IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-471-2001
Date of decision: 02.05.2018

Harbans Kaur and another **...Appellants**

V/s.

Sahezada and others **...Respondents**

CORAM: HON'BLE MS. JUSTICE RITU BAHRI.

Present: Mr. P.S. Punia and Mr. Sunil Garg, Advocates
for the appellants.

Mr. R.N. Singal, Advocate
for respondent No. 3-insurance co.

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RITU BAHRI, J. (Oral).

The claimants have come up in appeal against the award dated 07.09.2000 passed by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') whereby their claim petition has been dismissed, on account of death of their son Hardip Singh.

The case of the appellants was that on 10.02.1998, Harjit Singh, Harbans Singh and Hardip Singh, were going to Gandhi Nagar Petrol Pump from motor-cycle No. PB-11-D0487. The motor-cycle was being driven on the correct left side of the road at a slow speed. When they reached near Gandhi Nagar crossing opposite Bharat Sakaut Ground, Tata 407 truck No. MP-04K-1838 came from Bhopal side. This truck was being driven by respondent No. 1 at a fast speed and struck against the motor-cycle by coming on the wrong side of the road. The driver of the truck fled away from the spot. Harjit Singh noted down the number of the truck. As

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a result of the accident, Hardip Singh and Harbans Singh died on the spot.

Notice of the claim petition was issued to the respondents. Respondents No. 1 and 2 did not appear and sent their written statement by post. Both the respondents were proceeded *ex-parte*. Respondent No. 3-insurance company took an objection that the driver of the truck was not holding valid driving license and disputed the accident itself. Following issues were framed: -

1. *Whether Sahezada respondent-driver while driving truck No. MP-04K-1838 rashly and negligently caused the death of Hardip Singh on 10.2.1998? OPP.*
2. *Whether the claimants are the legal heirs/legal representatives of the deceased? OPP.*
3. *Whether the claimants are entitled to the grant of compensation? If so to what extent and from which of the respondents? OPP.*
4. *Whether the petition is not maintainable in the present form? OPR.*
5. *Whether respondent Sahezada was holding a valid driving licence at the time of alleged accident? If not its effects? OPR*
6. *Relief"*

Thereafter going through the evidence, the Tribunal observed that as per the FIR Ex. A2, the name of the driver of the offending vehicle was not mentioned and there was no eye witness examined by the claimants that the accident had taken place. It is further observed that no criminal proceedings were pending against the driver with regard to accident and the finding on issue No. 1 was decided against the claimants and accordingly, the claim petition was dismissed.

Learned counsel for the insurance company has taken an objection that there is no evidence led before the Tribunal that the

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respondent No.1 had a valid driving license on the date of accident and has referred to the judgment titled as ***Pappu and others V/s. Vinod Kumar Lamba and another (2018-1) PLR, 425***, passed by three-Judge Bench of the Supreme Court to contend that the onus is on the owner of the offending vehicle that the driver of the offending vehicle was authorised by him to drive the vehicle and was having a valid driving license at the relevant time. Insurance company can be fastened liability to make compensation on the basis of a valid insurance policy and only after the facts are established by the owner of the offending vehicle.

Learned counsel for the appellants has referred to amended written statement filed by respondents No. 1 and 2. A perusal of the record shows that in the written statement, additional pleadings have been added and it has been stated by respondents No. 1 and 2 that Hardip Singh who was driving the motor-cycle, was not holding any valid license and he was carrying two persons on pillion seat, which is not permissible for two wheeler and all the three persons Hardip Singh, Harbans Singh and Harjit Singh were in drunken position and when he tried to overtake the truck, another truck came from the opposite side but with the galaxy of the light of the truck, the motor-cycle dashed with the centre part of the truck and all the three persons were fell down on the road. The truck was not mechanically examined. It is further stated that motor-cycle while trying to enter into the link road which was on the right hand side, the driver did not slow down the vehicle and then took the right turn. He was negligent in driving. However, the driver and owner did not appear and were proceeded *ex parte*. The accident stands admitted.

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I have heard learned counsel for the parties and perused the case file.

A perusal of the statement of AW2 Harjit Singh shows that the offending vehicle was coming on fast speed from the wrong side and struck against the motor-cycle as a result of which all of them fell down and he had noted down the number of the vehicle. The number of the vehicle was not disputed by the defendants. Since the defendants had admitted the accident, the version of the eye witness is not doubted any longer and the finding on issue No. 1 is being reversed. The claim petition deserves to be allowed.

In this case the accident had taken place way back on 10.02.1998. This Court seeks to assess the compensation while exercising powers under Order 41 Rule 34 of CPC. In this case, the deceased was 20 years of age and keeping in view the minimum wages, the compensation is hereby assessed in view of the judgments passed by Hon'ble the Supreme Court in ***Sarla Verma and others vs. Delhi Transport Corporation and another***, 2009 (3) RCR (Civil) Page 77 and ***National Insurance Company Limited Vs. Pranay Sethi and others*****,** Special Leave Petition (Civil) No.25590 of 2014 (decided on 31.10.2017) as under:-

Sr. No.	**HEADS**	**CALCULATIONS**
(i)	Income	Rs.2,500/- per month
(ii)	40% of (i) above to be added as future prospects	2500+1000=3500
(iii)	50% of (ii) above is deducted as personal expenses of the deceased	3500-1750=1750
(iv)	Compensation after multiplier of 18 applied	1750 X 12 X 18=378000/-
(v)	Compensation under conventional heads	Rs.30,000/-
(vi)	**TOTAL COMPENSATION AWARDED**	**Rs. 4,08,000/-**

The amount of compensation of **Rs.4,08,000/-** shall be payable within a period of two months from the date of receipt of certified copy of this order. The insurance company has to make payment of compensation

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firstly to the claimants and since the driver and owner had not placed any driving license, the insurance company is given recovery rights. The enhanced amount of compensation shall carry interest @ 7.5% per annum from the date of filing of the claim petition, till its realization, in view of the judgment of Hon'ble the Supreme Court in the case of ***Shri Nagar Mal and others V/s. The Oriental Insurance Company Ltd. and others in Civil Appeal No. 448 of 2018***. Remaining conditions of disbursal of amount shall remain unaltered.

Accordingly the award stands modified to the above extent and the present appeal is allowed.

(RITU BAHRI)
JUDGE

May 02, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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