

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:1.10.2018

FAO No. 5073 of 2012(O&M)

Darshan Kaur and others

---Appellants

vs.

Munish Kumar @ Babbu and others

---Respondents

FAO No. 199 of 2014(O&M)

Jaswinder Singh

---Appellant

vs.

Makhan Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Kuldeep V. Singh Ahluwalia, Advocate
for the appellants in FAO-5073 of 2012
for respondent No. 3 in FAO -199 of 2014

Mr. Akshay Jain, Advocate
for the appellant in FAO- 199 of 2014
for respondent No. 2 in FAO-5073 of 2012

None for respondents No. 1 and 3 in FAO-5073 of 2012

Respondents No. 1 and 2 ex parte in FAO No. 199 of 2014

Rekha Mittal, J.

This order will dispose of FAO Nos. 5073 of 2012 and 199 of 2014 as these have emerged out of the same award dated 29.2.2012 passed

by the Motor Accidents Claims Tribunal, Mansa (in short “the Tribunal”) whereby compensation has been awarded on account of death of Malkit Singh in a motor vehicular accident that took place on 28.1.2011.

FAO No. 5073 of 2012 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been preferred by Jaswinder Singh (respondent No. 2 before the Tribunal), registered owner of offending vehicle bearing DL-2CJ-5260.

CM No. 22364-CII of 2012 in FAO-5073 of 2012

Prayer in this application is for condoning delay of 45 days in filing the appeal.

Heard.

Allowed as prayed for. Delay of 45 days in filing the appeal stands condoned.

Disposed of accordingly.

FAO No. 5073 of 2012

The Tribunal has assessed compensation of Rs. 4,40,000/-, detailed hereunder:-

Monthly income of the deceased	Rs. 3000/-
Deduction for personal expenses	1/4 th
Multiplier	16
Loss of dependency	Rs. 4,30,000/-
Funeral expenses	Rs. 5000/-
Loss of consortium	Rs. 5000/-

The plea of the claimants is that the deceased was working as a tailor at the shop of Surinderpal and was earning Rs. 500/- per day. The claimants did not examine said Surinderpal to prove avocation and income

of the deceased. However, there is nothing on record suggestive of the fact that deceased had any disability to impair his capacity to work and earn livelihood for his family consisting of his wife, four minor children and mother. Taking a clue from minimum wage available at the relevant time, income of the deceased is assessed at Rs. 3600/- per month. Claimants shall be entitle to addition in income for future prospects @ 40%. Deduction for personal expenses and multiplier adopted by the Tribunal are correct and affirmed. In this manner, loss of dependency is calculated at Rs.7,25,760/- $[3600 \times 12 \times 16 = 6,91,200 + 2,76,480(40\%) = 9,67,680 - 2,41,920(1/3^{\text{rd}})]$.

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

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

Total compensation is Rs. 7,95,760/- and the additional amount is Rs. 3,55,760/- (7,95,760-4,40,000), payable with interest @ 7.5% per annum from the date of petition till realization to minor children of the deceased in equal ratio, to be invested in fixed deposit till they attain the age of majority or for a period of three years, whichever is later. Interest accruing on the FDR shall be payable to their mother for meeting expenses on their education and living. All other terms and conditions of the award shall remain intact.

The appeal is partly allowed in the aforesaid terms.

FAO No. 199 of 2014

Jaswinder Singh, registered owner of offending vehicle has preferred the appeal to assail findings of the Tribunal whereby he has been

fastened with liability to pay compensation, to be paid jointly and severally by the driver, registered owner, and subsequent purchaser of the vehicle namely Makhan Singh. It is vehemently argued that the occurrence in question took place on 28.1.2011 but the vehicle in question was sold by Jaswinder Singh to Makhan Singh (respondent No. 3 therein) on 3.1.2011. It is further argued that on the basis of sale of vehicle by Jaswinder Singh in favour of Makhan Singh, registration of the vehicle could be transferred in favour of the purchaser within a period of one month from the date of purchase but since the period of one month had not expired by the time the accident in question took place, no fault for failure of getting the registration transferred in favour of Makhan Singh can be attributed to the appellant nor can he be fastened with liability to pay compensation. In addition, it is argued that Makhan Singh did not dispute the factum of sale of the vehicle and correctness of the affidavit produced on record when otherwise the vehicle in question was got released on Sapurdari by said Makhan Singh.

There is no representation on behalf of respondents No. 1 and 2 whereas respondent No. 3 (claimant therein) is a proforma respondent.

Be that as it may, it is undisputed position of the case that on the day of occurrence i.e. 28.1.2011, Jaswinder Singh was the registered owner of the offending vehicle. Section 50 of the Motor Vehicles Act, 1988 (in short “the Act”) deals with transfer of ownership. Sub Section (1)(a) of Section 50 says, reads thus:-

50. Transfer of ownership.—[\(1\)](#) Where the ownership of any motor vehicle registered under this Chapter is transferred,—
[\(a\)](#) the transferor shall,—

(i) in the case of a vehicle registered within the same State, within fourteen days of the transfer, report the fact of transfer, in such form with such documents and in such manner, as may be prescribed by the Central Government to the registering authority within whose jurisdiction the transfer is to be effected and shall simultaneously send a copy of the said report to the transferee; and

(ii) in the case of a vehicle registered outside the State, within forty-five days of the transfer, forward to the registering authority referred to in sub-clause (i)—

(A) the no objection certificate obtained under section 48; or....”

Indisputably, the vehicle in question was registered in the State of Punjab but no report regarding factum of transfer was sent by transferor to the registering authority within a period of 14 of the transfer, in compliance with the aforesaid provisions of the Act. The mere fact that Makhan Singh has admitted factum of sale of the vehicle, in the given scenario, would not entitle the appellant to escape his liability to pay compensation. In this context, reference can be made to judgment of Hon'ble the Supreme Court **Naveen Kumar vs. Vijay Kumar and other 2018(2) RCR (Civil) 74**. Hon'ble the Supreme Court by considering series of judgments on the issue including **Dr. T.V.Jose vs. Chacko P.M. 2002(1) RCR (Civil) 120**, **HDFC Bank Limited vs. Reshma 2015(1) RCR (Civil) 1**, **Purnya Devi vs. State of Assam 2014(2) RCR (Civil) 591**, **Pushpa alias Leela vs. Shakuntala 2011(2) RCR (Civil) 616** etc. and definition of 'owner' given in Section 2(30) of the Act has held that consistent thread of reasoning which emerges out of the above decision is that in view of the definition of expression 'owner' in Section 2(30), it is the person in whose

name the motor vehicle stands registered who, for the purpose of act, would be treated as the owner. In a situation where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the registering authority as owner of the vehicle, he would not stand absolved of liability. That being so, I find it difficult to accept contention of the appellant that the Tribunal has committed an error or illegality by fastening liability upon the appellant to pay compensation to the claimants.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

1.10.2018
paramjit

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