

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

FAO No.7278 of 2017 (O&M)

Date of Decision: 08.08.2018

Gurdial Singh and another

... Appellants

Versus

Jasbir Kaur and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Ms. Satwant Mehta, Advocate,
for the appellants.

TEJINDER SINGH DHINDSA, J.

A claim petition under Section 166 of the Motor Vehicles Act filed before the Motor Accident Claims Tribunal, Amritsar on account of death of Balwant Singh having been struck by a Platina Motorcycle bearing registration No.PB-02-BG-2386 has been adjudicated upon and award dated 16.08.2017 has been passed awarding a compensation amount of Rs.8,17,000/- in favour of claimant No.1 Jasbir Kaur/widow.

Instant appeal has been filed by Gurdial Singh and Jaswant Singh, driver and owner respectively of the offending motorcycle assailing the award dated 16.08.2017.

Briefly, it may be noticed that the case set up by the claimants in the petition under Section 166 of the Motor Vehicles Act was to the effect that on 27.09.2016 at about 7:00 p.m. Balwant Singh (since deceased) and his son Jagtar Singh were proceeding on separate bicycles. One motorcycle make Platina bearing

registration No.PB-02-BG-2386 being driven by Gurdial Singh (appellant No.1 herein) in a rash and negligent manner struck against the bicycle of Balwant Singh from the backside and who suffered grievous and multiple injuries. Balwant Singh is stated to have died while being removed to the hospital for treatment. Claimants asserted that Balwant Singh was 53 years of age and was earning Rs.15,000/- per month as a 'Carpenter'.

Claim petition had been filed by the widow Jasbir Kaur and 03 major sons of the deceased. Compensation amount of Rs.50 lakhs was claimed. The claim petition having been contested, the following issues were framed by the trial Court:-

1. ***“Whether respondent No.1 was driving the Platina Motor Cycle bearing No.PB02-BG-2386 in rash and negligent manner and Balwant Singh died in the accident? OPP.***
2. ***Whether the claimants are entitled to receive compensation as prayed for? OPP***
3. ***Whether the claim petition is not legally maintainable? OPR.***
4. ***Relief.”***

As regards issue No.1, findings were returned in favour of the claimants and it was held that Gurdial Singh had caused the accident while driving the offending motorcycle in a rash and negligent manner and which has resulted in the death of Balwant Singh.

On issue No.2 with regard to quantum of compensation, the same has been assessed and computed to be Rs.8,17,000/- to be paid along with interest @ 6% per annum w.e.f. 30 days after

the date of death and till realization.

Learned counsel representing the appellants strenuously argues that the impugned award is manifestly unjust and untenable. There has been a gross misreading of evidence oral as well as documentary. Counsel argues that appellant No.1 Gurdial Singh had also received injuries in the accident which had actually been caused by some unknown vehicle resulting in the death of Balwant Singh. The Tribunal has overlooked the fact that appellant No.1 Gurdial Singh had remained admitted in a private hospital till 01.10.2016. Further argued that since it was an unknown vehicle which had hit the deceased, Jagtar Singh claimant No.2 and son of the deceased had impleaded appellant No.1 Gurdial Singh just to obtain compensation. Further argued that Jagtar Singh being son of the deceased was an interested witness and as such his testimony could not have been given much weight. Apart from having raised submissions regarding false implication counsel would urge that even the compensation awarded by the Tribunal in the impugned award dated 16.08.2017 is on the excessive side and requires to be re-visited.

Having heard counsel for the appellants at length and having perused the case paper book, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

Adduced on record was the First Information Report Ex. P-2 registered at Police Station Kathunangal, Amritsar on the following day of accident i.e. 28.09.2016 and was duly proved on

record. Contents of the FIR supported the plea of the claimants as regards factum and manner of occurrence. It is not in dispute that criminal proceedings stood initiated against appellant No.1 Gurdial Singh on the accusation of rash and negligent driving.

Under such circumstances, no infirmity is found in the view taken by the Tribunal as regards presumption that the offending motorcycle was being driven by appellant No.1 in a rash and negligent manner.

Even though a plea of false implication has been raised yet it may be noticed that RW-1 Gurdial Singh (appellant No.1 herein) had stated in his cross-examination that he had no personal grudge with the claimants. Concededly, no application had been moved either by the driver or owner of the offending motorcycle to the concerned police authorities regarding false implication. Further more even though the case set up by counsel is that an unknown vehicle had caused the accident and which resulted in the death of Balwant Singh and appellant No.1 himself had suffered injuries yet it has been conceded during the course of arguments that no complaint/FIR had been got lodged by the appellants herein with regard to any accident having been caused by an unknown vehicle. The submissions raised by counsel with regard to false implication of the appellants are found to be without merit and are rejected.

Even with regard to plea raised by learned counsel as regards quantum of compensation awarded being on the higher side is being noticed only to be rejected. Suffice it to observe that

even though the claimants had asserted that the deceased was earning Rs.15,000/- per month as a 'Carpenter' yet the same has been discarded on account of lack of evidence to corroborate such claim and the income of the deceased has been assessed to be Rs.9000/- per month.

In view of the fact that deceased was a skilled worker i.e. 'Carpenter' and the accident had taken place on 27.09.2016, no interference is warranted with regard to assessment of monthly income of Rs.9000/- per month. Tribunal has made no additions upon such income. Keeping in view the age of the deceased as 53 years, multiplier of 11 has been applied. A composite amount of Rs.20,000/- has been awarded towards funeral expenses and loss of estate. The total compensation amount of Rs.8,17,000/- cannot be held to be excess and unjust.

For the reasons recorded above, there is no merit in the instant appeal and the same is dismissed.

It is clarified that dismissal of the instant appeal filed at the hands of driver and owner of the offending motorcycle and upholding the award dated 16.08.2017 passed by the Motor Accident Claims Tribunal, Amritsar is without prejudice to the rights of the claimants to seek enhanced compensation.

08.08.2018

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE****Whether speaking/reasoned
Whether Reportable****Yes/No
Yes/No**