

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

513

FAO No.1785 of 2004 (O&M)
Date of Decision : 10.09.2018

Smt. Sunita and others

..... Appellants

Versus

Jitender Singh and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.S.Malik, Advocate
for the appellants.

Mr. R.N.Singal, Advocate
for respondent No.2-Insurance Company.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the award dated 13.10.2003 passed under Motor Accident Claims Tribunal, Sonapat dismissing the petition of the appellants.

The brief facts of the case are that on 05.05.2002, Satish Kumar, aged 32 years was going towards village Kurar Ibrahimpur on his scooter at night to attend a marriage. When he reached near the bridge the Car in question being driven by respondent No.1 rashly and negligently hit his scooter, as a result of which he fell and died on the spot. The next morning his brother called up his father to inform him that Satish Kumar had not reached the marriage. A search was made and then his dead body

was found and an FIR was lodged at 10.30 AM on 06.05.2002. In that FIR it was alleged that an unknown vehicle had caused the accident. In the claim petition it was further averred that one Ram Kumar had witnessed the accident and had informed Om Parkash about the entire details in the evening on 06.05.2002. Om Parkash had taken that Ram Kumar to the Police Station but the police did not take any action.

The case of respondent No.1 on the other hand was that no accident had taken place with his car and that infact on the date of the accident he was away to his own paternal village. The Tribunal held that the appellants were not able to prove that the accident had taken place with the offending vehicle and dismissed the claim petition. Hence the present appeal.

Learned counsel for the appellants has argued that no worthwhile reason has been given to discard the testimony of Ram Kumar.

Learned counsel for respondent No.2-Insurance Company, however, points out that Ram Kumar never stopped to help the deceased and hence it is clear that he is bearing false witness. He has also argued that if it was the case of the appellants that the police was not taking down the details that they had been supplying to them they should have filed a complaint against them and no complaint was filed by them against the police officials. The arguments of the learned counsel for respondent No.2-Insurance Company can not be taken without a pinch of salt. When a young man dies his family can not be blamed for seeking action against the Police for not making due efforts. In the beginning such a family would be struggling to get over the loss of the loved one and later it

would not be unreasonable for them to come to the conclusion that rather than seek action against the police it would be better if they just got compensation.

In my opinion, this solitary fact can not be enough to completely discard his testimony. It may be mentioned here that no evidence was led by respondent No.1 in support of the plea of *alibi* which he had set up. In the circumstances, findings on issue No.1 are reversed. It is held that there is a preponderance of probability (howsoever slim) that the accident was caused in the manner suggested in the claim petition. Faced with this learned counsel for respondent No.2-Insurance Company states that since no findings were given on the other issues, the matter should now be remanded back. In a normal civil suit that would have been the right course but this Court can not lost sight of the fact that the death had occurred 16 years ago. The appellant No.2 who was 2 ½ years old at the time of the accident is now an adult. The two minor daughters must also be young women. The widow would be a middle aged woman and the mother an old woman. In these extreme and stark circumstances, my conscience does not permit me to send this case back. I also find that there is no evidence of income and I consequently take the income of the deceased as a labourer. As per the minimum wages notified for Haryana in the year 2002 the income had to be taken as Rs.2,050/-. In view of the judgment of the Supreme Court in ***National Insurance Company Ltd. vs. Pranay Sethi and others, 2017(4) RCR (Civil)1009***, 40% future prospects are added. As per the age of the deceased, the multiplier would be 16 in view of the judgment of the Supreme Court in the matter of ***Sarla Verma and others v. Delhi***

Transport Corporation and another, 2009 ACJ 1298. Since there were 5 dependents, the deduction would be $\frac{1}{4}^{\text{th}}$. Under the conventional heads, the appellants would be entitled to Rs.70,000/-. Out of the total compensation amount, I award 10% to appellant No.5, 50% to appellant No.1, 10% to appellant No.2 and 15% each to the appellants No.3 and 4. Out of the compensation amount, the share of the minors will be put in a fixed deposit till they attain the age of majority. The share of appellant No.5 would be disbursed to her. Half the share of appellants No.1 and 2 would be put in a fixed deposit for a period of 3 years and half would be released to each of them.

The rate of interest would be 7.5% from the date of filing the claim petition till the date of payment.

Appeal stands allowed.

Since the main case has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

10.09.2018

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No