

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO No. 2357 of 2006 (O&M)
 Date of decision : 20.12.2019

...

Sushila Rani and others

.....Appellants

vs.

Mahipal Singh and others

.....Respondents

2) FAO No. 839 of 2006 (O&M)

...

Bimla Bajaj

.....Appellant

vs.

Smt. Sushila Rani and others

.....Respondents

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

Present: None for the appellants in FAO 2357-2006

Mr. Vinod K. Kanwal, Advocate for
Mr. Ashit Malik, Advocate for the appellant in
FAO 839-2006 and for respondent No. 2 in
FAO 2357-2006

Mr. R.K. Bashamboo, Advocate for the Insurance company.

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H. S. Madaan, J.

By this common order, I intend to dispose of FAO 2357-

2006, titled as 'Sushila Rani and others vs. Mahipal Singh and

others' and FAO 839-2006, titled as 'Bimla Bajaj vs. Smt. Sushila Rani and others', as both these appeals have arisen out of the same award.

Briefly stated, facts of the case are that petitioners – claimants Smt. Sushila Rani wife of Surinder Singla, Surinder Singla son of Chaman Lal and Deepali Singla, Hitasha Singla, Nidhi Singla, Preeti Singla, Vompri Singla and Dimple Singla – all daughters of Surinder Singla, residents of Old Anaz Mandi, Sirhind, District Fatehgarh Sahib, now residing at Chandigarh, had brought a claim petition under Section 166 of the Motor Vehicles Act, against respondents i.e. Mahipal Singh – driver, Bimla Bajaj – owner and the New India Assurance Company Limited, Karnal – insurer of truck bearing registration No. HR 45-2185 (hereinafter to be referred as 'the offending vehicle'), claiming compensation of Rs.1,25,00,000/-, on account of death of Rishi Singla aged 14 years, in a motor vehicular accident.

As per version of the petitioners-claimants on 11.8.1998, Rishi Singla deceased, alongwith his his father Surinder Singla, was returning from their brick kiln situated at Village Latoor, in a Maruti Car bearing registration No. CH-01V-7561, being driven by Surinder Singla while Rishi Singla was siting on the front seat of the car. At about 5.30 P.M., when the Maruti car reached traffic light crossing on G.T. Road in the area of village Madhopur, which was also known as Battianwala Chowk, there was green light signal and after crossing the chowk, the car reached on the other end of road i.e. towards

Madhopur, in the meanwhile, a truck bearing registration No. HR-45-2185 reached there from the side of Ludhiana. It was being driven in a rash and negligent manner by its driver. The truck entered the chowk violating the traffic signal and struck against the left side of the car. The truck was being driven by respondent No.1 Mahipal Singh. Rishi Singla, aged about 14 years, who had suffered injuries in the accident, succumbed to those injuries. The claimants being his legal heirs/legal representatives, had brought the claim petition in question.

On notice, only respondents No. 2 and 3 appeared and offered a contest. Whereas respondent No.1 did not put in appearance despite service and as such was proceeded against ex parte. Respondents No. 2 and 3 filed separate written replies. In the written reply submitted by respondent No.2 she contended that no such accident had taken place involving the truck No. HR-45-2185. Respondent No.2 however admitted that she is registered owner of the truck in question, stating that it was a comprehensively insured with respondent No.3 – Insurance company for the period from 12.2.1999 upto 11.2.2000. This respondent prayed for dismissal of the claim petition.

In the written statement submitted on behalf of respondent No.3 – Insurance company, it took up various legal objections and statutory defences, contending that respondent No.1 – driver was not having a valid and effective driving licence at the time of accident. In that way the Insurance company should be absolved of its liability to

pay the compensation, as such Insurance company also craved for dismissal of the claim petition.

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

1. Whether respondent No.1 Mahipal Singh by driving truck No. HR-45-2185 rashly and negligently caused the accident on 11.8.1998 resulting into death of Rishi Singla?
OPP
2. If issue No.1 is proved, to what amount of compensation, claimants are entitled? OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence on the day of accident, if so, to what effect? OPR-3
4. Relief.

Parties led evidence in support of their respective claims. After hearing arguments, the Motor Accident Claims Tribunal, Chandigarh (hereinafter to be referred to as 'the Tribunal'), vide award dated 28.7.2005, decided issue No.1 in favour of claimants against respondents holding that the accident in question was caused because of rash and negligent driving of truck No. HR-45-2185 by its driver and Rishi Singla had died in the said accident.

Issue No.3 was decided holding that there was no violation of terms and conditions of the Insurance policy.

Issue No.2 was decided holding that the claimants No. 1 and 2 were entitled to get compensation of Rs.2,45,000/- payable by

respondents No. 1 and 3, since respondent No.1 was not holding a valid driving licence at the time of accident, though respondent no.3 shall be liable to pay the compensation amount to petitioner No.1 and 2, it shall be entitled to recover the same from respondent No.2. Vide award dated 28.7.2005, the claim petition was accepted, granting compensation of Rs.2,45,000/- alongwith interest @ 9% per annum from the date of filing of claim petition till realisation, to be paid to both petitioners no. 1 and 2 equally, in the manner discussed above.

Bimla Rani – insured, felt aggrieved by the recovery rights granted to the Insurance company and has approached this Court by way of filing appeal bearing FAO 839-2006. Whereas, claimants – Sushila Rani and others were dissatisfied with the amount of compensation awarded to them by the Tribunal, as such they have preferred a separate appeal bearing FAO 2357-2006, for enhancement of compensation awarded by the Tribunal. Notice of the appeals was given to the respective respondents, who have put in appearance through counsel. Counsel for the claimants was appearing earlier, however, later on he had stopped putting in appearance.

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

Learned Tribunal while giving verdict on issue No.3, has referred to testimony of RW-1 Naresh Kumar, Assistant Licensing Authority, Ambala, examined by respondent No.1, who had brought the record pertaining to licence of Mahipal stated to have been renewed vide No. 1562 from Licensing Authority, Ambala. He had

stated that the renewal of the licence was not done by their office and renewal number as given in the photocopy Exhibit R-1 was never allotted in the manner it was given in the licence and as per record no renewal was done from their office vide document Exhibit R-2. The said licence was not renewed by their office and renewal number mentioned in Exhibit R-1 was not having the stamp of their office. During his cross examination, he stated that though the original license was issued from Delhi, however, the renewal was not done by their office. The renewal had purportedly been done by Licensing Authority, Ambala on 31.10.1997 upto 30.10.2000. The accident in question had taken place on 11.8.1998. Thus the Tribunal had rightly concluded that it could not be said that Mahipal – driver was having a valid driving licence at the time of accident. Though Sushila Rani (wrongly written, should be Bimla Bajaj) – RW-2 has stated that driving licence of Mahipal was seen by her at the time of his employment. The licence was correct and was in order and was issued for heavy goods vehicle by the competent authority. Mahipal was a competent and qualified driver. During her cross examination, she stated that she did not know how to drive a motor vehicle and her brother-in-law had tested the driver and thereafter found him competent to drive the motor vehicle. She stated that she did not know whether the licence was renewed in a legal manner as the driving licence was checked by her brother-in-law when Mahipal was employed as driver by him. Such brother-in-law of Sushila Rani had not been examined. The Tribunal has rightly observed that it being so

it could not be stated that she being owner of the vehicle, had bona fide believed that driver Mahipal was having a valid driving licence. In that way there has been violation of terms and conditions of the Insurance policy on behalf of the insured.

The Tribunal was justified in granting the recovery rights to the Insurance company.

As regards the judgment referred to by learned counsel for appellant – insured, *Pepsu Road Transport Corporation vs. National Insurance Company 2013 (4) RCR (Civil) 273*, by the Apex Court, that had different facts where when the owner while employing the driver had satisfied himself that driver had valid driving licence and was competent to drive the vehicle, the driver had caused fatal accident after 7 years of employment. In that way the Insurance company was found liable to pay the compensation. In this case Bimla Devi, owner of truck herself had not reached any satisfaction with regard to competence of respondent No.1 to drive the vehicle or that he possessed a valid driving licence. Therefore, this authority is not of any help. No fault can be found with the direction issued by the Tribunal granting the recovery rights to the Insurance company. Even otherwise the award does not suffer from any illegality or infirmity in this regard.

Therefore, FAO 839-2006 is found to be without any merit and the same is dismissed accordingly.

Now taking up the appeal filed by the claimants, they being not satisfied with the amount of compensation awarded, have

preferred an appeal, seeking enhancement of compensation.

The Tribunal has taken the age of the deceased as 15 years and considered the assertions made in the affidavit of his father Surinder Singla, Exhibit CW 1/A, that the deceased was a student of 8th class in Saint Kabir School, Chandigarh and was having a bright prospects. He was share holder in the joint family business and his income was expected to rise in the near future. Ms. Preeti Singla, in her affidavit Exhibit CW 2/A has also corroborated those contentions. A sum of Rs.1,00,516/- was spent on medicines and treatment of Rishi Singla. Before his death Rishi Singla was admitted in PGI, Chandigarh. The Tribunal has granted a sum of Rs.70,000.- for treatment and medicines of Rishi Singla. Then a sum of Rs.1,75,000/- was granted as compensation, making it total Rs.2,45,000/-.

I find that the approach of the Tribunal in calculating the compensation was not proper. In judgment *Kishan Gopal and another vs. Lala and others 2013 (4) RCR (Civil) 276*, the Apex Court has dealt with the criteria for award of compensation in case of death of children in motor accidents. In the said case, while dealing with death of a child aged 10 years, who was assisting his parents in agricultural occupation, it was observed that had the deceased child been alive he would have contributed substantially to the family of the appellants by working hard, as such his notional income was taken as Rs.30,000/-. The age of his parents was considered and multiplier of 15 was applied and compensation was worked out to Rs.4,50,000/-. A sum of Rs.50,000/- was awarded under

conventional heads i.e. Loss of love and affection, funeral expenses and last rites. Thus additional compensation of Rs. 5 lacs was granted.

In this case also, the claimants are definitely entitled to compensation of Rs. 5 lacs in addition to the amount spent on medical treatment. Therefore, the compensation is enhanced to Rs.5,70,000/-.

The Tribunal has already awarded Rs.2,45,000/- to the claimants-appellants No.1 and 2. Thus the claimants-appellants No. 1 and 2 are held entitled to additional compensation of (Rs.5,70,000 – 2,45,000) Rs.3,25,000/-. The claimants -appellants No. 1 and 2 would be entitled to get interest @ 7.5% per annum on this amount from the date of filing of appeal till its actual realization. Liability to pay the additional compensation shall remain the same as mentioned in the original award.

With above modification in the impugned award, FAO 2357-2006 is allowed partly, with costs.

20.12.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No