

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

FAO No. 530 of 2015(O&M)

Date of decision: 22.2.2018

PaloAppellant

VERSUS

Rajesh Sahni and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh K. Sharma, Advocate for the appellant.

Mr. Rajbir Singh, Advocate for respondent No.2.

REKHA MITTAL, J.

CM No.1412-CII of 2015

Prayer in this application is for condonation of delay of 225 days in filing the appeal.

Heard.

In view of the averments made in the application supported by an affidavit of Palo - appellant, the application is allowed and delay of 225 days in filing the appeal stands condoned, subject to condition that in case, the appellant succeeds in appeal, she will forgo interest for the period of delay.

Disposed of accordingly.

FAO No.530 of 2015

Challenge in the present appeal has been directed against award dated 02.01.2014 passed by the Motor Accidents Claims Tribunal,

Panchkula (in short 'the Tribunal') whereby application for compensation filed under Section 166 of the Motor Vehicle Act, 1988 (in short 'the Act') for grant of compensation on account of death of Gursewak Singh, aged 9 years in a motor vehicular accident that took place on 21.09.2010 has been dismissed.

The facts relevant for disposal of present appeal are that as per plea of the claimant - mother of the deceased, on 21.09.2010 at about 5.30-6 PM, Gursewak Singh was crossing Barwala- Panchkula National Highway No.73 from right hand side of the road to left side of the road. When he had crossed the entire road and reached on kutchra berm, a Ford Fiesta Car bearing No.HR23-G-0003 came from Barwala side driven by respondent No.1 in a rash and negligent manner and hit Gursewak Singh and stopped after striking against a tree. Gursewak Singh suffered multiple grievous injuries. Accident was witnessed by Prem Singh and 4-5 other persons. Gursewak Singh remained under treatment of PGI, Chandigarh till 16.10.2010 but could not recover and eventually succumbed to the injuries on 07.12.2010.

Respondent Nos.1 and 2 before the Tribunal filed reply raising preliminary objection qua maintainability of the petition. It is averred that accident occurred due to oversight and negligence of deceased who was playing on the road and did not bother to listen to horn blown by him to rescue the victim and struck with a tree.

The insurance company also filed reply controverting allegations raised in the application for compensation and its liability to pay compensation.

The controversy between the parties led to framing of following issues by the Tribunal:-

1. Whether Gursewak Singh died on account of the injuries suffered in the accident in question which took place due to rash and negligent driving of offending vehicle bearing registration No.HR23G-0003 by the respondent No.1? OPP
2. If issue No.1 is proved, whether the claimant is entitled to compensation, if so to what amount and from whom? OPP
3. Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so, to what effect? OPR-3.
4. Relief.

The Tribunal, on the basis of findings recorded on issue No.1, rejected application for compensation. However, claimant was held entitled to a sum of Rs.50,000/- on the ground of no-fault liability out of which an amount of Rs.20,000/- received by the claimant on the basis of compromise Ex.R4 was deducted and eventually she was paid Rs.30,000/- along with interest at the rate of 6% per annum from the date of petition till realisation.

Counsel for the appellant has assailed findings of the Tribunal on issue No.1 with the submission that even if some stray animal came on the road, the very fact that driver of the offending vehicle hit the child and thereafter swerved further and hit against a tree is more than sufficient to

establish plea of the claimant that accident is the result of rash and negligent driving by Rajesh Sahni. It is further argued that facts recorded in the DDR Ex.P1 lodged at the instance of Sh. Prem Chand PW-2 are not sufficient to negate plea of the claimant and testimony of Prem Chand PW-2 that Rajesh Sahni was the author of accident due to rash and negligent driving.

Another submission made by counsel is that Rajesh Sahni in reply has raised a plea that the child was playing on the road and he did not respond to the horn blown by him, meaning thereby that the driver had seen the child from a distance but still did not bother to stop his vehicle, a vital fact that goes against the respondents.

Counsel representing the insurance company has supported findings of the Tribunal on issue No.1 by relying upon DDR No.27 Ex.P1 admittedly lodged by Prem Chand. In addition, it is argued that as the claimant entered into a settlement with driver –cum- owner of the alleged offending vehicle and received an amount of Rs.20,000/- towards treatment of the child, she cannot press for grant of compensation.

Before adverting to submissions made by counsel for the parties, it is pertinent to note that proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence. Equally true is that the factum of accident is to be decided on the basis of balance of probabilities and not proof beyond doubt.

Prem Chand, an eye-witness to the occurrence appeared in the witness box and supported cause of the claimant. He tendered into evidence Ex.PW2/A by way of examination in chief. In his cross examination, he has stated that driver of the vehicle got registered the DDR

in concerned police chowki. Attested copy of DDR was tendered into evidence by counsel for the claimant. In cross examination of Prem Chand, contents of DDR Ex.P1 were not put to the witness to seek his explanation. Perusal of DDR Ex.P1 does not indicate that author of the DDR has exonerated driver of the car with regard to the occurrence in question. Rajesh Sahni, driver-cum-owner of the offending vehicle did not appear in the witness box to counter testimony of Prem Chand or substantiate his plea raised in the reply. As has been rightly argued by counsel for the claimant that plea raised by driver of the offending vehicle rather goes a long way to prove case of the claimant that accident was the result of rash and negligent driving of offending vehicle, admittedly, driven by Rajesh Sahni at the relevant time. This apart, this Court in **Bansi and another Vs. Vikas, FAO No.7213 of 2010 decided on 29.08.2012** has held, reads thus:-

“When the claimant had originally stated that there had been no negligence on the part of the motorcyclist and that the accident was inevitable on account of a cow crossing the road and later he resiled from such a statement, I have no reason to suspect that he was speaking any untruth before the Court. A person who so drives his motorcycle that would result in dashing against a tree when a cow was crossing, cannot be an act of careful driving. By the very nature of things, a motorcyclist dashing against a tree when a cow was crossing the road, ought to be stated to be guilty of negligent driving. If the claimant was making a statement initially that there was no negligence on the part of the motorcyclist but later he made a different statement to sustain his claim, it was perfectly justified that he made a re-assessment of his own judgment of what caused the accident”

Taking into consideration testimony of Prem Chand coupled with failure of Rajesh Sahni to appear in the witness box without any tangible explanation along with plea raised by Rajesh Sahni in reply, there is no escape from conclusion that accident was the result of negligence on the part of driver of offending car. In this view of the matter, findings recorded by the Tribunal on issue No.1 cannot be allowed to sustain and accordingly set aside. Resultantly, issue No.1 is decided in favour of the claimant and against the respondents.

This brings the Court to plea of the insurer that as the claimant had settled the dispute with the driver by way of compromise Ex.R4, she is stopped from claiming compensation, is absolutely misconceived and liable to be rejected. The compromise was effected at a time, when the child was still alive. The mother agreed to receive a sum of Rs.20,000/- towards treatment of the child and not to initiate any proceedings against the driver. There cannot be any denial that provisions of the Act providing for compensation are a benevolent social legislation enacted with an object of providing succour and financial assistance to the victim family to make good the loss as the money can do. It appears that as the victim family was finding financial constraint to incur expenses on treatment of the child, the mother agreed to accept a paltry sum of Rs.20,000/- for meeting expenses on medical treatment of the child and further not to proceed against the driver. It further appears that driver of the offending vehicle could wield influence with the police, to arrive at such a settlement which pricks conscious of the Court. Under the circumstances, document Ex.R4 cannot be allowed to stand in the way of claimant to get just and reasonable

compensation. On the other hand, if document Ex.R4 is allowed to prevail with the Court it would be travesty of justice. In this view of the matter, plea raised by the insurance company to deny compensation to the victim is not tenable and accordingly rejected.

The Tribunal has not assessed compensation payable to the claimant as it answered issue No.1 against her. As findings recorded by the Tribunal on issue no.1 have been set aside, the claimant is entitled to get compensation. The child was 9 years old. Taking into consideration income of a non-earning person and by applying multiplier of 15 in the light of judgments of Hon'ble the Supreme Court **Puttamma and others vs K.L. Narayana Reddy and another, 2014(1) R.C.R. (Civil) 443** and **Reshma Kumari and others Vs. Madan Mohan and another, 2013 ACJ 1253**, loss of dependency comes to Rs.2,25,000/-. Another sum of Rs.15,000/- is awarded for expenses on funeral/last rites. The total compensation is Rs.2,40,000/-.

The mother received an amount of Rs.20,000/- from the driver-cum-owner of the offending vehicle on the basis of Ex.R4. The Tribunal has deducted that amount out of compensation paid under no-fault liability. The child remained alive till 7.12.2010, for one month and twenty days. He got treatment from PGI Chandigarh and General Hospital, Sector 6, Panchkula as per the documents available on record. The amount of Rs.20,000/- paid by driver-cum-owner of the offending vehicle shall be appropriated towards expenses on medical treatment of the child.

The driver-cum-owner as well as insurance company of the vehicle shall be jointly and severally liable to pay compensation of

Rs.2,40,000/- along with interest at the rate of 7.5% per annum from the date of petition till realisation. The amount paid by the insurance company, in pursuance of the award passed by the Tribunal, shall be liable to adjustment.

The appeal is partly allowed in the aforesaid terms.

FEBRUARY 22, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no