

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 3868 of 2002 (O&M)

Date of decision : 4.10.2019

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Kulwant Singh and another

.....Appellants

vs.

Smt. Meera Kapoor and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. G.S. Phull, Advocate for

Mr. B.S. Bhalla, Advocate for the appellants

Mr. Ravinder Arora, Advocate for respondent No.7

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H. S. Madaan, J.

Briefly stated facts of the case are that on 12.3.1999, at about 10.00 a.m., Karnail Singh son of Piar Singh alongwith deceased Subash Chander @ Billa was returning to Kot Ise Khan, on a motorcycle bearing registration No. PB-47-5670. The motorcycle was being driven by Karnail Singh, on which Subash Chander @ Billa was pillion riding. When they had reached near Hem Kunt School, Kot Ise Khan, a tractor-trolley was going ahead of them towards Kot Ise Khan side. While they had crossed the tractor-trolley, a scooter bearing registration No. PB-47-8432 was coming at a fast speed being driven in a rash and negligent manner by Baldev Singh and the scooter hit the motorcycle being driven by Karnail Singh. Resultantly,

both the riders on the motorcycle fell down. The scooter driver and a person pillion riding the scooter also fell down. In the meanwhile, the tractor bearing registration No. PB-07-0343 with trolley, being driven by respondent No.4 – Kulwant Singh came and passed over Subash Chander. This accident took place at 3.00 p.m. As a result, Subash Chander received multiple injuries. Karnail Singh also being severely injured, both of them were shifted to Harbans Nursing Hospital, Kot Ise Khan. Keeping in view his serious condition, Subash Chander was referred to hospital at Ludhiana, but he succumbed to the injuries on the way to Ludhiana. FIR No. 43 dated 12.3.1999 was registered with regard to the accident.

On account of death of Subash Chander @ Billa, in the said motor vehicular accident, statedly on account of rash and negligent driving of tractor No. PB-07-0343 by respondent No.4 - Kulwant Singh, legal representatives of such deceased, namely, his wife Smt. Meera Kapoor, minor son Pankaj, minor daughter Mini and mother Smt. Chand Rani, had brought a claim petition under Section 166 of the Motor Vehicles Act, against respondents i.e. Baldev Singh – driver, Surjit Singh – owner and New India Insurance Company, Ferozepur City – insurer of scooter No. PB-47-8432, as well as Kulwant Singh – driver-cum-owner and Jaswinder Singh – owner of Tractor No. PB 07-0343, claiming compensation.

On notice, all the respondents appeared and contested the claim petition. Issues on merits were framed. The Motor Accident Claims Tribunal, Moga, vide award dated 20.2.2002, accepted the claim petition and awarded the compensation amount of

Rs.5,14,000/- to the claimants, with interest @ 9% per annum, from the date of filing of claim petition, till actual realization. Finding it to be a case of contributory negligence, it was observed that the Insurance company shall be at liberty to recover the amount of Rs.3,14,000/- from respondents No.4 and 5 jointly and severally, since it was their vehicle which had run over the deceased, resulting into his death. However, at the first instance, respondent No.3 – Insurance company was directed to make payment of total compensation amount awarded to the claimants and thereafter, it could recover a sum of Rs.3,14,000/- from respondents No. 4 and 5 with interest @ 9% per annum.

Respondent No.4 Kulwant Singh and respondent No.5 Jaswinder Singh, felt aggrieved by the award and they have approached this Court, by way of filing the present appeal, notice of which was given to the respondents. However, only respondents No. 5 and 7 had appeared through counsel, whereas remaining respondents did not appear despite service.

I have heard learned counsel for the appellants and counsel for respondent No.7 – Insurance company, besides going through the record.

Learned counsel for the appellants has argued that the Tribunal has wrongly saddled the appellants with pecuniary liability when even the claimants had not made any allegations against them that the accident had taken place due to rash and negligent driving of the tractor-trolley. As a matter of fact, the entire allegations were against the scooter driver. Therefore, the appellants, who were

respondents before Tribunal, should not have been made liable to pay any compensation.

Whereas, this contention is being resisted by learned counsel for the Insurance company.

After hearing learned counsel for the parties, I find that in light of the facts and circumstances of the case and evidence available on the record, the Motor Accident Claims Tribunal has found it to be a case of contributory negligence of driver of scooter i.e. Baldev Singh and driver of the tractor-trolley i.e. respondent No.4, observing that it had come on record that the tractor was at a distance of 10 karams from the place where the motorcycle and scooter collided with each other and that the tractor was coming at a speed of 15/20 km and if the driver of the tractor-trolley had applied brakes on time and had taken proper care, then his tractor-trolley would not have run over the deceased Subash Chander @ Billa. This finding is proper and appropriate and cannot be faulted on any account. I do not see any reason to differ with it on any score.

Though learned counsel for the appellants has contended that respondent – insurance company had filed FAO No. 2507 of 2002, in this Court, which was dismissed on 7.7.2010 and a copy of that judgment has been placed on the record. However, a perusal of that judgment goes to show that no error in the manner of apportionment and the provision for recovery allowed to the insurer, was found. It is mentioned that the insurer cannot seek recovery of the whole amount especially when the Tribunal had found that there has been a composite negligence where the owner of the insured was also found

liable for the negligence of his driver, while ascertaining the total compensation payable as Rs.5,14,000/-. This judgment is not of much help to the appellants, rather the observations by the Tribunal that it was a case of composite negligence, were in fact in a way were approved.

No other argument was advanced.

I do not find any merit in the appeal. The same stands dismissed.

4.10.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes/ No

Whether reportable Yes/ No