

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

FAO No.5487 of 2013 (O&M)

Date of decision: 16.03.2018

Santosh Devi and others

... Appellants

Versus

Laxman and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Ajit Sharma, Advocate
for the appellants.

Respondent No.1 already ex parte.

None for respondent No.2.

REKHA MITTAL, J.

The claimants are in appeal to assail award dated 31.07.2013 passed by the Motor Accidents Claims Tribunal, Rewari whereby application for grant of compensation on account of death of Raj Kumar in a motor vehicular accident, filed under Section 163-A of the Motor Vehicles Act, 1988 (in short 'the Act') has been dismissed.

The facts relevant for disposal of the appeal are that as per case of the claimants, on the intervening night of 16/17.04.2011, Raj Kumar after unloading husk at Gugodh was going on his tractor No.HR-43A-6681 to his village Jakhala to load husk for the second time. He was driving the tractor and Rakesh son Pyare Lal was sitting on the right side of mudguard.

Zile Singh along with his wife Subhanka and son Monu aged 13 years was sitting in the trolley. When they reached near canal Kosli to Mundhra on Gudiyani Jhajjar Road, tractor trolley overturned in the ditches on left side of the road. Zile Singh, his wife and son were saved but Raj Kumar and Rakesh came under the tractor. Zile Singh called the villagers to take them out but Raj Kumar died on the spot due to injuries sustained by him and Rakesh was taken to Rewari for treatment. FIR No.74 dated 17.04.2011 was lodged at Police Station Kosli at the statement of Zile Singh.

The appellants claimed compensation of Rs.10,00,000/- qua death of Raj Kumar by alleging that Raj Kumar was about 48 years old and earning Rs.3300/- per month by doing agriculture work. Due to untimely death of Raj Kumar, the appellants are entitled to compensation for loss of income, pain and agony and loss of love and affection etc.

Laxman respondent No.1 filed reply and raised preliminary objections regarding maintainability and cause of action. He has denied that tractor No.HR-43A-6681 was involved in the accident, however, it has been averred that the tractor was duly insured with respondent No.2.

Respondent No.2 filed written statement and denied its liability to pay compensation. Raj Kumar was not holding a valid licence to drive the vehicle at the time of alleged accident. It has further been pleaded that the vehicle in question has been falsely involved to extort compensation.

The controversy between the parties led to framing of

following issues by the learned Tribunal:-

- “1. Whether on 17.04.2011 at about 00.30/1.00 am near Rajbala Mundhra on Gudiyani Jhajjar Road any accident was caused by respondent No.1 Laxman by driving his tractor bearing No.HR-43A-6681 in a rash and negligent manner as alleged? OPP*
- 2. If issue No.1 is proved whether Raj Kumar received injuries in the said accident and died due to said injuries as alleged? OPP*
- 3. Whether petition is not maintainable? OPR*
- 4. Whether petitioners have no locus standi to file the present claim petition? OPR*
- 5. Whether driver of tractor bearing No. HR-43A-6681 was not holding effective driving licence to drive the said vehicle at the time of accident? OPR*
- 6. Relief.”*

To prove their case, the claimants examined Nathu PW2 and one of the claimants, Santosh Devi appeared as PW1. To rebut evidence of the claimants, respondents examined Sumer Singh, retired Sub Inspector RW1. Counsel for the respondents tendered into evidence copy of registration certificate Ex.R1, copy of insurance policy Ex.R6, copy of driving licence Ex.R7 and copy of NOC Ex.R8.

Claim petition filed by Sushma Devi and others in regard to death of Rakesh Kumar was also decided by the same award. Issues No.1 and 2 in both the claim petitions were taken up together for discussion and decision. In view of discussion in paras 27 to 31, it has been held that evidence on record does not establish involvement of tractor No.HR-43A-

6681 registered in the name of respondent No.1. Deceased Raj Kumar was driving tractor of his brother thus, he cannot claim compensation from respondents.

Counsel for the appellants would argue that findings recorded by the learned Tribunal negating plea of the claimants that Raj Kumar was driving tractor No. HR-43A-6681, admittedly owned by Laxman respondent No.1, are the result of misappreciation of evidence. It is argued with vehemence that alleged statement of Nathu purportedly recorded during investigation of FIR No.74 dated 17.04.2011 does not find corroboration from any source whatever that Nathu was owner of any tractor which could be driven by Raj Kumar on the day of occurrence. Plea of the claimants that Raj Kumar was going on his tractor No.HR-43A-6681 to his village Jakahla cannot be construed adversely against the claimants. It is further argued that the words 'was going on his tractor' are qualified by number of the tractor which indisputably is owned by Laxman respondent No.1. There is no material on record suggestive of the fact that either Raj Kumar or his brother Nathu ever owned any tractor, therefore, there is no question of Raj Kumar having sustained injuries while driving his own tractor or tractor owned by his brother Nathu PW2. It has further been argued that an adverse inference is liable to be drawn for failure of Laxman to appear in the witness box to say something with regard to involvement of the tractor in the occurrence or the tractor in question being driven by Raj Kumar on the fateful intervening night of 16/17.04.2011.

Counsel representing the insurance company has supported findings of the Tribunal on the premise that the same are based upon detailed and correct appreciation of evidence adduced by the claimants and testimony of Sumer Singh, retired Sub Inspector RW1.

Before adverting to the submissions made by counsel for the parties, it is pertinent to note that there is no dispute that Raj Kumar and Rakesh Kumar sustained injuries out of use of a vehicle and Raj Kumar succumbed to the injuries at the place of accident. It is a categorical plea of the claimants that Raj Kumar was driving tractor No.HR-43A-6681 and was going to his village Jakhala for loading husk for the second time. FIR in this case was registered at the behest of Zile Singh who was travelling in the trolley attached with the tractor driven by Raj Kumar. Perusal of the FIR would reveal that it does not make reference to the number of tractor which was driven by Raj Kumar at the relevant time. However, contents of the FIR support plea of the claimants that Raj Kumar was going to his village for loading husk for the second time. In the FIR, it is mentioned that tractor was driven by its owner Raj Kumar and Rakesh son of Pyare Lal was travelling on its mudguard.

Santosh Devi, widow of the deceased tendered into evidence her affidavit Ex.PW1/A and reiterated her version set up in the petition. In her cross-examination, she has deposed that there is no tractor with Nathu. At the time of accident, Nathu was not having any tractor marka Eicher of red color. It is incorrect that Raj Kumar was driver on the tractor of Nathu.

She has further denied the suggestion that accident was not caused out of use of tractor No.HR-43A-6681.

Nathu tendered into evidence his affidavit PW2/A, by way of examination-in-chief. A relevant extract from his cross-examination reads as follows:-

“Police never recorded my statement. Police never obtained my signature or thumb impression. I cannot tell the name of police officials who investigate the matter. I am not having a tractor marka Eicher. I identified my signatures on the statement under Section 175 Cr.P.C. document Ex.R1. Statement of Omparkash son of Sh. Sheo Ram was recorded by the police in my presence. It is incorrect that accident had taken place by my tractor. It is incorrect to suggest that tractor bearing registration No.HR-43A-6681 involved falsely for getting compensation.”

Perusal of testimonies of Santosh Devi and Nathu makes it evident that the respondents failed to elicit any materials in their cross-examination that either Raj Kumar or Nathu was owning a tractor much less tractor marka Eicher, therefore, question of Raj Kumar driving a tractor owned by Nathu does not arise by any stretch of imagination. Nathu has admitted his signatures on the statement Ex.R1. The contents of the said statement were not put to the witness for seeking his explanation in this regard. The very fact that there is no evidence on record that Nathu owned a tractor on the day of occurrence, creates a serious doubt regarding correctness of what has been mentioned in Ex.R1 recorded by the police during investigation. The learned Tribunal has failed to appreciate this aspect in right perspective and seriously erred by relying upon testimony of

the investigating officer and documents Exs.R1 and R2 to arrive at a conclusion that tractor in question was not involved in the occurrence. This apart, Laxman owner of the tractor did not appear in the witness box to controvert testimony of Nathu and Santosh Devi. He also could not establish his plea that tractor bearing No.HR-43A-6681 was not involved in the accident or driven by Raj Kumar on the day of occurrence.

Nathu is not an eye-witness to the occurrence. However, when he received intimation with regard to occurrence having taken place, he reached the place of accident. He has deposed in para 2 of his affidavit Ex.PW2/A to the following effect:-

“Zile Singh called the villagers and the villagers informed me about the accident and we arranged to take out my brother since deceased Raj Kumar and Rakesh from the tractor. My brother Raj Kumar since deceased died on the spot due to the injuries sustained by him in this accident.”

In the opening line of para 2, there is reference to tractor No. HR-43A-6681 in following terms:-

“On intervening night of 16/17.04.2011 at about 00.30/1.00 am, my brother since deceased Raj Kumar after unloading the husk at Gogodh, was going on by driving tractor No. HR-43-6681 to his village Jakhala to load tractor with husk for the second time.”

A conjoint reading of the facts stated in para 2 of the affidavit is more than sufficient to establish plea of the claimants that Raj Kumar sustained injuries while driving tractor No.HR-43A-6681 and Nathu reached the spot and arranged to take out his brother and Rakesh from the

tractor. In his cross-examination, there is no challenge to his testimony in regard to the facts deposed in para 2, particularly the facts extracted hereinbefore. In this view of the matter, Court has to accept testimony of Nathu being correct and sufficient to establish, on the basis of balance of probabilities, that occurrence in question took place while Raj Kumar was driving tractor No.HR-43A-6681.

Sumer Singh, retired Sub Inspector RW1 was examined to prove statement of Nathu and documents marked as Exs.R1 and R2. Correctness of statement Ex.R1 becomes doubtful in view of the discussion made hereinbefore. Laxman did not appear in the witness box to controvert case of the claimants and testimony of Nathu. Under the circumstances, the Tribunal has committed a gross error by relying upon documents Exs.R1 and R2 vis-a-vis statement of Nathu. As such, findings recorded by the Tribunal on issue No.1 in both the cases cannot be allowed to sustain and liable to be set aside.

There is no dispute that appellants/claimants are the widow and children of deceased Raj Kumar, therefore, they are entitled to get compensation. The driving licence of Raj Kumar is marked as Ex.R7. Raj Kumar was driving the tractor at the time of occurrence, sufficient to prove that he was driver by profession. There is no clear evidence available with regard to income of the deceased. Taking a clue from the minimum wage available at the relevant time coupled with that the deceased was driver by profession, plea of the claimants that deceased was earning Rs.3300/- per

month is liable to be accepted. 1/3rd is to be deducted towards personal expenses of the deceased. As per postmortem report, deceased was 48 years old and multiplier of 13 is admissible. In this manner, loss of dependency comes to Rs.3,43,200/- (Rs.3300 x 12 x 13) - (1/3rd deduction for personal expenses).

Under conventional heads, claimants shall be entitled to Rs.9500/-, detailed hereunder:-

1. Loss of consortium	Rs.5000/-
2. Loss of estate	Rs.2500/-
3. Funeral expenses	Rs.2000/-

The insurance company did not adduce evidence to establish its plea that driving licence possessed by Raj Kumar is not valid. The insurance company is jointly and severally liable to pay compensation to the claimants. Accordingly, issue No.2 is answered in favour of the claimants in the aforesaid terms.

Counsel for the respondents have not advanced any argument to substantiate their plea(s) on the basis whereof issues No.3 to 5 have been framed. Accordingly, issues No.3 to 5 are answered against the respondents.

For the foregoing reasons, the appeal is allowed. The award passed by the Tribunal is set aside. The claimants shall be entitled to compensation of Rs.3,52,700/- along with interest @7.5% per annum from the date of petition till realization to widow of the deceased.

Before parting with this order, it is pertinent to note that the learned Tribunal dismissed the claim application filed by Sushma Devi and

others on account of death of Rakesh, in view of its findings recorded on issue No.1 in both the petitions. As findings of the Tribunal on issue No.1 in both the cases have been set aside, Sushma Devi and others would also be entitled to advantage thereof even though they have not preferred an appeal to challenge the award dated 31.07.2013. A copy of the judgment be sent to claimants-Sushma Devi and others. They are left at liberty to file an application before the Tribunal for decision of other issues framed in their claim application. It is clarified that in case Sushma Devi and others file an application, the Tribunal shall decide the issues except issue No.1 after hearing the parties, in accordance with law.

16.03.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No