

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

FAO-39-2005(O&M)

Date of decision:-17.12.2019

Harvinder Kaur and others

...Appellants

Versus

Amar Singh and others

...Respondents

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

Present: Mr. Ashok Jindal, Advocate
for the appellants.

Mr.Subhash Goyal, Advocate for
Mr.Sanjeev Pabbi, Advocate for respondent No.4.

Mr.Pardeep Goyal, Advocate
for respondent No.5 – insurance company.

H.S. MADAAN, J.

Petitioners/claimants Smt.Harvinder Kaur – widow,
Shamanpreet Kaur – minor daughter and Smt.Kirpal Kaur – mother of
Balbir Singh, an unfortunate victim of a road side accident had brought a
claim petition under Section 166 read with Sections 140 and 141 of the
Motor Vehicles Act, 1988 (hereafter referred to as the Act) against
respondents i.e. Amar Singh – owner as well as employer of Manjit Singh
driver of TATA Sumo bearing registration No.DL-4CE-5314, Ravinder –
owner and Harbans Singh – driver of truck bearing registration No.PB-10-
R-9620, Oriental Insurance Company Ltd. - insurer of TATA Sumo
bearing registration No.DL-4CE-5314 as well as The New India

Assurance Company Ltd. - insurer of truck bearing registration No.PB-10-R-9620, claiming compensation on account of death of Balbir Singh in a motor vehicular accident, which took place on 16.2.1997 at about 6:00 a.m. near Anurag Filling Station involving TATA Sumo No.DL-4CE-5314 and truck bearing registration No.PB-10-R-9620.

Briefly stated, the version of the claimants is that on 16.2.1997 at about 5:30 a.m. deceased Balbir Singh along with his minor son Aman and some other persons left Ludhiana in TATA Sumo No.DL-4CE-5314 for going to Dharamkot after attending marriage of sister of Rajiv Kumar; the TATA Sumo was being driven by Manjit Singh; when the vehicle reached near Anurag Filling Station and the time was about 6:00 a.m., it struck against rear side of the stationed truck bearing registration No.PB-10-R-9620, which was wrongly parked on the right side of the road with its parking lights off; as a result Aman, minor son of Balbir Singh died at the spot, whereas Balbir Singh sustained multiple injuries; other occupants also sustained injuries; the injured were taken to Dayanand Medical College & Hospital, Ludhiana, where Balbir Singh succumbed to the injuries after some time of his admission there; DDR No.3 dated 16.12.1997 was recorded regarding the accident but it was based on wrong facts.

According to the petitioners/claimants, Balbir Singh deceased was aged about 33 years and was enjoying good health; he was posted as Mandi Supervisor in Market Committee, Dharamkot and was drawing salary to the tune of Rs.9,206/- per month and in addition to that he also owned 12 acres of agricultural land and he used to supervise the

cultivation of his land through his farm assistants; the deceased used to spend all his earnings on the claimants; that as a result of untimely death of Balbir Singh, the claimants have not only deprived of his love and affection but future prospects also.

On being put to notice, respondents No.1 and 2 appeared through counsel, whereas respondent No.3 did not put in appearance despite service, as such was proceeded against ex-parte. Respondent No.4 – Oriental Insurance Company Limited and respondent No.5 – The New India Assurance Company had appeared through counsel. All the appearing respondents had filed separate written replies.

In the written reply filed on behalf of respondent No.1, he had raised various legal objections contending that the claim petition was not maintainable in the present form; that claimants were not the legal representatives/dependents of Balbir Singh – deceased and no cause of action arose to them to bring the claim petition; further they lacked locus standi to bring the petition in question. On merits, such respondent denied the assertions in the claim petition though admitting that the TATA Sumo had met with an accident with stationed truck bearing No.PB-10-R-9620 and the accident had taken place due to wrong parking of the truck by respondent No.3 inasmuch the truck was standing in between the road without its parking lights on, in that way, the driver and owner of the truck were responsible for the accident. Refuting the remaining assertions in the claim petition, such respondent prayed for dismissal of the claim petition.

In the written reply submitted on behalf of respondent No.2,

he contended that the accident had taken place due to rash and negligent driving of TATA Sumo by its driver, who struck the said vehicle against the rear side of the stationed truck, which was parked on extreme left side of the road, in that way respondent No.3 was not at fault in happening of the accident. The claimants have involved the truck just to extract compensation. This respondent also prayed for dismissal of the claim petition.

Respondent No.4 – Oriental Insurance Company in the written reply filed by it also raised various legal objections and put forward statutory defences contending that driver of the vehicle in question was not holding any valid and effective driving licence at the time of accident, in that way, the respondent – insurance company is not liable to pay any compensation since the terms and conditions of the insurance policy were violated and contributory negligence cannot be ruled out since the truck in question was parked on the road without any indication, therefore, owner and driver of the truck are liable to pay compensation, if any. On merits, such respondent refuted the assertions in the claim petitions and reiterated the averments made in the preliminary objections, in the end praying for dismissal of the claim petition.

In the written reply submitted on behalf of respondent No.5 – New India Assurance Company i.e. insurer of truck No.PB-10-R-9620, it also raked up various legal objections contending that respondent No.3 – Harbans Singh, the alleged driver of the truck in question was not holding a valid driving licence at the time of accident; respondent No.2 was not holding a valid registration certificate, route permit, fitness certificate of

the truck in question, therefore the claimants were estopped from filing the present claim petition by their own act and conduct and the alleged accident, if any occurred due to the rash and negligent driving of TATA Sumo vehicle in question by Manjit Singh (since dead); even as per the DDR No.3 dated 16.2.1997 registered at Police Station Dakha, Police District Jagraon, the accident took place suddenly and further none was at fault. On merits, the respondent had admitted that the truck in question was insured with it at the time of accident but contended that since respondents No.2 and 3 have violated the terms and conditions of the insurance policy, no liability of compensation can be fastened on it. Furthermore, since the claimants have obtained personal accident benefit amounting to Rs.6 lakhs as well as some other benefits under the Employee's State Insurance Act, they were not entitled to benefits under any other law. Such respondent also prayed for dismissal of the claim petition.

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

1. Whether Balbir Singh son of Malook Singh, died in vehicular accident occurred on 16.2.1997 on G.T. Road, Mullapur, District Ludhiana, due to the rash and negligent act of the driver of the Truck bearing No.PB-10-R-9620, driven by respondent No.3 Harbans Singh? OPP.
2. If issue No.1 is proved, whether the claimants are entitled to the compensation, if so for what amount and from whom? OPP.
3. Whether the petition is bad for mis-joinder of parties? OPR.

4. Whether no cause of action has arisen to the claimants to file the present petition? OPR.
5. Whether the claimants have got no locus standi to file the present claim petition? OPR.
6. Whether the alleged accident took place due to the rash and negligent driving of Tata Sumo bearing No.DL-4-CE-5314? OPR-2.
7. Whether the driver of the vehicle allegedly involved in the accident was not holding valid and effective driving licence at the time of accident? OPR.
8. Relief.

Both the parties were afforded adequate opportunities to lead evidence.

During the course of evidence, the claimants had examined Sh.Sukhdev Singh, Accountant, Market Committee, Dharamkot, District Moga as AW1, who brought the summoned record and proved salary certificate of the deceased as Ex.A1 further contending that as per the Service Book of the deceased, his date of birth was 5.1.1961 and he was to retire on 31.1.2019. He was likely to be promoted in the near future. AW2 Constable Randhir Singh from Police Station Mullapur Dakha, District Jagraon proved the copy of DDR No.3 dated 16.2.1997 as Ex.A2. AW3 Sh.Gopal Singh, Kanungo, Halqa Kusla, Tehsil Sardulgarh, District Mansa had placed on record the details of agricultural produce for the period Sauni 1994 to Hari 1997 regarding the land owned by Balbir Singh – deceased. The assessments so made being Ex.A3 and Ex.A4. AW4

Harjit Singh provided the eye-witness account of the incident deposing in consonance with the case of the claimants. AW5 Smt.Harvinder Kaur claimant repeated on oath case of the claimants as given in the claim petition. She stated that her husband was getting Rs.9,500/- per month as salary by working as Supervisor in Market Committee, Dharamkot and in addition to that he used to earn Rs.20,000/- per month around from the avocation of agriculture. The claimants had placed on record copy of postmortem report of Balbir Singh deceased as Ex.A4/A and copy of award dated 10.1.2001 as Ex.A5 and then closed the evidence.

In rebuttal, the counsel for respondent No.1 had placed on record photocopy of award dated 11.10.2001 passed by Motor Accidents Claims Tribunal, Ferozepur as Ex.R2. Counsel for respondent No.4 – Oriental Insurance Company had tendered in evidence copy of insurance policy as Ex.R1, whereas counsel representing respondent No.5 – New India Assurance Company also closed the evidence after placing on record insurance policy of truck as Ex.R3.

After hearing arguments, the Motor Accidents Claims Tribunal, Bathinda (hereinafter referred to as the Tribunal) decided issues No.1 and 2 against the claimants, issue No.3 against the respondents, issues No.4 and 5 against the respondents, issue No.6 against the respondent No.2 and issue No.7 was decided against the respondents. Resultantly, the claim petition was dismissed without costs by the Tribunal vide Award dated 3.11.2004, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents and respondents No.4 and 5 insurance

companies put in appearance through counsel.

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

I find that the entire approach of the Tribunal was erroneous and misdirected. Learned Tribunal proceeded to decide the matter as if it was dealing with a criminal case and not a petition for compensation under Section 166 of the Motor Vehicles 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 Motor Vehicles 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.

The Tribunal was too much influenced by the fact that in the DDR got recorded regarding the accident, it was mentioned that nobody was at fault in happening of the accident. Now the question arises as to whether such DDR will override and prevail over the evidence recorded

during the trial before the Tribunal, the answer is obviously in negative. The FIR or for that matter DDR entry is certainly not a substantive piece of evidence. The only purpose of recording FIR is to set the criminal machinery into motion and with regard to the DDR on getting information with regard to the commission of an offence, the police makes an entry in its record. Giving too much importance to the contents of FIR or DDR is uncalled for. Such information regarding commission of offences can be given to the police by any person, who may or may not have seen the incident himself. It is for the police to investigate the matter and to find out as to whether any offence had been committed in the matter, if so, by whom. Since FIR and DDR are often lodged in hurry, those may not contain the entire details of the incident and the persons committing the offence. The police of the region is not known for very professional and efficient investigation and many a times, the matters relating to commission of criminal offences are either not investigated properly or not investigated at all. Therefore, the Tribunal was obviously not justified in giving undue importance to the DDR entry that nobody was at fault in happening of the accident or that the accident had taken place since brakes of the Tata Sumo vehicle had failed. The Tribunal should have arrived at its own conclusion on the basis of evidence adduced before it but it failed to do so. The claimants had examined Sh.Harjit Singh as AW4, who had provided the eye-witness account of the accident deposing in consonance with the case of the claimants. He was cross-examined at length on behalf of the respondents but he stuck to his guns and could not be shattered on any material point. He is not shown to have any motive to depose falsely

against the driver of the truck and in favour of claimants. His presence at the spot is found to be natural and probable and account given by him worthy of reliance.

It needs to be mentioned here that neither the owner nor driver of the truck could summon courage to step into the witness-box and to depose on oath that the truck in question was not parked in the middle of the road and adequate precautions had been taken in the form of switching on the parking lights, placing branches and brickbats around the truck or in any other manner so as to indicate to the traffic that truck was parked ahead. Therefore, the evidence adduced by the claimants has gone un rebutted and there was no reason to disbelieve the same. The insurance companies on their parts also did not lead any evidence in rebuttal to the evidence adduced by the claimants except tendering documents in the form of insurance policies. The Motor Accidents Claims Tribunal, Ferozepur has decided a claim petition arising out of the same accident having title 'Nisha Singla and others Versus Raman Kumar and others' on account of death of Rajiv Kumar Singla in that very accident, whereas a very strange finding had been given that neither of the two vehicles nor their drivers could be held at fault but then the claim petition had been accepted. In this case there was no ground to dismiss the claim petition in such a manner, which the Tribunal without any justification did.

Adverting to the discussion on issue No.1, from the record it comes out that the accident had taken place due to wrongful parking of the truck in the manner on the road without giving any indication that it was so parked there. The traffic coming on the road could not possibly

anticipate that some big vehicle was parked in the middle of the road ahead so as to take necessary precautions to avoid the collision. There is nothing on record to show that brakes of Tata Sumo vehicle had failed and on account of that it had hit the truck from behind. The entire blame for the accident is to be shared by driver of the offending truck, who had parked it wrongly on the road. It can also be not taken to be a case of contributory negligence since no evidence in that regard is available on the file. Merely on account of the fact that the Tata Sumo had hit the truck from behind cannot be taken to mean that the driver of Tata Sumo was also at fault.

For determining contributory negligence, several factors have to be taken into consideration i.e. the width of the road, whether it was meant for one way traffic or traffic from both sides was coming; the light available at the spot; whether it was a foggy weather or clear sky etc. From the evidence available on record, it cannot be taken to be a case of contributory negligence. Even otherwise, Balbir Singh and Aman were travelling in the Sumo vehicle, which was being driven by Manjit Singh, who had since expired in the accident. Balbir Singh and Aman cannot be held responsible for contributory negligence. At best it could be a case of composite negligence but then negligence on the part of driver of the Tata Sumo is not established on the record.

The finding of the Tribunal on issue No.1 cannot be sustained. The same is hereby reversed with the observations that Balbir Singh had died in vehicular accident which occurred on 16.2.1997 on G.T. Road, Mullapur, District Ludhiana, due to the rash and negligent act of the

driver of the Truck bearing No.PB-10-R-9620.

The Tribunal in a very strange manner has decided issue No.6 against respondent No.2. The findings are obviously self-contradictory. Though issue No.1 having been decided against the petitioners/claimants and issue No.6 against respondent No.2. The Tribunal itself was not clear as to how the accident had taken place and who was responsible for the same. In fact, the accident had taken place and the Tribunal was required to determine, who was responsible for the same. The Tribunal failed in its duty to do so and the finding given is neither here nor there.

The Tribunal has decided issued No.3 against the respondents. It has been rightly done. The claimants have impleaded all the necessary parties in the claim petition and it cannot be held to be bad for misjoinder of parties.

Coming to issues No.4 and 5. The observations of the Tribunal on these issues are obviously wrong, though the findings has been given against the respondents. On account of death of Balbir Singh, a cause of action did arose to their legal heirs/legal representatives to file claim petition under Section 166 of the Act against the owners, and insurance companies of both the vehicles involved in the accident as well as driver of the truck in question and they have got every locus-standi to file the claim petition. Hence both the issues are decided against the respondents.

In view of the detailed findings on issues above, issue No.6 is decided in favour of the claimants and against respondent No.2.

The Tribunal has rightly decided issue No.7 against the

respondents and finding in that regard is affirmed.

Now coming to the issue No.2. In view of the detailed discussion above, the petitioners/claimants are entitled to get compensation on account of death of Balbir Singh. AW1 Sukhdev Singh, Accountant in Market Committee, Dharamkot, District Moga had given date of birth of deceased to be 5.1.1961 as entered in his service record. The accident in question had taken place on 16.2.1997, in that way, the deceased Balbir Singh was aged about a little more than 36 years at the time of his death. As per his salary certificate proved by AW1 Sukhdev Singh, the net salary drawn by Balbir Singh was Rs.7,178/- and gross salary was Rs.8,728/-. He was in permanent employment and in ordinary course, he would have earned promotions and his salary would have increased. Therefore, in view of **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, 50% of the income is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.8,728} + 4364 = \text{Rs.13,092/-}$.

From the testimony of AW3 Sh.Gopal Singh, Kanungo and documents proved by him, it comes out that the deceased was having agricultural income also. Though the revenue record in the form of jamabandi etc. has not been placed on file to show as to how much land holding was there with the deceased. Even otherwise, the land if any is still there and is supposed to have been inherited by his legal heirs. But then some amount can be added towards efforts for management of the land put in by the deceased. Keeping in view the fact that the accident had taken place about 22 years back, it would be proper and appropriate to add

around a sum of Rs.2,000/- per month towards the efforts for management of land put in by the deceased. Therefore, the total income of the deceased can be taken to be Rs.15,000/- per month to make it round figure.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, $1/3^{\text{rd}}$ of the amount is to be deducted towards self expenses of the deceased. Doing that the dependency of claimants comes out to Rs.10,000/- per month, annual dependency comes out to Rs.10,000 x 12 = Rs.1,20,000/-.

Keeping in view the age of the deceased Balbir Singh, multiplier of 15 should have been used. Doing that the compensation payable comes out to Rs. 1,20,000 x 15 = 18,00,000/-.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-. The total compensation comes out to Rs. 18,00,000 + 70,000 = 18,70,000/-.

Though respondent NO.5 in its written reply had taken up a plea that the claimants have obtained personal accident benefit amount to Rs.6 lakhs as well as some other benefits under the Employee's State Insurance Act but those contentions have not been proved on record by bringing clear, cogent and convincing evidence by any of the respondents.

Thus, issue No.2 is decided in favour of the claimants.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.18,70,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimants payable by respondents No.2, 3 and 5 jointly and severally, who are owner, driver and insurer of the truck.

The compensation amount shall be apportioned as follows:

1. Petitioner No.1 – Harwinder Kaur - 50%
2. Petitioner No.2 – Shamanpreet Kaur – 40%
3. Petitioner No.3 – Kirpal Kaur - 10%.

Since the accident had taken place on 16.2.1997 i.e. more than 22 years back, minor claimant/petitioner No.2 Shamanpreet Kaur must have attained majority by now. As such her share be released to her in cash.

Since the main appeal is allowed, the miscellaneous application, if any, stand disposed of accordingly.

17.12.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No