as follows:-

“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the Courts, as has been observed by us earlier in other case, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising

this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving.”

9. Similarly in **Krishan s/o Mangiram vs. Tarawati widow and others, 2011(3) PLR 29**, this Court has held that the Tribunal should not be influenced by the outcome of a criminal case because standards of proof in a criminal case are different from those in tortuous claims.

10. There is another principle of law which has been ignored in this case by the Tribunal. The driver and owner of the offending vehicle did not appear as a witness in support of his case. In the written statement, he took the stand that no accident was caused with his vehicle but he failed to support this statement by any evidence. The least what he could have done was to have appeared as his own witness and supported his case subject to cross-examination. Having failed to do so, an adverse inference has to be drawn against him. This Court in **Raju and others vs. Sukhwinder Singh and others, 2006 (4) RCR (Civil) 82**, after examining the law on the subject, has held as follows:-

“10. This Court agrees with the contention raised by the learned counsel for the appellants that non-examination of truck driver i.e. respondent No.1 by the respondents was fatal and a presumption had to be drawn regarding his involvement in the accident. It is not disputed that he was the driver of truck No. HNE 2180. Therefore, the findings on issue No.1 are reversed and the same is decided in favour of the claimants. It is also held that the accident in question was a result of rash

and negligent driving of the said truck which was being driven by respondent No.1-Sukhwinder Singh.”

11. I respectfully agree with these judgments and hold that in the present case also, an adverse inference is required to be drawn against the driver and owner of the offending vehicle. The question which now arises is as to what quantum of compensation the claimants are entitled?

12. It has been observed in the claim petition that Gurpiar Singh was the owner of four acres of land and in support of this averment, Jamabandi for the year 2009-10, has been placed on record as Exhibit A-1. Forms 'J' regarding sale of crops, have been produced on record as 'Marks A to F'. This evidence is sufficient to establish that Gurpiar Singh was earning income from agriculture. His age has been mentioned as 39 years in the claim petition as well as in the evidence of AW-1 Harjinder Kaur (widow of Gurpiar Singh) and there is no cross-examination on this aspect by the counsel for the driver and owner. Minimum wages in the year 2012 for a skilled workman, were in the vicinity of ₹ 5000/- per month. This is also the figure which is suggested to AW2 during her cross-examination and, therefore, I take the monthly income of Gurpiar Singh as ₹ 5000/- per month. The claimants are thus, entitled to compensation, as follows:-

1	Annual Income (5000x12)	₹ 60,000/-
2	Increase of 50% on account of future prospects (60,000+30,000)	₹ 90,000/-
3	Deduction of 1/4 th on account of personal expenses (90,000-22,500)	₹ 67,500/-
4	Annual dependency applying multiplier of 15 as deceased was 39 years of age (67,500x15)	₹ 10,12,500/-
5	Loss of Consortium	₹ 1,00,000/-

6	Loss of Love and Affection	₹ 1,00,000/-
7	Funeral Expenses	₹ 25,000/-
8	Total Compensation	₹ 12,37,500

13. The claimants are entitled to a total compensation of ₹ 10,35,000/-. The same shall be paid to them by the respondent-Insurance Company within a period of 3 months from the date of receipt of a certified copy of this judgment, failing which, the same shall carry interest @ 7.5% per annum from the date of this judgment till the date of payment.

14. The appeal is allowed in the above-stated terms.

September 22, 2017
poonam

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned Yes

Whether Reportable Yes