

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

FAO No.2306 of 2012 (O&M)

Date of decision: 31.08.2018

Sukhjit Kaur and others

.....Appellants

Versus

United India Insurance Company Ltd. and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Surinder Garg, Advocate for the appellants.

Mr. R.N. Singal, Advocate for respondent No.1 (Insurance Co.).

None for respondent Nos.2 and 3 (Driver and Owner).

MAHABIR SINGH SINDHU, J.

Appellants-claimants (*for short 'appellants'*) have filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the impugned Award dated 05.11.2011, passed by learned Motor Accident Claims Tribunal, Faridkot (*for short 'Tribunal'*) on account of death of Balwinder Singh (*for short 'deceased'*) in a motor vehicle accident.

The appellants are widow and two sons of deceased; whereas respondents.No.1, 2 and 3 are Insurer, Driver and Owner of the offending vehicle, respectively. However, for the sake of convenience and brevity, the respondents will be referred in the same sequence as before learned Tribunal i.e. respondent No.1-Driver, respondent No.2-Owner and respondent No.3-Insurer.

(2) A claim petition was filed under Section 166 of the Act by appellants before learned Tribunal with the averments that on 31.10.2010, deceased was

riding on his motorcycle from village Dhudi to Khara, when he reached on fly-over in Kotkapura city, then a truck bearing registration No.RJ-13-G-8229 (*for short 'offending truck'*), driven by respondent No.1-Jaskaran Singh in a very rash and negligent manner came from wrong side without blowing any horn and hit the motorcycle of deceased. As a result thereof, deceased was crushed by the offending truck and died on the spot. Specifically pleaded that deceased was going on left side of the road on a very slow speed. The occurrence was witnessed by one Tarsem Singh, but he could not inform the same to the family members of deceased as he was going to village Mal Ke to see his wife and he was in hurry due to some unavoidable circumstances. After some days, said Tarsem Singh narrated the whole story to the appellants and thereafter, they approached the local police as well as to the S.S.P., Faridkot, but no action was taken. Further averred that police officials at Police Station Kotkapura recorded DDR No.21 dated 01.11.2010 on the basis of wrong facts in connivance with respondents No.1 and 2 (driver and owner of the offending truck), respectively, to save them from civil as well as criminal liability. Further pleaded that accident in question had occurred due to rash and negligent driving of respondent No.1-driver and respondent No.2 is the owner of the offending truck, whereas respondent No.3 being insurer are liable jointly and severally to pay the compensation of ₹ 20,00,000/- (Twenty Lakh) along with interest @ 18% per annum from the date of accident till its realization. Averments have been made in the claim petition that deceased was 60 years of age, having seven acres of agriculture land and earning about ₹ 2,50,000/- (Two Lakh and Fifty Thousand) per annum. In addition, doing dairy farming and earning ₹ 20,000/- (Twenty Thousand) per month.

(3) In response to the claim petition, respondents No.1 and 2 (driver and owner) filed their joint written statement while denying the contents of the claim petition including connivance with the police regarding lodging of DDR as alleged by the appellants. Also submitted that Kamaljit Singh (appellant No.3) made a statement before the police that accident had taken place due to negligence on the part of deceased on account of darkness and as such, there was no fault of respondent No.1. Further submitted that offending truck was duly insured with respondent No.3 and at the time of accident, deceased was under the influence of liquor. Ownership of agriculture land and income of deceased have also been denied. Again submitted that as a matter of fact, offending truck was being driven at a very slow speed in proper direction, but motorcycle of the deceased went out of control and hit against the offending truck, which coming from the opposite side.

A separate reply was filed by respondent No.3-Insurance Company and denied the averments made in claim petition in similar terms as that of respondents No.1 and 2. Also submitted that appellants No.2 and 3 are major and they were not dependent on the deceased and in case the deceased was an agriculturist, then after his death, the entire estate has been inherited by the appellants and thus, no loss is caused to the appellants. Income from dairy farming was also denied.

(4) On the basis of pleadings of both sides, learned Tribunal framed the following issues: -

“1 Whether deceased Balwinder Singh died in a Motor Vehicle Accident that took place on 31.10.2010 after noon in the area of Police Station City, Kotkapura on account of rash and negligent driving of Truck bearing registration No.RJ-

*13G-8229 by its driver respondent No.1 Jaskaran Singh?
OPA.*

- 2 Whether the claimants are entitled to compensation, if so, to what extent and amount and as to from whom of the respondents? OPA*
- 3. Whether the driver of the Truck bearing registration No. RJ-13G-8229 at the time of alleged accident was not holding a valid, legal and effective driving license? OPR-3.*
- 4. Relief.”*

In order to prove the claim petition, appellant No.1-Sukhjit Kaur appeared as AW-1 and tendered into evidence affidavit (Ex.A1), DDR (Ex.A2), Post Mortem Report (Ex.A3), J-Forms dated 27.04.2009, 06.02.2010, 02.02.2010 and 28.01.2010 (Ex. A4 to A7) and attested copy of driving licence of deceased (Ex.A8). Tarsem Singh appeared as AW-2 and tendered into evidence his affidavit (Ex.A9).

On the other hand, respondent No.1-Jaskaran Singh appeared as RW-1 and produced on record his affidavit (Ex.R1); Registration Certificate of the offending truck (Ex.R2), Insurance Cover Note (Ex.R3), Fitness Certificate (Ex.R4), Route Permit (Ex.R5), Driving Licence (Ex.R6) and Insurance Policy (Ex.R7).

Respondent No.3-Insurance Company did not lead any evidence.

Learned Tribunal, while deciding Issue No.1, came to the conclusion that accident in question, resulting into death of deceased, took place due to his own negligence and as such, decided the same against the appellants and in favour of respondent No.1.

Learned Tribunal, while deciding Issue No.2, came to the conclusion that except J-Forms, there is no other evidence on record to prove the income of deceased and while observing that appellant Nos.2 & 3 are grown up,

found the claim petition to be untenable. However, keeping in view the finding on Issue No.1, awarded the compensation of ₹ 50,000/- (Fifty Thousand) on account of '*No Fault Liability*' in favour of appellant No.1-Sukhjit Kaur and all the respondents were held liable jointly and severally.

Learned Tribunal, decided Issue No.3, in favour of respondent Nos.1 and 2 and against respondent No.3 and came to the conclusion that respondent No.1 was having a valid driving licence at the time of accident.

Ultimately, while deciding Issue No.4, learned Tribunal partly allowed the claim petition and awarded a compensation of ₹ 50,000/- on account of '*No Fault Liability*' in favour of appellant No.1-Sukhjit Kaur along with interest @ 8% per annum from the date of filing of the claim petition till its realization. All three respondents were held liable to pay the compensation jointly and severally. However, the claim petition qua appellant Nos.2 and 3 was dismissed.

(5) It is argued on behalf of the appellants that there is sufficient material on record to prove the negligence on the part of respondent No.1-driver, but learned Tribunal ignored the same including the testimonies of AW-1 and AW-2. Further argued that learned Tribunal has committed a grave error of law while recording the findings on Issue No.1 against the appellants on the basis of DDR (Ex.A2) while treating the present claim petition like a criminal trial.

On the other hand, learned Counsel for the Insurance Company submitted that impugned award, passed by learned Tribunal, is legally sustainable and does not require any interference by this Court while entertaining the present appeal and as such, the same deserves to be dismissed.

- (6) Heard arguments from both sides and perused the record.
- (7) Learned Tribunal, while deciding Issue Nos.1, 2 and 3, came to the conclusion that deceased died in a motor vehicle accident, caused with offending truck on 31.10.2010, which was duly insured with respondent No.3 and the driver-respondent No.1 was having a valid driving licence at the relevant time.

Concededly, respondents have neither filed any substantive appeal; nor cross-objections against the impugned award and even no arguments have been raised against the above findings. Consequently, findings to that effect are affirmed.

- (8) The points for determination in the present appeal are as under: -

- I. *As to whether the deceased died in the accident in question on account of his own negligence or due to the rash and negligent driving of the offending truck by respondent No.1?*
- II. *As to what should be the 'just compensation' for which the appellants are entitled in view of the facts and circumstances of the present case?"*

Point No.I

Tarsem Singh-AW2 is stated to be an eye-witness to the accident in question and while filing his affidavit (Ex.A9) deposed that in the afternoon of 31.10.2010, deceased was going on his motorcycle from village Dhudi to Khara and when he was crossing fly-over in Kotkapura City, then offending truck, driven by respondent No.1 in a very rash and negligent manner, came from a wrong direction without blowing any horn and hit the motorcycle of deceased. As a result thereof, deceased was crushed by the offending truck and died on the spot. Further deposed that occurrence was witnessed by him, but he could not

inform the same to the appellants due to unavoidable circumstances as he was going to Village Mal Ke to see his wife and as such, he was in hurry. In para 3 of his affidavit, he specifically deposed that accident in question had occurred due to rash and negligent driving of respondent No.1.

This witness was duly cross-examined by all the respondents and his entire cross-examination reads as under: -

“ I was going to village Mal Ke when the accident took place. I returned back from village Mal Ke on the next day. On my return the same day I told about the accident to the claimants. It is incorrect to suggest that I have never witnessed the accident and have deposed falsely. I did not meet the police nor I made any statement before the police. ”

A perusal of the cross-examination of AW-2 clearly reveals that at the time of accident, he was going to Village Mal Ke and denied the suggestion that he has not witnessed the accident or that he has deposed falsely.

While deciding Issue No.1, learned Tribunal did not accept the testimony of AW-2 merely due to the reason that he neither lodged the FIR; nor reported the matter to the police.

It deserves to be mentioned here that learned Tribunal has duly accepted that AW-2 was the eye-witness of the accident and he clearly stated that offending truck was being driven in a rash and negligent manner on the wrong side of the road without blowing any horn and hit the motorcycle of deceased, who was going on a slow speed and as a result of which, he died on the spot and a relevant part of paragraph 8 of the impugned award, while dealing with Issue No.1, reads as under: -

“ AW-02 Tarsem Singh eye witness of this accident through Ex.A09 has clearly stated that the driver of the offending Truck

was driving the truck rashly and negligently and without blowing any horn went on the wrong side of the road and hit the motorcycle of the deceased, who was going on at a slow speed and as a result of which the deceased was crushed and died instantaneously and this witness has not been sufficiently cross-examined and only a suggestion has been put to him. ”

AW1-Sukhjit Kaur has also supported the claim petition and deposed that they came to know about the accident in question from AW 2-Tarsem Singh, who was present at the time of accident. She also deposed that appellants approached the police of City Kotkapura as well as SSP, Faridkot, but no action was taken in the matter. She further deposed that DDR No.21 (Ex.A2) and the consequent proceedings were conducted by the police in connivance with respondents No.1 and 2 just to save them from the criminal prosecution as well as civil liabilities.

Respondent No.1-Jaskaran Singh appeared as RW1 and tendered his affidavit (Ex.R1) while deposing that deceased was an idle man and he was neither owned the land; nor doing dairy farming. Further deposed that police recorded the DDR (Ex.A2) on the basis of statement of Kamaljit Singh (appellant No.3) and he denied any connivance with the police. He also deposed that accident had taken place due to the negligence of deceased as he was under the influence of liquor. Further deposed that motorcycle was being driven by the deceased in a rash and negligent manner and he came from the opposite side and hit the offending truck.

From the averments made in Paras 8 and 24 of the claim petition, coupled with the testimony of AW 2-Tarsem Singh, it is clearly evident that accident in question had occurred in the afternoon of 31.10.2010, but in the

DDR, it is recorded that it happened suddenly and naturally due to lights from front side and the motorcycle became uncontrollable on the turn of the bridge, but this witness has nowhere deposed that accident occurred on account of the darkness, rather he stated that deceased was under the influence of liquor at the time of accident. Although respondent No.1 has deposed that deceased was under the influence of liquor at the time of accident, but that is not acceptable for the simple reason that there is no medical evidence available on record to prove that deceased was under the influence of liquor at the time of accident despite the fact that Post Mortem Examination of the deceased was conducted. Moreover, learned Tribunal has not recorded any findings that there was any darkness or that deceased was under the influence of liquor at the relevant point of time.

Learned Tribunal has swayed primarily on the basis of DDR No.21 dated 01.11.2010, which was alleged to have been entered on the basis of the statement made by appellant No.3-Kamaljit Singh, who, undisputedly was not even present at the time of accident in question. Moreover, in the said DDR, it is recorded that the accident occurred due to the lights from the front side, but AW 2-Tarsem Singh, who is the eye-witness to the accident in question, has categorically deposed in his deposition that the accident had taken place afternoon and on that count, there is no cross-examination of this witness. Therefore, testimony of RW-1 and DDR cannot be the basis to record the finding that deceased himself was negligent for the accident in question.

Even otherwise, proceedings under Section 168 of the Act are termed as an inquiry and the same cannot be converted into a criminal trial where charges are to be proved beyond reasonable doubt.

In such like cases, preponderance of evidence is to be seen on the basis of probabilities and reference in this regard can be made to a judgment, rendered by the Division Bench of this Court in **First Appeal From Order No.1950 of 1995** titled as **Amolakdeep Singh and another Versus The Punjab State and another**, decided on 19.07.1996 and relevant part of the same reads as under:-

“ The only contradiction brought out in the statement of Teja Singh was that he had not mentioned these facts in his statement before the police which was recorded in the hospital and the copy of the DDR (Ex.A-5). In our opinion, the Tribunal has seriously erred in discarding the testimony of Teja Singh merely because there was some variance in the statement made by him while he was in hospital and the statement made before the Tribunal. The Tribunal ignored the well established principle of law that in the proceedings under the Motor Vehicles Act, 1988 issues are required to be determined on the basis of preponderance of the evidence and degree of proof required for award of compensation is not the same as is required for holding a person guilty of an offence. ”

Still further, in '**Bimla Devi and others Versus Himachal Road Transport Corporation and others, (2009) 13 SCC 530**, the Hon'ble Supreme Court has held as under:-

" In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. "

In view of the above, the findings of learned Tribunal on Issue No.1 to the effect that deceased died on account of his own negligence merely on the ground that AW-2 did not report the matter to the police and a different version

is given by appellant No.3 in DDR (Ex.A2) is not sustainable. Consequently, the findings to that extent on Issue No.1 deserve to be interfered and accordingly reversed. As a result thereof, Point No.I is decided in the aforementioned terms.

Point No.II

Sukhjit Kaur-AW1, apart from supporting the contents of the claim petition regarding the accident in question, deposed that deceased was an agriculturist and having seven acres of land as well as running dairy farm and earning about ₹ 2,50,000/- (Two Lakh and Fifty Thousand) per annum from agriculture as well as ₹ 20,000/- (Twenty Thousand) per month from Dairy Farming. J-Forms dated 27.04.2009, 06.02.2010, 02.02.2010 and 28.01.2010 (Ex.A4 to Ex.A7) have been duly proved. She also deposed that they spent ₹ 1,00,000/- on *bhog* ceremony as well as on the cremation of the deceased. Although in para 4 of her affidavit (Ex.A1), there is a reference of *jamabandi* for the year 2003-2004, mentioning the ownership of seven acres of land in favour of deceased as Ex.P5, but there is no such document available on record.

During cross-examination, this witness denied that deceased was not gainfully employed or that he was not having any income.

(9) Therefore, in view of the totality of the circumstances, this Court is of the opinion that monthly income of deceased be taken into consideration at least ₹ 3,000/- and as such, the annual income would be ₹ 36,000/- (₹ 3,000 x 12).

Since deceased was married, therefore, keeping in view the judgment of Hon'ble Supreme Court in **Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121**, 1/3rd deduction is to be made towards self expenses of the deceased and

multiplier of 9 is attracted and consequently, loss of annual dependency comes to ₹ 24,000/-. Still further, in view of the judgment of the Hon'ble Supreme Court in '*National Insurance Company Limited Versus Pranay Sethi and others*', (2017) 16 SCC 680, the appellants are entitled for addition of 10% in view the fact that deceased was 60 years of age at the time of death as well as compensation under other conventional heads.

Keeping in view the facts and circumstances, discussed hereinabove, the following amount of compensation would be the “just compensation” on account of death of Balwinder Singh for which appellant No.1-Sukhjot Kaur is entitled:-

Sr. No.	Heads	Calculation
(i)	Annual Income of the deceased	₹ 36,000
(ii)	1/3 rd of (i) deducted for personal expenses	₹ 36,000 - ₹ 12,000 = ₹ 24,000
(iii)	10% addition for future prospects	₹ 24,000 + ₹ 24,00 = ₹ 26,400
(iv)	Net annual income of the deceased	₹ 26,400
(v)	Multiplier	9
(vi)	Total Loss of dependency	₹ 26,400 x 9 = ₹ 2,37,600
(vii)	For loss of estate	₹ 15,000
(viii)	For loss of consortium	₹ 40,000
(ix)	For Funeral Expenses	₹ 15,000
	Total Compensation	₹ 3,07,600

Since, there is no point raised by learned Counsel for the appellants regarding the entitlement of appellant Nos.2 and 3, therefore, rest of the terms and conditions of the impugned award i.e. entitlement of compensation only by appellant No.1 and rate of interest will remain unaltered.

Needless to say that amount of compensation already paid to appellant No.1 shall be adjusted and the balance amount of compensation shall

be paid within a period of six weeks from the date of receipt of certified copy of this order.

Disposed off in the above terms.

August 31, 2018
naresh.k/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes