IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.763 of 1995 (O&M)
Date of Decision : 07.03.2019

SAROJ JAIN AND OTHERS ....APPELLANTS

V/S

SUNIL KUMAR AND ANOTHER ....RESPONDENTS

2. FAO No.764 of 1995 (O&M)

MASTER BHUVAN JAIN ....APPELLANT

V/S

SUNIL KUMAR AND ANOTHER ....RESPONDENTS

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Ajay Pal Singh, Advocate for
Mr. Amarjeet Markan, Advocate
for the appellants **in both the appeals**.

Mr. Vinod Gupta, Advocate
for respondent No.2/*Insurance Company*
in both the appeals.

B.S. WALIA, J. (ORAL)

[1] FAO Nos.763 and 764 of 1995 have been filed by the claimants, seeking setting aside of award dated 16.11.1994 passed by the learned Motor Accidents Claims Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal), dismissing the claim petition on account of death of Ashwani Kumar Jain and injuries sustained by Bhuvan Jain, respectively.

[2] Brief facts of the case leading to the filing of the appeals are that on 03.02.1991, Achla Jain i.e. AW-3, her husband Sunil Kumar, one Ashwani Kumar Jain besides her son Bhuvan Jain were travelling by Maruti Car No.CH-01-4663 from Sunam to Ludhiana. The car was being driven by Sunil

Kumar, which was following the Gypsy going ahead of them. When the car reached near village Lehra near village Dehlon, a truck was standing on the left side of the road and there was firing from behind the curve of the standing truck. On seeing that firing was going on, the driver of the Maruti car namely Sunil Kumar instead of stopping the car speeded up the same and kept on driving. Shots fired hit Ashwani Kumar Jain as also Bhuvan Jain, as a result of which Ashwani Kumar Jain succumbed to the injuries at the spot, while Bhuvan Jain sustained injuries on the right side of the temporal region. As per the statement of AW-3 Achla Jain, her husband Sunil Jain who was driving the Maruti Car did not slow the speed of the car instead increased speed with a view to get clear of the oncoming firing but on account of his having speeded up the car, the same came within firing range of the terrorists. Sunil Kumar, RW-1 stated that his cousin Ashwani Kumar Jain had cautioned him that firing was going on ahead of them on the road and that he should stop the car but he did not stop the car instead increased the speed of the car and continued driving, as a result of which, Ashwani Kumar Jain and Bhuvan Jain received gunshot injuries.

[3] In his cross-examination, Sunil Jain stated that he had not intentionally taken the car through the firing range and it was only an act of indiscretion on his part to have taken the car through firing site and that despite Ashwani Kumar Jain advising him to stop the car, he did not stop the car and instead increased the speed of the car, thereby coming within the firing range.

[4] The Tribunal took into account that Sunil Kumar took a decision to speed up the car in order to get clear of the firing, which was taking place ahead and that since there was no vehicular accident involved and the death and injuries had taken place on account of terrorists act, the Tribunal which

had been constituted for deciding claims, arising out of accidents due to use of motor vehicle could not award any compensation as the death/injuries were not due to the rash and negligent driving of the vehicle.

[5] A perusal of the statement of AW-3 Achla Jain reveals that despite Sunil Kumar seeing that firing was going on instead of stopping the car, speeded up the car and kept driving the car, as a result of which shots fired by terrorists hit Ashwani Kumar Jain as well as her son Bhuvan Jain and further that Sunil Kumar did not slow the speed of the car in the anticipation that he would steer clear of the firing but as a result of his speeding up, the car came within firing range of the terrorists despite the occupants of the car having seen shots being fired from quite a distance. Likewise, Sunil Kumar in his evidence stated that he did not stop the vehicle despite being cautioned by Ashwani Kumar Jain of firing going on ahead on the road and that he should stop the car, instead increased the speed of the car and continued driving it, as a result of which Ashwani Kumar Jain and his son Bhuvan Jain received gun shot injuries due to which Ashwani Kumar Jain died at the spot, while his son sustained injuries.

[6] In his cross-examination, he admitted that had he followed the advise of Ashwani Kumar Jain and stopped the car instead of increased the speed of the car negligently then the misfortune could have been averted.

[7] Learned counsel for the appellants contended that the facts of the case were crystal clear that it was on account of the negligence of the driver of the Maruti Car namely Sunil Kumar in having speeded up the vehicle despite noticing the firing from quite some distance that the vehicle came within the firing range of the terrorists as a result of which, two occupants of the car

sustained gun shot wounds, as a result of which Ashwani Kumar Jain died on the spot, while Buvan Jain received injuries on the temporal reigion.

[8] Learned counsel placed reliance upon the decision of a Co-ordinate Bench of this Court in '***Smt. Inder Mohini and others*** *versus* ***Lakhvinder Pal Singh Duggal and others***', *1992(2) PLR 488*, a Division Bench of Hon'ble the Gauhati High Court in '***Bipal Bashi Das*** *versus* ***Oriental Insurance Co. Ltd. And others***', *2008 ACJ 1728* as also decision of Hon'ble the Supreme Court in '***Samir Chanda*** *versus* ***Managing Director, Assam State Transport Corporation***', *1998(2) ACJ 1351*. Relevant extracts of the decision in the aforementioned cases is reproduced as under:-

> '***Smt. Inder Mohini and others*** *versus* ***Lakhvinder Pal Singh Duggal and others***', *1992(2) PLR 488*
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> *"3. After hearing the learned counsel for the parties, I am of the considered view that the order of the Motor Accident Claims Tribunal, Ferozepur cannot be sustained. The claimants in their petition have made a clear averment that on account of negligence and rash driving of the driver, the vehicle could not be stopped with the result that it came within the rang of cross-fire and this is how the use of the vehicle resulted in the death of Harpreet Singh. In case the claimants can prove this averment, then certainly the petition is maintainable and the Tribunal, has the jurisdiction to entertain and try the petition. Learned counsel for the claimants made reference to Shivji Dayanu Patil v. Vatschala Uttam More), A. I. R. 1991 S. C. 1769. Union of India v. Sushila Devi, 1990 A. C. J. 1 (All.) as well as unreported judgment of Himachal Pradesh High Court, F.A.O.; (M.V.A.) 194 of 1989 decided on 29.10.1990 (H.R.T.C and Ors. v. Om Parkash, F.A.O. 194 of 1989 (H.P) to contend that the Tribunal has wrongly held that the*

petition was not maintainable. The judgments cited by the learned counsel for the petitioners certainly help the claimants in case they can prove that the use of the motor vehicle resulted in the death of the deceased. This matter can be determined only if the parties are allowed to lead evidence."

'***Bipal Bashi Das*** *versus* ***Oriental Insurance Co. Ltd. And others***', *2008 ACJ 1728*

"21. Situated thus, it is clear that in the present case, the death of the claimant's husband was caused on account of use of the vehicle in question was thus, accidental, which took place because of rash and negligent use/driving thereof by its driver inasmuch as without caring of the safety of the passengers, the driver chose to adopt the shorter route to his destination and did not follow the safer route despite requests made by the passengers including claimant's husband. The death of claimant's husband thus, if we may reiterate, cannot but be regarded as the death caused by accident arising out of the use of the said vehicle."

23. Though it has been agitated, on behalf of the respondent No. 2, that under ***section 166 of the M.V Act****, no liability for payment of compensation can be imposed until the accident arises out of use of the motor vehicle and that in the case at hand, the death was not caused because of use of the vehicle and no claim for compensation could have been entertained, what needs to be pointed out is that under* ***section 166 of the M.V Act****, the question of compensation would, undoubtedly, arise only when the death or injury is caused as a result of an accident arising out of rash and negligent use of the vehicle but, at the same time, it also needs to be borne in mind that the use of the vehicle does not necessarily mean that the vehicle has to be in motion. Far from this, the use of the vehicle may be inferred even when it is stationary. Similarly, when care on account of a given situation, is required to be* *taken in driving a vehicle in a particular area and such a care is not taken, such a driving will amount to rash and negligent driving of the vehicle. The answer, therefore, to the question whether the death or injury, in a given case, has been caused as a result of the use of a vehicle or not will really depend on the facts of the given case. In the case at hand, in the face of the pleadings on record, there can be no escape from the conclusion that the claimant's husband's death was accidental arising out of rash and negligent driving of the said vehicle by its driver at a public place."*

'***Samir Chanda*** *versus* ***Managing Director, Assam State Transport Corporation***', *1998(2) ACJ 1351*

"10. After going through the judgment of the High Court, we are of the view that the High Court was not right on facts that there was no negligence on the part of the owner or the driver of the bus especially when the appellant has specifically pleaded about the negligence which was accepted by the Tribunal in the light of the pleadings and of the evidence produced before it. The explosion took place inside the bus is an admitted fact and the usual police escort was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant. We are satisfied with the assessment of the Tribunal in quantifying the compensation in a sum of Rs.1,20,000 with interest at the rate of 12%."

Thus, in the light of the position as noted above, it is clear that the death of Ashwani Kumar Jain and injuries sustained by Bhuvan Jain were on account of the rash and negligent use of Maruti Car by Sunil Kumar who despite having noticed firing taking place from quite a distance instead of stopping the vehicle speeded up the vehicle thereby directly came into the line of fire by the terrorists. In the circumstances, the death of Ashwani Kumar Jain and the injuries sustained by Bhuvan Jain cannot but be regarded as caused by an accident arising out of the use of the Maruti car.

[9] Admittedly, Ashwani Kumar Jain was a businessman and had filed ITR for the year 1989-90, reflecting income of Rs.19,000/-. After his death, ITR for the period 01.04.1990 to 03.02.1991 was filed, reflecting his income as Rs.27,280/-.

[10] Learned counsel for the respondent-Insurance Company by referring to the award contended that the income tax return for the period 01.04.1990 to 03.02.1991 was filed by Saroj Jain, wife of Ashwani Kumar Jain after his death, reflecting his assessed income as Rs.27,280/- as against income of Rs.19,000/- for the year 1990-91 filed by Ashwani Kumar Jain himself and that since the income tax return for the year 1991-92 had been filed, reflecting a much higher income than what was filed for the previous year, it was apparent that that the same was inflated with a view to get higher compensation.

[11] I am afraid the argument of the learned counsel does not merit acceptance in view of the statement of PW-1 Suresh Kumar, UDC, Income Tax Office, Ward-I, Sangrur who on the basis of record stated that return filed for the year 1991-92 pertained to the period 01.04.1990 to 03.02.1991 and that assessment of the said return had been finalized by the department @ Rs.27,280/- as had been filed by Smt. Saroj Jain, legal heir of Ashwani Kumar Jain. In his cross-examination, he denied as incorrect the suggestion that the income of Ashwani Kumar Jain had been inflated after his death by the legal

heirs. No evidence whatsoever was led by the respondent-Insurance Company in support of the plea that the income tax return filed by the legal heir of deceased Ashwani Kumar Jain was inflated. In the absence of any such evidence having been brought on record, besides the income tax return filed by the legal heir of deceased Ashwani Kumar Jain having been accepted by the department, the income as assessed by the income tax department is the income which has to be taken into account for the purpose of working out the compensation. Ashwani Kumar Jain died leaving behind five dependants i.e. wife, two minor daughters, one minor son and mother. He was aged 32 years at the time of his death.

[12] Learned counsel for the parties jointly state that the income of the deceased was below the taxable limit, therefore, no income tax was payable.

[13] In the circumstances, compensation payable to the claimants in FAO No.763 of 1995 would works out as under:-

Particulars	**Assessed by the Tribunal (in ₹)**	**Re-assessed by the High Court (in ₹)**
Income assessed	NIL	27,280/- (Annually)
Add:Future Prospects	NIL	40% of 27,280/- = 10,912/-
Deductions	NIL	1/4th of 38192/- = 9548/-
Total Income	NIL	28,644/-
Multiplier	NIL	‘16’
Dependency	NIL	28,644/- x 16 =4,58,304/-
Loss of consortium	NIL	40,000/- to the widow
Funeral Expenses	NIL	15,000/-
Loss of Estate	NIL	15,000/-

Total compensation	NIL	**5,28,304/-**

Accordingly, the appellants in FAO No.763 of 1995 are held entitled to award of compensation of Rs.5,28,304/- along with interest @ 7.5% per annum with effect from the date of claim petition, till date of payment.

[14] As regards, the compensation payable to injured Bhuvan Jain, learned counsel contended that no doubt Bhuvan Jain at the time of the incident was 06 years old, but as a result of injuries sustained by him, he lost his memory besides remained under treatment for a period of more than 5 years and even now needs medical attention from time to time, therefore, compensation of Rs.1,00,000/- assessed was grossly inadequate and minimum of Rs.5,00,000/- along with interest @ 12% per annum ought to have been awarded by taking into account various heads such as pain & suffering, period of hospitalization, expenses incurred on the medical treatment, the future medical expenses, loss of productive years of life on account of loss of memory, loss of marriage prospects, amenities of life etc besides attendant charges and special diet.

[15] Faced with the aforementioned situation, learned counsel for the respondent-*Insurance Company* contends that the claim *qua* injuries sustained be settled at Rs.4,50,000/- without interest. The same is accepted by learned counsel for the appellant. Accordingly, in view of the statement of learned counsel for the parties, FAO No.764 of 1995 is also allowed and the appellant is held entitled to lump sum payment of Rs.4,50,000/- without any interest, to be paid within a period of two months from date of receipt of certified copy of order, failing which interest will be payable @ 7.5% per annum with effect from the date of claim petition, till date of payment. Accordingly, FAO

Nos.763 of 1995 and FAO No.764 of 1995 are **allowed**, award dated 16.11.1994 passed by the learned Motor Accidents Claims Tribunal, Ludhiana, is **set aside** and the appellants are held entitled to the compensation as per details given above.

(B.S. WALIA)
JUDGE

March 07, 2019
'Rajneesh'

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