

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:8.3.2018

FAO No. 3567 of 2009(O&M)

Smt. Sunita Rani

---Appellant

vs.

State of Punjab and others

---Respondents

FAO No. 4911 of 2009(O&M)

Smt. Gurnam Kaur and another

---Appellants

vs.

State of Punjab and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ishan Cooner, Advocate
for the appellants in both the appeals

Ms.Anju Sharma Kaushik, AAG, Punjab

Mr. K.S.Rekhi, Advocate
for respondent No. 3 in both the appeals

Rekha Mittal, J.

This order will dispose of FAO Nos. 3567 and 4911 of 2009 as these have emerged out of the same award dated 7.12.2007 passed by the Motor Accidents Claims Tribunal, Amritsar (in short “the Tribunal”) whereby applications for grant of compensation filed by Sunita Rani in regard to death of Anil Kumar (FAO No. 3567 of 2009) and Smt. Arvinder

Kaur and others on account of death of Gurcharan Singh (FAO No. 4911 of 2009) in a motor vehicular accident that took place on 2.7.2006 have been dismissed on the basis of findings recorded qua issue No. 1. For the sake of convenience, facts are taken from FAO No. 3567 of 2009.

In short, case of the claimants is that Anil Kumar son of Sunita Rani claimant was 19 years old, earning Rs. 3200/- per month by working as a labourer. On 2.7.2006, Anil Kumar alongwith Rattan Lal and some other persons was going from Amritsar to Ludhiana after paying obeisance at Golden Temple in three wheeler bearing No. PB-01-BG-9403 driven by Gurcharan Singh. At about 2-00 p.m., when three wheeler crossed chauhan drain bridge in between Jandiala and Beas on Amritsar to Jandiala road, Dalbir Singh respondent No. 3 came driving bus No. PB-02-B-9913 in a rash and negligent manner from opposite side and struck against three wheeler by bringing the bus on extreme wrong side of the road on kacha berm. Occupants of the three wheeler sustained injuries and three wheeler was extensively damaged. The bus turned turtle in the pits. Gurcharan Singh, driver of the three wheeler died at the spot and occupants of the three wheeler were sent to hospital. Anil Kumar was taken to PHC, Manawala, District Amritsar and succumbed to injuries received in the accident.

Respondent Nos. 1 and 2 filed their joint reply and, in turn, resisted claim of the applicants that accident took place due to rash and negligent driving of offending bus. It is averred that the bus was driven by its driver at normal speed. Three wheeler was having more passengers than seating capacity. Two persons were sitting on the right and left side of driver of three wheeler, therefore, movement of the driver was congested

and he had no effective control over steering wheel of three wheeler. The driver of three wheeler lost control over the vehicle and suddenly came in front of the offending bus. The driver took the bus on extreme left side on kacha berm of the road and applied brakes effectively but three wheeler struck on the right front of the bus which fell into ditches on left side of the road. It is alleged that accident took place due to rash and negligent driving of three wheeler by its driver and there is no fault on the part of bus driver.

Respondent No. 3 filed his separate reply in line with the averments raised by respondent Nos. 1 and 2. He has reiterated that accident took place due to rash and negligent driving of three wheeler by its driver and there was no fault on his (Dalbir Singh's) part.

On pleadings of the parties, following issues were framed on 13.10.2006:-

1. Whether Dalbir Singh, respondent No. 3, caused the death of Anil Kumar son of Vijay Kumar by driving the motor vehicle, bus No. PB- 02-B-9913, negligently? OPA
2. Whether the applicant is the only legal representative of Anil Kumar, deceased? OPA
3. How much compensation, the applicant is entitled to recover and from which of the respondents? OPA
4. Relief.

The parties were permitted to adduce evidence in support of their respective contentions. After having heard counsel for the parties in the light of materials on record, the learned Tribunal negatived plea of the claimant and accepted version of the respondents that the accident in

question took place due to rash and negligent driving of three wheeler by its driver Gurcharan Singh and resultantly, the applications for compensation were dismissed.

Counsel for the appellant would argue that findings recorded by the Tribunal on issue No. 1 are based upon assumptions and presumptions in place of meticulous and correct appreciation of testimony of material witnesses namely Sunita Rani, one of the claimants and an eye witness to the occurrence and Dalbir Singh driver of the offending bus. It is argued with vehemence that the learned Tribunal raised a presumption that since the three wheeler had passengers more than its seating capacity or in other words, it was overloaded, driver would have lost control over steering wheel and due to that he may have taken the three wheeler on right side of the road and hit the bus of respondent No. 3. It is argued with vehemence that no such fact has been elicited in cross examination of Sunita Rani that since there were more passengers in the three wheeler, that fact had, in any manner, contributed in causing the accident much less driver of the three wheeler being exclusively liable for the occurrence in question. In addition, it is argued that in regard to the occurrence, first information report was lodged with the police and after due investigation, charge sheet was filed in the court and Dalbir Singh respondent No. 3 faced trial for committing offence under Sections 279, 304-A etc. of the Indian Penal Code before the court of Judicial Magistrate. It is further argued that testimony of Sunita Rani coupled with criminal proceedings against Dalbir Singh are more than sufficient to accept plea of the claimant on the basis of balance of probabilities that accident was caused due to rash and negligent driving of

bus driven by Dalbir Singh when, on the contrary, driver of the bus had every reason to deny the accident in order to escape his liability both criminal and civil.

Counsel representing the respondents have supported findings of the Tribunal that accident took place due to fault of three wheeler as he allowed 11 passengers to travel against seating capacity of 5. Another submission made by counsel is that such like vehicles i.e. three wheeler is meant for carrying passengers at a short distance and not covering long distance running into several kilometers from one town to another town.

Counsel for the claimant, in reply, would urge that mere fact that Sunita Rani or Anil Kumar could not afford to travel by a car or they had hired a three wheeler for going to Amritsar to pay obeisance at Golden Temple cannot be a ground to exonerate driver and owner of the bus in question from their liability to pay compensation to victims of the accident.

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

Sunita Rani, one of the occupants of the ill fated three wheeler appeared in the witness box and tendered into evidence her affidavit by way of examination in chief. She has reiterated her version brought forth in the application for compensation, taken note of hereinbefore while describing the facts in brief. She was cross examined by counsel for respondent No. 3 whereas her cross examination by counsel for respondent Nos. 1 and 2 was taken as nil after opportunity being given. In her cross examination, she has denied the suggestion that three wheeler had turned turtle on account of negligence of its driver Gurcharan Singh and due to overloading of the

passengers. She has also denied that in order to save three wheeler, driver of the bus took it on the extreme left side on the kacha road as a result of which he struck against the tree. She has also denied the suggestion that accident never took place on account of negligent driving of driver of the bus. Sunita Rani was not cross examined qua the facts deposed by her that Gurcharan Singh took his three wheeler on the extreme left ledge of the road on kacha berm, even then the bus hit the three wheeler by going on the extreme wrong side of the road and after hitting the three wheeler, the bus also turned turtle. As per the settled position in law, non-cross examination of a witness on a particular fact amounts to an admission on the part of the contesting party. In absence of any cross examination of Sunita Rani qua the material facts deposed by her attributing rash and negligent driving to the bus driven by Dalbir Singh respondent No. 3, testimony of Sunita Rani is more than sufficient to establish plea of the claimant that accident took place due to rash and negligent driving of offending bus by its driver Dalbir Singh.

This apart, there is no challenge to contention of the claimant that on due investigation of report lodged with the police, Dalbir Singh was put to trial for causing the accident due to rash and negligent driving constituting offence under Sections 279, 304-A, 337, 338 and 427 IPC. The learned Tribunal totally ignored testimony of Sunita Rani and misdirected itself by deciding a factual controversy on the basis of assumptions and presumptions. I would hasten to add that the Tribunal gave unnecessary weightage to discrepancy qua particulars of the three wheeler mentioned in the FIR and the one stated in the claim application because in the FIR,

particulars of the three wheeler are PB-10B-9403 whereas in the claim application, it is stated to be PB-01-BG-9403. As in the case in hand, there is no dispute that the accident took place between the three wheeler and the bus in question and on account of the accident, Gurcharan Singh driver of the three wheeler died at the spot and Anil Kumar one of the occupants of the three wheeler succumbed to injuries in the hospital, any such discrepancy should not have invited any mention much less weighed with the Tribunal to reject testimony of Sunita Rani.

To be fair to the respondents, Dalbir Singh, driver of the offending bus was examined. As has been rightly argued by counsel for the claimant that Dalbir Singh has every reason to deny his liability as he is facing criminal trial for causing the accident. Keeping in view the discussion made hereinbefore that testimony of Sunita Rani has not been challenged qua material facts deposed by her coupled with Dalbir Singh has been put to trial for causing the accident after due investigation, testimony of Dalbir Singh cannot be given primacy over that of Sunita Rani. Dalbir Singh has deposed that three wheeler over turned but no such fact could be proved in cross examination of Sunita Rani. There is nothing on record suggestive of the fact that during investigation, the police noticed any skid marks of the bus to prove that the bus driver applied brakes effectively in order to avoid the occurrence. In view of the above, I have no hesitation to hold that the learned Tribunal was swayed by immaterial facts and based its conclusion on assumptions and presumptions. No doubt, factum of overloading of the three wheeler could be taken note of by the court but that itself is not a ground to record a finding that accident took place due to

overloading of the three wheeler. In this view of the matter, findings recorded by the Tribunal on issue No. 1 cannot be allowed to sustain and liable to be set aside. Accordingly, issue No. 1 is decided in favour of the claimant and against the respondents.

As the Tribunal decided issue No. 1 against the claimants, it did not record its findings on other issues particularly quantum of compensation and the person entitled thereto.

FAO No. 3567 of 2009

The application for compensation has been filed by Sunita Rani, mother of deceased Anil Kumar. Anil Kumar was 19 years old at the time of occurrence. There is no clear evidence with regard to avocation and income of the deceased. Taking a clue from the minimum wage fixed by the Government of Punjab and available at the relevant time, income of the deceased is assessed at Rs. 2400/- per month. The claimant is entitled to increase in income for future prospects @ 40%. Admissible multiplier is 18 and deduction for personal expenses would be 50% in the light of judgment of Hon'ble the Supreme Court **Smt.Sarla Verma and others vs. Delhi Transport Corporation and another 2009 ACJ 1298**. In this manner, loss of dependency comes to $\text{Rs. } 2400 \times 12 \times 18 = 5,18,400 + 2,07,360(40\%) = 7,25,760 - 3,62,880(50\%) = \text{Rs. } 3,62,880/-$.

Under conventional heads, in the light of latest judgment of Hon'ble the Supreme Court **National Insurance Company Limited vs. Pranay Sethi and others 2017 SCC 1270**, claimant shall be entitled to Rs. 30,000/- namely Rs.15000/- for expenses on funeral and Rs. 15,000/- for loss of estate.

The total compensation comes to **Rs.3,92,880/-**, payable with interest @ 7.5% per annum from the date of petition till realization. The respondents shall be jointly and severally liable to pay compensation being the owner and driver of the vehicle in question.

FAO No. 4911 of 2009

Application for compensation has been filed by the widow, minor children namely Harjot Singh and Gurleen Kaur and parents of deceased Gurcharan Singh. There is nothing on record suggestive of the fact that widow, children and parents of the deceased were not dependent upon earning of Gurcharan Singh. Gurcharan Singh was driving the three wheeler at the time of occurrence sufficient to show that he was a driver by profession. There is no clear evidence on record with regard to his income. Taking a clue from the minimum wage fixed by the Government of Punjab and available at the relevant time, income of the deceased is assessed at Rs. 2600/- per month. The deceased was in the age bracket of 26-30 years, therefore, admissible multiplier would be 17. The claimants shall be entitled to increase in income for future prospects @ 40%. Deduction for personal expenses in the given circumstances would be 1/4th. In this manner, loss of dependency comes to $Rs.2600 \times 12 \times 17 = 5,30,400 + 2,12,160$ (40%) = $7,42,560 - 1,85,640$ (1/4th) = **Rs.5,56,920/-**.

Under conventional heads, claimants shall be entitled to Rs. 70,000/- in the light of latest judgment of Hon'ble the Supreme Court of India **Pranay Sethi and others' case (supra)**, detailed hereunder:-

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

Loss of estate

Rs. 15,000/-

The total compensation is **Rs. 6,26,920/-**, payable with interest @ 7.5% per annum from the date of petition till realization. Out of the compensation, Rs. 50,000/- shall be paid to the mother, Rs. 2,00,000/- to widow of the deceased and the remaining amount to the children in equal share, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. The interest accruing on the FDRs shall be paid to their mother for meeting expenses on their education and living.

Appeals are partly allowed in the aforesaid terms.

(Rekha Mittal)
Judge

8.3.2018
paramjit

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