

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 370 of 1994 (O&M)

Cross Objection No. 74-CII of 1996

Date of Decision: 29.5.2018

Harbans Singh and another

---Appellants

vs.

Ram Kala and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Vishal Rattan Lamba, Advocate for the appellants
Mr. Harsh Vardhan Shehrawat, Advocate for respondents No. 1 to 6
Mr. Suvir Dewan, Advocate for respondent No. 9

Rekha Mittal, J.

CM No.10946-CII of 2017

Heard.

Allowed as prayed for. Copy of Cross objections No. 74-CII of 1996
filed by the claimants/respondents Nos. 1 to 6 is taken on record.

Disposed of accordingly.

FAO No. 370 of 1994 and Cross objections No. 74-CII of 2017

The present appeal directs challenge against award dated 25.11.1993
passed by the Motor Accidents Claims Tribunal, Bathinda (in short “the
Tribunal”) whereby application for compensation filed under Section 166 of the
Motor Vehicles Act, 1988 (in short “the Act”) on account of death of Azad Singh
in a motor vehicular accident that took place on 5.10.1990 was allowed and the
claimants were awarded compensation of Rs. 1,67,000/- to be paid by the
appellants/respondents No. 1 and 2 namely the driver and owner of tractor No.
PBI-7162 whereas the driver, owner and insurer of jeep No. PJO-157 in which the
deceased was travelling at the relevant time have been exonerated in view of

findings recorded on issue No. 1.

The facts relevant for disposal of present appeal are that as per case of the claimants, accident took place on Barnala-Bathinda road on 5.10.1990. Azad Singh son of Charanji Lal aged 32 years died in the accident. On the ill fated day, Azad Singh was travelling in jeep No. PJO-157. As tractor No. PBI-7162 was driven rashly and negligently by Harbans Singh-appellant No. 1, the same hit with the jeep on its right side and occupants of the jeep received injuries but Azad Singh died on the spot. The driver of the jeep gave dipper to driver of the tractor and also took the jeep on kacha portion of road but still tractor struck with the jeep. Case under Sections 304-A, 279, 336 and 337 of the Indian Penal Code was registered at Police Station, Rampura on 5.10.1990 against driver of tractor.

Respondents No. 1 and 2 (appellants herein) filed joint reply and averred that accident took place on account of negligence of jeep driver due to sudden bursting of tyre of the jeep. Report was lodged by Labh Singh, driver of the jeep who himself was negligent in causing the accident. All other material averments of the application were denied with a prayer for its dismissal.

Respondents No. 3 and 6 also filed reply and alleged that drivers of the jeep and tractor were not having valid licence at the time of occurrence and as such insurance company is not liable. Respondent No. 2 has not disclosed particulars of the insurance policy, thus, company is not liable.

The driver and owner of the jeep filed their joint reply controverting the allegations that the accident took place due to rash and negligent driving of the jeep with the plea that driver of the tractor is responsible for the occurrence due to his rash and negligent driving.

The pleadings led to framing of following issues by the Tribunal on 24.9.1991:-

1. Whether Azad Singh died in motor accident on 5.10.1990 near

village Jethuke about 50 Karams from link road on Barnala-Bathinda road due to rash and negligent driving of tractor No. PBI-7162 by Harbans Singh respondent No. 1? OPA

2. Whether the applicants are the L.Rs. of Azad Singh deceased and entitled to receive compensation?OPA
3. To what amount of compensation, if any, and from whom the claimants are entitled to?OPA
4. Whether the claim application is bad for non-joinder of necessary parties?OPR
5. Whether tractor No. PBI-7162 and Jeep No. PJO-157 were duly insured with New India Assurance Company respondent No. 3 and 6. If so, its effect?OPR
6. Whether respondent No. 1 was holding a valid driving licence, registration and fitness certificates etc. at the time of accident?OPR
7. Relief

The parties were permitted to adduce evidence in support of their respective claims. Having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No. 1 in favour of the claimants and against respondents No. 1 and 2 before the Tribunal and also assessed compensation to the tune of Rs. 1,67,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 1500/-
Deduction for personal expenses	1/3 rd
Multiplier	16
Loss of dependency	1,92,000/-

However, the amount of Rs. 25,000/- paid to the claimants by the insurance company under 'No Fault Liability' was ordered to be adjusted and accordingly respondents No. 1 and 2 (before the Tribunal) were held liable to pay

compensation jointly and severally to the tune of Rs. 1,67,000/-.

Counsel for the appellants has assailed findings of the Tribunal on issue No. 1 with the submission that the Tribunal has committed a gross error in failing to appreciate the evidence meticulously and in right perspective. To bring home his contention, he has referred to testimonies of Labh Singh, driver of jeep PW1 and Ramesh Kumar @ Harmesh another occupant of jeep AW2 in extenso. It is further argued that though the Tribunal has accepted plea of the appellants that tractor with trolley was on correct side of the road but still proceeded to blame driver of the tractor for the accident due to his rash and negligent driving. According to counsel, testimonies of the witnesses examined by the claimants do not lead to conclusion even on the basis of balance of probabilities that Harbans Singh, driver of the tractor has in any manner attributed in causing the occurrence much less solely responsible for the same.

Counsel representing the insurance company,(insurer of jeep No. PJO-157) has supported findings of the Tribunal on issue No. 1 with the submission that the Tribunal has rightly held that subsequent to the jeep being hit by the trolley attached with the tractor, the jeep took turn at 90 degree to Rampura-Barnala road and Azad Singh, one of the occupants of the jeep fell down on the road due to impact of trolley having struck against the jeep and sustained injuries that proved fatal.

Counsel representing the cross-objectors-claimants has prayed for enhancement of compensation qua loss of dependency and under conventional heads. It is argued that claimants examined Ram Kala widow of Azad Singh and a witness from Hem Kund Rice Mill, Goniana to prove that deceased was working as a Foreman in the aforesaid mill at salary of Rs. 4000/- per month. The witness from the aforesaid mill produced documents, copies of cash book Ex. AW4/1 and AW4/2, copies of ledgers Ex. AW4/3 and AW4/4, sufficient to prove that deceased was paid salary @ Rs. 4000/- per month for the months of August

and September 1990. Further argued that it has also been established that job of a Foreman in a rice mill is not seasonal rather throughout the year. Further argued that claimants are entitled to increase in income for future prospects @ 40% and adequate compensation under conventional heads.

Counsel for the appellants and so also counsel representing insurer of jeep in question have supported assessment of compensation made by the Tribunal.

I have heard counsel for the parties, perused the paper book and documents available on record particularly the award but some of the documents are not clearly legible as the records have been burnt in a fire incident.

Labh Singh, author of FIR and driver of the jeep in which Azad Singh was travelling at the time of occurrence appeared in the witness box. In his examination-in-chief, he has deposed that when he passed Tapa Mandi and reached village Jethuka, one tractor trolley bearing No. PBI-7162 was coming with a high speed. He also used dipper then the tractor struck with his jeep towards right side of jeep. Azad Singh fell down on the road. He died at the spot. He, Ramesh Kumar, Jasbir also got injuries. The accident took place due to fault of the tractor trolley driver Harbans Singh who was driving negligently.

However, a relevant extract from his cross examination, reads as follows:-

“It is wrong to suggest that tyre-tube of the jeep were punctured. The steering of the jeep was towards the right side. Ramesh Kumar was sitting on my left hand side. There were two pulis weighing about one quintal each and three sanitary (long iron rods) weighing about 20Kgs each. The deceased and Jasbir Singh were the occupants. I was seeing towards my front side while driving the jeep. Tractor-trolley was on correct and left side of the road. It is wrong to suggest that the jeep was got punctured and struck on the wrong

side and struck with the trolley.”

Further stated:-

“The deceased had fallen on the metalled portion of the road in the middle. The jeep was towards the right side of the deceased. The tractor-trolley was also towards the right side. Head of the deceased was towards east and the feet were towards west. The tractor and trolley were on the extreme right side of the road while facing towards Rampura side. The tractor was on the left side of the deceased on Jethuwala side. There was no mark on the tractor with which the jeep struck first. However, iron patti of the trolley had become bent with the impact.”

Ramesh Kumar AW2 has deposed in his examination-in-chief to the following effect:-

“When we reached in the area of village Jethuke ahead of Tapa Mandi. One tractor which was being driven at a high speed came from the front side. The driver was driving it rashly and negligently. It was 7 p.m. The number of the tractor was PBI-7162. The Tractor collided with the right side of the jeep. Myself and Azad Singh fell on the ground and Azad Singh died at the spot and I received injuries on the chin, below the lips and on the legs.”

A relevant extract from his cross examination reads, quoted thus:-

“The front right side tyre of the jeep was found punctured after the accident. It is wrong to suggest that the jeep became out of control due to the puncturing of the tyre and it struck against the trolley of the tractor. The jeep had struck against the right mudguard of the tractor.”

In the later part, he has deposed, quoted thus:-

“The jeep was on the left side of the road and after the accident, it

had taken a turn and its front portion was at 90 degree to Rampura-Barnala road.”

Harbans Singh driver of the tractor also appeared in the witness box and reiterated his version that accident took place due to bursting of tyre of the jeep that rammed into his trolley.

As has been rightly argued by counsel for the appellants that the Tribunal has accepted plea of the appellants that the tractor-trolley was on its correct side. Labh Singh AW1 and Ramesh Kumar AW2 have not explained the facts constituting rashness and negligence on the part of tractor-trolley. They do not say that tractor was brought on the side meant for the vehicles coming from the opposite direction i.e. Rampura side. It is astonishing rather beyond comprehension that if the tractor-trolley remained on its correct side throughout during its journey from Rampura side to Barnala side, as has been shown in site plan Ex. R1, how the Tribunal arrived at a conclusion that accident is the result of rash and negligent driving of tractor attached with trolley driven by appellant Harbans Singh. As a matter of fact, there is no satisfactory much less cogent materials on record to attribute rashness and negligence to the tractor driver. The driver of the jeep took advantage of the situation, lodged the FIR and tried to shift his wrongful act and neglect upon the tractor driver. The very fact that jeep struck against the trolley attached with the tractor and turned at 90 degree to Rampura-Barnala road coupled with that tyre of the jeep was found punctured even in the mechanical report leads to no other conclusion than that the accident took place due to rash and negligent driving of the jeep and not of the tractor-trolley. In this view of the matter, findings recorded by the Tribunal on issue No. 1 that accident is the result of rashness and negligence on the part of tractor driver cannot be allowed to sustain and liable to be set aside. Actually, the accident took place due to rash and negligent driving of aforesaid jeep by Labh Singh, its driver. Accordingly, issue No. 1 is answered against respondents No. 4 to 6 before the

Tribunal.

This brings the Court to quantum of compensation assessed by the Tribunal. It is not in dispute that the deceased was working as a Foreman in Hem Kund Rice Mill. Dalip Singh, one of the partners of Rice Mill was examined to prove avocation and income of Azad Singh. He produced copies of cash book and ledger. In his cross examination, he has admitted that rice mill is a seasonal factory but Foreman is permanent. The jeep belongs to some acquaintance/relative of partners of Hem Kund Rice Mill. Dalip Singh did not produce any document with signatures of Azad Singh to prove that he was paid salary @ Rs. 4000/- per month. He did not produce the relevant entries of the previous year qua salary paid to Baldev Singh who was working as a Foreman prior to Azad Singh. He did not produce the vouchers with regard to payment of salary to Sh. Azad Singh @ Rs. 4000/- per month. He has also not proved the entries with regard to payment of salary to a Clerk, Accountant and Chowkidar employed in the Rice Mill for the whole year. Under the circumstances, entries in the cash book, ledger qua months of August and September, 1990 cannot form the basis to hold that Azad Singh was employed at a salary of Rs. 4000/- per month. I would hasten to add that there is nothing on record suggestive of the fact that entries in the cash book and ledger have been counter signed by any authority. In this view of the matter, I do not find any reason to interfere in assessment of income of the deceased @ Rs. 1500/- per month, made by the Tribunal. It is pertinent to point out that minimum wage at the relevant time was less than Rs. 1500/- per month.

The application for compensation has been filed by the widow, four minor sons and widowed mother of deceased Azad Singh. Admissible deduction for personal expenses would be $\frac{1}{4}$ th. Claimants shall be entitled to benefit of addition in income for future prospects @ 40%. Multiplier adopted by the Tribunal is affirmed. In this manner, loss of dependency is computed at Rs.

3,02,400/- [1500 x12x16 =2,88,000+1,15,200(40%)=4,03,200 -1,00,800(1/4th)].

Under conventional heads, claimants shall be entitled to Rs.70,000/-, detailed hereunder:-

Loss of consortium	Rs. 40,000/-
Expenses on funeral	Rs. 15,000/-
Loss of estate	Rs. 15,000/-

Total compensation is Rs. 3,72,400/- and the additional amount is Rs.2,05,400/- (3,72,400 -1,67,000), payable with interest @ 7.5% per annum from the date of petition till realization.

For the foregoing reasons, the appeal is allowed. The appellants shall not be liable to pay compensation. On the contrary, respondents No. 4 to 6 in the claim application shall be jointly and severally liable to pay compensation assessed by the Tribunal and additional amount found payable by this Court. The cross objections filed by the claimants are partly allowed in the aforesaid terms. A sum of Rs. 25,000/- paid by the insurance company under 'No Fault Liability' shall be liable for adjustment out of compensation payable to the claimants. No order as to costs.

(Rekha Mittal)
Judge

29.5.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No