

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

**1. FAO No.2311 of 2014 (O&M)
Date of Decision: 15.12.2018**

Respondents

Respondents

Mr. Ashwani Bhardwaj, Amicus Curiae and
Mr. Anil Chawla, Advocate
for the appellant [in FAO No.808 of 2015]
for respondents No.1 to 4 [in FAO No.2311 of 2014]

AVNEESH JHINGAN, J (Oral):

The award dated 01.02.2014 passed by the Motor Accident Claims Tribunal, Amristar [for brevity 'the Tribunal'] has been assailed in two appeals, one by the insurer of car bearing registration No. PB-02Q-0525 [hereinafter referred to as 'offending vehicle'] and another by legal heirs of Taranjit Singh. Since both the appeals arise from the same award and same accident, these are

being disposed of by a common order.

The grievance raised by the insurer in the appeal is that the claimants are not entitled to compensation under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'] as the deceased himself was the driver of the offending vehicle.

The claimants have assailed the award for enhancement of compensation under Section 163-A of the Act.

The facts emanating from the record are that on 19.01.2013, Taranjit Singh alongwith his friends Amandeep Sharma, Ramjit Singh Bhullar and Mohit Sharma @ Sunny was going back after attending a function at GVR Resorts at Chheharta in the offending vehicle, which was being driven by Amandeep Sharma. When they reached near Swiss Resorts, the offending vehicle was struck against a stationary truck bearing registration No. JH-11A-6125, which was parked on the road without any indicators. As a result of the impact, Taranjit Singh sustained injuries and died at the spot. The accident was witnessed by Jagmohan Kumar who was following the offending vehicle on his scooter. FIR No. 13, dated 19.01.2013 was registered.

A claim petition under Section 163-A of Act was filed by the legal heirs of Taranjit Singh. The Tribunal after considering the facts and appreciating the evidence adduced held that Taranjit Singh died in the accident as a result of collision between the offending vehicle and the truck. The owner, driver and insurer of the offending

vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a sum of ₹4,53,300/- alongwith interest @ 6% per annum. The Tribunal assessed monthly earning of the deceased as ₹3,300/- per month, 1/3rd deduction for self-expenses was made and multiplier of '17' was applied as the deceased was 22 years old at the time of accident. ₹2,500/- was awarded for loss of estate and ₹2,000/- for funeral expenses.

Learned counsel for the insurer defends the award so far as quantum of compensation is concerned. In respect of FAO No.808 of 2015, he argues that the compensation has been calculated in accordance with Schedule-II of the Act. In respect of FAO No.2311 of 2014, he contends that the Tribunal erred in holding that insurer of the offending vehicle is liable to pay the compensation as the deceased himself was the driver of the offending vehicle. He further argues that the eye-witness Jagmohan Kumar (PW-2) was the author of FIR wherein he stated that offending vehicle was being driven by Taranjit Singh at the time of accident.

Learned amicus curiae appearing for the claimants contends that the amount awarded by the Tribunal is on the lower side. He contends that it was duly proved before the Tribunal that at the time of accident, Taranjit Singh was sitting besides the driver i.e. on the passenger seat.

From the perusal of the paper book and record, it is

evident that Jagmohan Kumar (PW-2) was eye-witness to the accident. He deposed before the Tribunal and narrated the entire details of occurrence of the accident in his deposition. He specifically stated that the offending vehicle was being driven by Amandeep Sharma whereas Taranjit Singh was sitting at the adjoining seat. Jagmohan Kumar withstood the cross-examination and nothing contrary came on record. The reliance of the learned counsel for the insurer merely on the contents of the FIR does not enhance his case. The law is well settled that the onus in proceedings under the Act, is not as heavy as in the criminal cases. The evidence in criminal cases itself is not enough for the Tribunal to decide the case in the claim petition. The Tribunal has to rely upon the evidence adduced before it.

In the present case, statement of the eye-witness was sufficient to prove the fact that the offending vehicle was being driven by Amandeep Sharma. Moreover, before the Tribunal, the insurer even took a stand that the accident never occurred. The said stand was rejected as not even an iota of evidence was produced to support the stand taken. No official of Insurance Company came into the witness box to rebut the evidence adduced by the claimants. From the perusal of the record, it is further clear that though such a plea was raised in the written statement, but, it was never pressed before the Tribunal either in arguments or by adducing evidence to the said effect.

Coming to the appeal of the claimants, the compensation awarded is already in consonance with the Schedule-II of the Act and as such, no interference is called for in the award.

No interference is called for in the findings recorded by the Tribunal.

Both the appeals are dismissed.

[AVNEESH JHINGAN]
JUDGE

December 15th, 2018
pankaj baweja

1. Whether speaking/ reasoned

:

Yes/ No
2. Whether reportable

:

Yes/ No