

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 1220 of 1998 (O&M)
 Date of decision : 7.12.2019

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Baljiti

.....Appellant

vs.

Om Parkash @ Shri Om and others

.....Respondents

2) FAO No. 1728 of 1998 (O&M)

...

Dharmo Devi and others

.....Appellants

vs.

Shri Om and others

.....Respondents

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

Present: Mr. Ashok Kumar Khubber, Advocate for the appellant
 in FAO 1220-1998

Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate for the appellants
in FAO 1728-1998

Mr. Rajesh Bansal, Advocate for respondents No.2(i) (ii)

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H. S. Madaan, J.

Briefly stated, facts of the case are that on 20.6.1993, at
about 7.45 A.M., deceased Mai Chand s/o Bhartu r/o village

Ghisarpari, was going on his bicycle, to attend his duty at HSEB, Indri, when he reached near bridge of Western Yamuna canal, a truck bearing registration No. HRK 6197, being driven by respondent No.1 – Om Parkash, in a rash and negligent manner, at a very high speed, came from Karnal side and struck against the bicycle of Mai Chand. Resultantly, Mai chand fell on the ground, suffered injuries and died. The driver of the truck ran away from the spot. Formal FIR No. 103 dated 20.6.1993, for offences under Sections 279, 304-A IPC was registered at Police Station Indri.

Smt. Baljiti, claiming herself to be widow of said Mai Chand had filed claim petition under Section 166 of the Motor Vehicles Act 1988, against respondents i.e. Om Parkash @ Shri Om – driver, Sham Lal -owner, M/s New India Assurance Co. Ltd., Karnal – insurer of offending truck No. HRK 6197, Bhartu and Sharfi parents, Dharmo Devi - widow , Master Satbir Singh and Ranbir Singh minor sons of deceased Mai Chand. She claimed compensation of Rs.3 lacs contending that deceased Mai Chand was aged about 40 years and he was working as a lineman in HSEB, Indri, drawing a salary of Rs.3,000/- per month.

Whereas Dharmo Devi, claiming herself to be widow of Mai Chand, alongwith her two minor children namely Satbir Singh and Ranbir Singh @ Karam Singh, had brought a similar petition for grant of compensation of Rs. 6,00,000/- on account of death of Mai Chand. According to them he was earning Rs.2,641/- per month and a sum of Rs.15,000/- was spent on his last rites.

On being put to notice the respondents appeared and filed written statements in both the cases.

Respondent No.1 in the written replies filed by him had raised various legal objections to wit that the claim petitions were not maintainable. The petitions were bad for mis-joinder and non-joinder of parties; that no such accident had taken place. Both Baljiti and Dharmo Devi were not legally wedded wife of Mai Chand nor Satbir and Ranbir @ Karam Singh were children of Mai Chand. On merits, contentions of the petitions were denied. Though ownership of the truck was admitted, involvement of the truck in accident was also denied contending that a false FIR has been registered against the truck driver. However, it was admitted that the truck was insured with New India Assurance Company Ltd.

In the written statement filed by respondent No.3- Insurance company, it took up various legal objections and statutory defence, while denying its liability to pay any compensation. All the three respondents prayed for dismissal of both the claim petitions. It may be mentioned here that written replies filed by respondents No. 1 & 2 and 3 in two petitions are on similar lines.

Respondents No. 4 and 5 Bhartu and Sharfi, parents of deceased Mai Chand, had filed a written statement in case Baljiti vs. Om Parkash and others, raising preliminary objections that Baljiti has no locus standi to file the petition. She had never married Mai Chand and is not his legally wedded wife. She has no right in the estate of deceased Mai Chand. Rather, the answering respondents alongwith

Dharmo Devi etc. were entitled to compensation on account of death of Mai Chand. Refuting the remaining assertions, such respondents prayed for dismissal of the claim petition filed by Baljiti.

Respondents No. 6, 7 and 8 i.e. Dharmo Devi etc., in the written statement filed by them had also contested the claim petition filed by Baljiti, contending that only they are legal heirs and legal representatives of Mai Chand – deceased.

Baljiti in the written statement filed by her in the claim petition preferred by Dharmo Devi and others, had contended that she is also known as Jitto and is daughter of Ram Dia. She got married with Mai Chand s/o Bharti in Samat 2025 Miti Vishak Vadi Eight, as per Hindu rites and ceremonies. They lived together as husband and wife. However, no issue was born. She was being ignored by Mai Chand. She had filed a maintenance application under Section 488 Cr.P.C. against Mai Chand on 17.7.1973, which was decided on 12.8.1976. There is an entry of their marriage with Mai Chand in family bahi of her father. She is legally wedded wife of Mai Chand and entitled to compensation. She has also filed a separate claim petition claiming compensation. According to her Dharmo Devi was not legally wedded wife of Mai Chand.

Replications were filed.

Both the petitions were consolidated by order dated 1.2.1996 and it was ordered that evidence recorded in petition titled 'Baljiti vs. Om Parkash etc.' shall be read for the purpose of deciding the connected petition.

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

1. Whether the accident in question took place due to rash and negligent driving on the part of respondent No.1, while driving truck No. HRK-6197 as alleged in the petition ?
OPP
2. To what amount or compensation, the claimants are entitled to and from whom? OPP
3. Whether the claim petitions are not maintainable? OPR
4. Whether the petitions are bad for mis-joinder and non-joinder of necessary parties? OPR
5. Whether the driver of the offending vehicle was not holding a valid driving licence at the time of accident in question? OPR
6. Whether Baljiti claimant is not the legally wedded wife of Mai Chand, deceased? OPR
7. Relief

Parties were afforded adequate opportunities to lead evidence in support of their contentions.

In order to prove her case, claimant No.1 Dharmo Devi herself stepped into witness box as PW-1 and further examined Vijay Kumar, A.L.M., H.S.E.B., Indri, as PW-2, Inderjit, LDC, H.S.E.B. Indri PW-3, Ram Saran as PW-4, Fateh Chand, father of Dharmo Devi as PW-5, Rugha Ram as PW-6, Baljiti as PW-7, Punna Ram as PW-8, Ram Dia, father of Baljiti as PW-9 and closed the evidence

after tendering certain documents.

On the other hand, respondents No. 4 and 5 in Baljiti's case examined Rajinder, Chowkidar as RW-1. Respondent No.4 Bhartu, father of Mai Chand, deceased examined himself as RW-2 and further examined Kuldip as RW-3 and closed the evidence.

In rebuttal, claimant Baljiti examined Faggu Ram as PW-10 and closed the evidence. Whereas claimant Dharmo Devi tendered in evidence certain documents and closed the same.

After hearing the arguments, the Motor Accident Claims Tribunal, Karnal, decided issue No.1 in favour of the claimants and against the respondents, concluding that the accident had occurred due to rash and negligent driving of offending truck driven by Shri Om @ Om Parkash. Issues No. 2 and 6 being interconnected, were decided together. Dharmo Devi etc. alongwith respondents No. 4-5 parents of the deceased, were entitled to receive compensation of Rs.3,45,000/- from respondent No.3 and other respondents No. 1 and 2, jointly and severally. Issue No.2 was decided accordingly. Whereas issue No. 6 was decided against Baljiti. Issue No. 3 was decided holding that petition filed by Baljiti was not maintainable. Issue No. 4 was not pressed at the time of arguments by the counsel for the respondents. As such it was decided against respondents No. 1 to 3. Issue No.5 was decided in favour of petitioner and against the respondents. Resultantly, the petition filed by Baljiti bearing No. 96/1993 titled 'Baljiti vs. Om Parkash etc.' was dismissed, whereas petition filed by Dharmo Devi bearing No. 124/1993 titled 'Dharmo

Devi and others vs. Shri Om @ Om Parkash and others' was accepted and compensation of Rs.3,45,000/- was awarded to them. The split up of the amount is given in para No. 24 of the award which is as follows :-

Monthly income	Rs. 2,641.00
Deduction of personal maintenance and upkeep	Rs. 881.00
Total dependency	Rs. 1,760.00
Annual dependency	Rs. 21,120.00
Multiplier of 16	Rs. 3,37,920.00
Rounded of	Rs. 3,38,000.00
Expenses on last rites	Rs. 7,000.00
Total	<u>Rs. 3,45,000.00</u>

The mode and manner of payment and apportionment of compensation amount are given in the impugned award.

Baljiti and Dharmo Devi and others were dissatisfied with the award passed by the Tribunal. The former for rejection of her claim and the latter being of the view that the compensation awarded to them was on lower side. They have filed separate appeals, notice of which was given to the respondents. Since they arise out of the same accident and against common award, thus are being decided together.

I have heard learned counsel for the parties, besides going through the record.

Firstly coming to the appeal filed by Baljiti, she had

approached the Tribunal seeking compensation claiming herself to be legally wedded wife of Mai Chand deceased but she was unable to establish her relationship with the deceased. The Tribunal has dealt with such aspect in detail and in light of the facts and circumstances of the case by analysis of the evidence adduced by the parties, has observed that though Baljiti had got her statement recorded as PW-7 and has given her name as Baljiti @ Jito @ Mitro. She has stated that she was married with Mai Chand son of Bhartu of village Ghisarpari about 29 years back and the marriage was entered in bahi mark A-1 (Exhibit PF). She remained with him for about 5 years and then was turned out of the house. She had filed a petition under Section 488 Cr.P.C. for maintenance, which remained pending for 3 years and was then allowed. However, the Tribunal has found several suspicious circumstances and then concluded that Baljiti could not establish that she was legally wedded wife of the deceased. Briefly enumerated such circumstances happen to be :-

- 1) Baljiti had admitted in her cross examination that she was married in Baisakh Bari Athon. However, PW-10 Faggu Ram a witness examined by her stated that such marriage had been performed in the month of Kartik, which is contrary.
- 2) Though Baljiti claimed that she had got alias of Mitro Devi also, but she could not establish that fact. She at no point of time had disclosed that she was known as Mitro. She has not claimed so in her pleadings and it was only at the time

of making statement before the Tribunal, when she claimed that she was also known as Mitro.

- 3) Though she claimed that she had filed a petition under Section 488 Cr.P.C. for maintenance against the deceased which was allowed and in her cross examination she stated that she had obtained a certified copy of that order, but for the reasons best known to her, that order was not placed on record, which goes adverse to her.
- 4) RW-1 Rajinder, Chowkidar of villages Narota and Ghisarpari, had brought the death register for the year 1979 and proved entry with regard to death of Mitro Devi Exhibit R-1, showing that Mitro Devi wife of Mai Chand had died on 19.7.1979, which falsifies claim of Baljiti that she is in fact Mitro Devi.
- 5) Bhartu and Sharfi are parents of Mai Chand. Bhartu has got his statement recorded as RW-2 and has stated that Mitro wife of Mai Chand had expired in the year 1979 and then Mai Chand had re-married Dharmo after about 3 months of the death of Mitro and two children namely, Satbir and Karam Singh @ Ranbir were born from the wedlock of Mai Chand and Dharmo.
- 6) PW-3 Inderjit, LDC HSEB, Indri, had brought service record of deceased, wherein he has given name of his wife as Dharmo Devi.

I do not see any reason to disagree with the Tribunal on this

issue. Furthermore, I find that from the record, appellant Baljiti has been unable to show that she is legally wedded wife of the deceased, as such her claim petition was rightly dismissed by the Tribunal and no ground is there to set aside the impugned award in that respect and to allow the appeal filed by her.

Therefore, FAO 1220-1998 filed by Baljiti, being without any merit, stands dismissed.

Now coming to the FAO filed by Dharmo Devi etc., seeking enhancement of compensation, I find that indeed there is scope of enhancement since, the Tribunal has not added any amount to the monthly income of the deceased towards future prospects. The deceased was in permanent service of HSEB. With passage of time, he was expected to earn promotions and his salary would have increased and this aspect should have been kept in mind by the Tribunal.

The Apex court in an important judgment **National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009**, had dealt with such aspect in detail, observing that where the deceased had a permanent job and was below the age of 40 years, then an addition of 50% of actual salary be added to the income of the deceased towards future prospects and if he was in the age group of 40-50 years, then such addition should be 30% and if the deceased was between the age of 50-60 years, then addition should be 15%.

In this case, the date of birth of the deceased was 1.1.1953,

as per his service record. The accident in question had taken place on 20.6.1993, that means he was aged about more than 40 years and 5 months at that time. Therefore, 30% of the amount is to be added towards future prospects. Doing that, the monthly income of the deceased could be taken to be $\text{Rs.}2,641 + 792 = \text{Rs.}3,433/-$.

$1/3^{\text{rd}}$ of the amount is to be deducted towards his personal and living expenses, calculating the dependency of the claimants i.e. Dharmo Devi and two sons, comes to be $\text{Rs. } 3,433 - 1,145 = \text{Rs.}2,288/-$ per month. Thus annual dependency is calculated as $\text{Rs. } 2,288 \times 12 = 27,456/-$.

The Tribunal has adopted multiplier of 16. However, in terms of the ratio of authority *Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77*, if the age of the deceased is between the age group of 41-45 years, then multiplier of 14 would be applicable. The Tribunal has used the multiplier of 16, whereas it should have been 14. So, by applying the multiplier of 14, the payable compensation comes to $\text{Rs.}27,456 \times 14 = \text{Rs.}3,84,384/-$

On this amount, in terms of ratio of authority *Pranay Sethi's case (Supra)*, the claimants are entitled to get $\text{Rs.}15,000/-$ towards loss of estate, $\text{Rs.}15,000/-$ towards funeral expenses and $\text{Rs.}40,000/-$ to the widow, on account of loss of consortium.

Thus by adding the amount of $\text{Rs.}70,000/-$ towards conventional heads, the total compensation payable to the claimants comes out to $\text{Rs.}3,84,384 + 70,000 = \text{Rs.}4,54,384/-$.

The Tribunal has awarded a compensation of $\text{Rs.}3,45,000/-$

to the claimants. Accordingly, the claimants are held entitled to additional compensation of Rs. 4,54,384 – 3,45,000 = Rs,1,09,384/- The claimants shall be entitled to get interest @ 7.5% per annum on additional compensation from the date of filing of appeal till actual realization. The said amount be apportioned equally among the claimants i.e. Dharmo Devi - widow, Satbir Singh and Ranbir Singh @ Karam Singh - minor sons and Bhartu and Smt. Sharfi (profoma respondents) - parents of the deceased. Additional compensation shall be disbursed among the claimants, as per direction in the original award. However, the shares of appellants Dharmo Devi, Bhartu and Sharfi be released to them in cash, whereas, those of Satbir Singh and Ranbir Singh – minor sons, be released to them in cash on their attaining the age of majority. Till then share of such minor sons be kept in the form of FDRs in some nationalized bank.

With above modification in the impugned award, FAO -1728-1998, is partly allowed with costs.

7.12.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No