

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.5726 of 2015 (O&M)
Date of Order:10.08.2018

Sandeep Kumar and another

..Appellants

Versus

Bhajan Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Mohd. Yousaf, Advocate,
for the appellants

ANIL KSHETARPAL, J(Oral)

Driver and owner of the offending vehicle which allegedly killed a young boy of 21 years, are in appeal against the award passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as 'the Tribunal').

Appellant no.1-driver was driving a lancer car and killed late Sh. Jagveer Singh while he was walking along side the road in an accident which took place on 09.07.2011. Appellants (respondents in the claim petition) denied the accident. The learned Tribunal after appreciating the evidence particularly relying upon evidence of PW2 Jeevan Lal, Sarpanch, who was having a shop on the road side held that the accident has taken place and appellant no.1 was driving the vehicle in a rash and negligent manner.

It may be significant to note that none of the appellants (respondents in the claim petition) have stepped into the witness box. Once the appellants had taken a plea that no accident took place, it was incumbent

for the driver of the offending vehicle to appear in the court and face cross-examination. Once the driver has not appeared, adverse inference has to be drawn against the appellants for non-appearance.

Learned counsel for the appellants submitted that there was no post mortem of the deceased and therefore, there is no evidence that late Sh. Jagveer Singh had died in a motor vehicular accident. He further submitted that father of the deceased had filed an application under Section 311 Cr.P.C. alleging that his son has been intentionally killed in a motor vehicular accident and, therefore, appellant no.1 should be tried for culpable homicide amounting to murder. Hence, he submitted that it cannot be said to be a case of accident. He further submitted that in a criminal case, appellant no.1 has been acquitted as no evidence was produced. He further submitted that there is every possibility of false implication. He further submitted that the court while assessing the compensation also relied upon age of the deceased although assessment should have been made on the basis of the age of the father-claimant.

This court has considered the submissions made by counsel for the appellants and examined the record which was summoned from the learned Tribunal.

In order to prove, claimants has examined 4 witnesses. PW2 Jeevan Lal, Sarpanch, is most important witness being the eye witness in the case. It is not in dispute that he is owner of a shop, which is on the road side where accident took place. No evidence has been produced to prove that he was inimical to the appellants. No suggestion has been give to him when he appeared in evidence. He has specifically stated that appellant no.1 was driving the lancer car in a rash and negligent manner and had hit

late Sh. Jagveer Singh from behind and due to the impact late Sh. Jagveer Singh fell on the road, whereas appellant no.1 continued to drive the vehicle. However, front bumper of the vehicle due to impact started hanging and after some distance it had fallen on the road. Forcibly appellant no.1 stopped the vehicle but thereafter he ran away after seeing the public, leaving the bumper on the road. The front bumper of the car was handed over to the police after 4 days of the incident.

No doubt, no post mortem or medical evidence has been produced but evidence of father of the deceased is categoric. He has deposed that late Sh. Jagveer Singh was first taken to Sarwan Dass Hospital where first aid was provided and then he was taken to Miglani Hospital, Adampur where doctors declared him brought dead.

It may be significant to note that this positive assertion of the father has not been rebutted by any evidence led by the respondents. In the present case, first information report was lodged after 7 days and after investigation, police filed the challan. However, since in the criminal case, proper evidence was not led, appellant no.1 was acquitted. However, it is well settled that the judgment of criminal case is not binding on the learned Tribunal. The learned Tribunal has to evaluate the evidence independently and arrive at a conclusion.

As noticed earlier, if the appellants had any doubt, they should have produced evidence to rebut the evidence lead by the claimants. Except denial of the accident in the written statement, no evidence has been led. No doubt, father of the claimant did move an application under Section 311 Cr.P.C.. However, a bare look at the application, it is apparent that application was filed for summoning Jeewan Lal, Sarpanch, as witness in

the criminal case. Unfortunately the criminal court did not appear to have recorded the evidence of Jeevan Lal, Sarpanch.

It may be significant to note here that the lancer car was inspected by the expert on 01.08.2011. Inspection of the vehicle is part of police file, which has been produced. It was noted that except back bumper of the vehicle, colour of the remaining vehicle was different. Vehicle was produced 23 days after the date of the accident that itself shows that after the accident efforts were made to remove the signs of accident from the offending vehicle.

Last argument of learned counsel is with regard to assessment of the compensation on the ground that the assessment should have been made keeping in view the age of the father, the claimant.

It is by now well settled that in case of a person who was not married, deduction is to be made to the extent of 50% for own expenses, which has been duly applied by the learned Tribunal. The loss of estate is to be with reference to the deceased not with reference to the age of the claimant. As noticed, a young boy of 21 years had died. The learned Tribunal has already taken a conservative view while assessing the income of the deceased and working out dependency.

In view thereof, this court does not find any good ground to interfere.

The appeal is dismissed.

C.M.No.17974-CII of 2015

Prayer in this application is for condonation of delay of 18 days in re-filing the appeal.

For reasons mentioned in the application, which is supported by

an affidavit, the delay of 18 days in re-filing the appeal is condoned.

Application is allowed.

August 10, 2018
nt

(ANIL KSHETARPAL)
JUDGE

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