

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

FAO-2206-2003 (O&M)

Date of decision: 12.12.2019

Ajmero Devi and others

...Appellants

Versus

Manjoor Hussain and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. J.P. Dhull, Advocate for the appellants.

Mr. V.K. Garg, Advocate for respondent No.3.

H.S. MADAAN, J.

Petitioners/claimants Ajmero Devi-widow, Master Ravi Kumar-minor son, Ms. Sunita Devi and Saraswati-minor daughters and Sh. Jindu Ram-father of Pritam Singh, an unfortunate victim of road side accident had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') against respondents i.e. Manjoor Hussain-owner, Gurnam Singh-driver and The National Insurance Company Ltd., Ambala Cantt.-insurer of truck No.HR03-0564 (for brevity 'the offending truck') claiming compensation to the tune of Rs. 20 lacs with interest and cost.

As per version of the claimants, on 02.12.1999, Pritam Singh-deceased along with Sushil Kumar was returning from office

of Army Headquarters on scooter bearing registration No.HR01-B-3533. The scooter was being driven by Pritam Singh, on which, Sushil Kumar was a pillion rider. The scooter was being driven at a normal speed and on the correct left hand side of the road. At about 2.15 pm, when the scooter reached near Church situated at Ambala Cantt., the offending truck being driven by respondent No.2 Gurnam Singh in a rash and negligent manner came from the opposite direction and by going on wrong side hit against the scooter. As a result of impact, both the riders on the scooter fell down and suffered multiple injuries. The scooter was also damaged extensively. The injuries suffered by Pritam Singh proved fatal. At the time of his death in the road side accident, deceased Pritam Singh was aged about 46 years and was earning Rs.5000/- per month from his avocation as a driver.

On getting notice, all the three respondents put in appearance and contested the claim petition by filing written statements.

Respondents No.1 & 2 filed a joint written statement, denying the accident, contending that respondent No.2 was confined to bed on the date of alleged accident on account of injuries suffered on his person. The truck was not involved in the mishap.

Respondent No.3-insurance company in the written statement filed by it had also raised various legal objections,

contending that the truck was being driven by a person without holding a valid and effective driving licence and in the alternative, denying the accident and involvement of the truck. All the three respondents prayed for dismissal of the claim petition.

The claimants filed replications, controverting the allegations in the written statements, reiterating the averments in the claim petition.

On pleadings of the parties, the following issues were framed:-

- 1. Whether the accident took place due to rash and negligent driving of truck No.HR03-0564 by respondent No.2, resulting into death of Pritam Singh, as alleged? OPP*
- 2. If issue No.1 is proved, to what amount of compensation, the claimants are entitled to and from whom? OPP.*
- 3. Whether the insurance company is not liable to make any payment of compensation on account of the preliminary objections taken by it in its written statement? OPR(3).*
- 4. Whether the driver of the offending vehicle was not holding a valid driving licence? OPR-3.*
- 5. Whether the petition is not maintainable? OPR.*
- 6. Whether the petition is bad for non-joinder and mis-joinder of necessary parties? OPR.*
- 7. Relief.*

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Ambala (for short 'the Tribunal') vide award dated

04.03.2003, dismissed the claim petition.

The claimants felt aggrieved by the said award and have approached this Court, by way of filing the present appeal, notice of which was given to the respondents, however, only respondent No.3 has put in appearance through counsel to offer a contest.

I have heard learned counsel for the parties besides going through the record and I find that the whole approach of the Tribunal was erroneous and misdirected. The claimants had led enough oral as well as documentary evidence on file to show that the accident in which Pritam Singh had lost his life had taken place due to rash and negligent driving of the offending truck by respondent No.2 Gurnam Singh but the Tribunal without any justifiable reason, rejected that evidence and came to a strange conclusion that the claimants could not prove that the accident had taken place due to rash and negligent driving by respondent No.2, resulting into death of Pritam Singh. It may be mentioned here that the FIR in this case was recorded on the date of accident itself i.e. on 02.12.1999 at 4.20 pm, while the accident had taken place at 2.15 pm. The FIR had been lodged by Sushil Kumar, the pillion rider of the scooter, which was being driven by Pritam Singh deceased, wherein he had stated that accident had taken place with some unknown truck and unknown driver but that by itself cannot be taken against the claimants.

Though, in the FIR, the registration number of the truck

and name of the truck driver are not mentioned but then, FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. It is only after registration of the FIR when the matter is investigated by the police then the details of the incident, the persons responsible for commission of the offence come out to be there. Therefore, merely for the reason that the registration number of the offending truck is not mentioned in the FIR and name of the truck driver is not given, that does not give rise to any suspicion in the matter. It has to be taken note of that after registration of the FIR, when the matter was investigated, involvement of the truck in question and respondent No.2 being its driver came out to be there. For the said reason, respondent No.2 was challaned and sent up to face trial, which clearly goes to show the involvement of the offending truck in the mishap and respondent No.2 being its driver at the relevant time. PW1 Vishavjeet, Criminal Ahlmad in the Court of JMIC, Ambala Cantt., who had proved brought the summoned file title State Vs. Gurnam Singh, bearing FIR No.516 dated 02.12.1999, under Sections 279, 337, 338 and 304-A IPC, relating to Police Station Ambala Cantt., had stated that Gurnam Singh son of Sarwan Singh, resident of H.No.340, Village Burail, PS Sector 34, Chandigarh was produced before Illaqa Magistrate in police custody on 06.01.2000 and was released on bail. Truck No.HR03-0564 had been taken on superdari, vide order dated

07.01.2000 by owner Sh. Manjoor Hussain. Charge against accused Gurnam Singh was framed on 04.09.2000 and thereafter, the case was fixed for prosecution evidence. PW2 HC Gurcharan Singh from PS Ambala Cantt., had brought the summoned record pertaining to FIR No.516 dated 02.12.1999, under Sections 279 and 304-A IPC, PS Ambala Cantt, proving its copy as Ex.P1. He also stated that name of accused to be Gurnam Singh son of Sarwan Singh, resident of Burail, PS Sector 34, Chandigarh.

On the other hand, respondent No.2 Gurnam Singh had not appeared in the witness box to state on oath that he had not caused the accident by his rash and negligent driving of the truck. Similarly, respondent No.1 Manjoor Hussain had not got his statement recorded to state that the truck belonging to him and driven by Gurnam Singh was not involved in the accident. Rather, counsel for respondents No.1 & 2 had closed the evidence by tendering photocopy of driving licence of Gurnam Singh as Mark 'A'. Similarly, counsel for insurance company had closed its evidence, after tendering copy of insurance policy. Thus, the evidence adduced by the claimants has virtually gone un-rebutted.

The findings of the Tribunal on issue No.1 are obviously erroneous based upon wrong interpretation of law and misappraisal of evidence. Learned Tribunal proceeded to decide the issue as if it was dealing with a criminal case and not a petition for compensation

under Section 166 of the Act. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

Furthermore, [Section 166](#) of the Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice. Therefore, finding of the Tribunal on issue No.1 is reversed and this issue is decided in favour of the claimants and against the respondents, holding that the accident had taken place due to rash and negligent driving of the offending truck by respondent No.2, resulting into death of Pritam Singh.

Now coming to findings on issue No.2, this issue was wrongly decided against the claimants and in favour of the respondents, since verdict on issue No.1 has been reversed and such

issue has been decided in favour of the claimants, findings on issue No.2 is also required to be reversed, since, it has been observed that the accident in question had taken place due to rash and negligent driving of the offending truck by respondent No.2. Respondent No.2 being driver, respondent No.1 being owner and respondent No.3 insurer of the offending truck are liable to pay compensation to the claimants, who are legal heirs and legal representatives of the deceased. Deceased Pritam Singh was stated to be aged about 46 years, married and an Ex.serviceman, engaged in avocation of driver, earning Rs.5000/- per month and the petitioners/claimants numbering five were dependent upon his earnings. Claimant Ajmero Devi appearing as PW1, Jindu Ram appearing as PW6 have deposed in that regard. PW3 Narinder Singh, LDC, TBRL, Chandigarh (Terminal Blastic Research Laboratory, Govt. of India) had stated that Pritam Singh deceased was Sepoy in their establishment. He had brought the last pay certificate of the deceased issued by Defence Controller, Defence Account, PAOR Cannanore-13, proving it as Ex.P2, stating that the total emoluments in the month of 01.07.1998 were Rs.3721/- given to the deceased. PW5 Sh. Dharam Singh, Senior Auditor, DPTO, Ambala Cantt., had stated that deceased Pritam Singh had joined DSC on 21.02.1986 and prior to that, he had retired from CMP on 28.09.1984. His date of birth was 28.01.1951. He was serving in CMP as driver. He proved his

descriptive roll, stating that it is prepared at the time of retirement of a Military Personnel. In his cross examination, he stated that the deceased was taking pension from his previous employer. PW8 Amrik Singh, Proprietor of Amrik Auto Workshop, Naraingarh, stated that the deceased remained as driver with him on his Mahindra vehicle for 3/4 months and he used to pay him Rs.3500/- per month as salary, besides expenses on holidays. He used to pay him Rs.100-200/- on that occasion.

There is no evidence adduced by the respondents in rebuttal, therefore, I find that considering all facts and circumstances of the case, the monthly income of the deceased can safely be taken to be Rs.5000/- from all the sources.

Considering his age as 46 years, 25% of the amount is to be added towards future prospects in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**. In that way, monthly income of the deceased comes out to Rs.6250/-.

Keeping in view the number of dependent family members, 1/4th of the amount is to be deducted towards personal and living expenses of the deceased. In that way, the dependency of the claimants comes out to Rs.4688/-, annual dependency Rs.56256/-.

Considering the age of deceased to be 46 years, multiplier of 13 is to be used. In that way, the total dependency

comes out to Rs.7,31,328/-

In view of the Apex Court judgment Pranay Sethi's (supra), a sum of Rs.70,000/- is to be awarded under the conventional heads i.e. Rs.15,000/- on account of loss of estate and Rs.15,000/- as funeral expenses and the widow of the deceased is entitled to get Rs.40,000/- towards loss of consortium. Thus, the total compensation payable is arrived at Rs.8,01,328/-.

In that way, the claimants are entitled to get compensation of Rs.8,01,328/- They would be entitled to get interest @ 7.5% p.a., on the amount of compensation from the date of filing of claim petition till actual realization. The amount of compensation would be apportioned among the claimants as follows:-

Ajmero Devi	: 45%
Ravi Kumar	: 15%
Ms. Sunita Devi	: 15%
Saraswati	: 15%
Jindu Ram	: 10%

The share of minor claimants be deposited with some nationalized bank in the form of FDRs for the period till they attained majority. The liability to pay this amount would be joint and several of all the three respondents.

The appeal stands allowed with costs throughout.

12.12.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No