

IOIN-FAO-747-2006 in
FAO-747-2006(O&M)

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

IOIN-FAO-747-2006 in
FAO-747-2006(O&M)
Date of decision:-21.11.2019

Jal Kaur and others

...Appellants

Versus

Kewal Krishan Kataria and another

...Respondents

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

Present: Mr.Surinder Garg, Advocate
for the appellants.

Mr.R.C. Kapoor, Advocate
for respondent No.2.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that claimants - Jal Kaur aged about 45 years – widow, Gulshan Rani, aged about 22 years – daughter, Baby Manisha aged about 12 years – minor daughter of Harchand Singh son of Devi Shah, an unfortunate victim of a road side accident had brought a claim petition under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 against respondents i.e. Kewal Krishan Kataria – driver and owner as well as National Insurance

Company Ltd., Jaitu – insurer of Maruti Car bearing registration No.DL-4CE-5620 (hereinafter referred to as the offending car), claiming compensation to the tune of Rs.10,45,000/-.

As per the case of the claimants on 28.12.2002 at about 6:00 p.m. deceased Harchand Singh after getting his salary was returning home on a bicycle; the offending car driven by respondent No.1 – Kewal Krishan Kataria in a rash and negligent manner at a very high speed came in a zig-zag manner from Jaitu side i.e. opposite direction and struck against bicycle of deceased, with the result he received multiple injuries; after the accident, respondent No.1 sped away the offending car; the passersby took Harchand Singh, who was in injured condition to Civil Hospital, Jaitu; he was given first aid there and thereafter referred to GGS Medical College/Hospital, Faridkot; on the next day statement of Harchand Singh was recorded by police but no FIR was registered; subsequently Harchand Singh had succumbed to the injuries suffered by him in the accident; the FIR No.74 dated 26.6.2003 for the offences under Section 304-A IPC was registered against respondent No.1 – Kewal Krishan Kataria later on only when Jal Kaur claimant No.1 had submitted a representation to Chief Minister, Punjab; accused was challaned and faced trial in the Court.

As per the version of the claimants, deceased Harchand Singh was aged about 60 years and was doing job of watering the plants in Forest Department/Nursery earning Rs.2,500/- from that avocation besides selling milk of buffaloes earning Rs.3,000/- therefrom; the claimants were fully dependent upon his earnings.

On getting notice both the respondents appeared and filed separate written statements contesting the claim petition.

In the written statement filed by respondent No.1, he denied that he had caused the accident by rash and negligent driving of the offending car or that Harchand Singh had suffered injuries in any such alleged accident to which he had succumbed. According to the answering respondent a wrong FIR has been recorded against him involving his car for political reasons, however the car was insured with respondent No.2 at the relevant time. According to such respondent, Harchand Singh had made a statement to ASI Paramjit Singh on 29.12.2002 in which he himself stated that he did not know the cause of accident and the vehicle involved in the accident and respectable persons gathered at the spot i.e. hospital stated that they did not want to pursue the matter; statement of Jal Kaur – petitioner No.1 was also recorded; the FIR was lodged on 26.6.2003 i.e. after six months of the alleged accident on the statement of Jal Kaur – petitioner No.1 but in the FIR neither name of respondent No.1 was mentioned nor registration number of the car was given; a perusal of the FIR goes to show that the answering respondent was not at fault in the accident; the police officer of the gazetted rank had made strong recommendation for cancellation of the FIR, however, subsequently on statement of Jal Kaur, answering respondent and his car were involved in the case just to get compensation. Refuting the remaining assertions, such respondent prayed for dismissal of the claim petition.

Respondent No.2 – insurance company in the written statement filed by it took various legal objections and raised statutory

defences contending that the car bearing registration No.DL-4CE-5620 was not being driven by an authorized person having a valid and effective driving licence at the time of accident resulting in violation of terms and conditions of the insurance policy absolving such insurance company of any liability to pay compensation. On merit, material assertions in the claim petition were controverted, whereas pleas taken in the preliminary objections were reiterated.

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

1. Whether the offending vehicle was not being driven by an authorised person with valid and effective driving licence at the time of alleged accident? OPR2.
2. Whether Harchand Singh died in an accident took place on 28.12.2002 in the area of village Guru Ki Dhab with Maruti Car bearing No.DL-4CE-5620 being driven by Kewal Krishan in a rash and negligent manner? OPP.
3. Whether the claimants are entitled to recover the amount of compensation from the respondent, if so, to what amount and from whom? OPP.
4. Relief.

Both the parties led evidence in support of their respective claims.

Smt.Jal Kaur – claimant No.1 had got her statement recorded as AW1 and tendered in evidence her affidavit duly sworn Ex.A1 along with copy of FIR Ex.A2. AW2 Chaman Lal, Forest Guard, Department of

Forest, Beer Romana Albel Singh, Tehsil Jaitu and District Faridkot in his affidavit Ex.A3 deposed that Harchand Singh son of Devi Shah, aged about 60 years was having a good health and was doing work of watering the plants in forest of their department under him getting a salary of Rs.2,500/- from their department.

Counsel for the claimants tendered in evidence copy of postmortem Ex.A4 and closed the evidence of the claimants.

In rebuttal evidence, respondent No.1 - Kewal Krishan Kataria get his statement recorded as RW1 and submitted his affidavit Ex.R1, copy of judgment dated 8.4.2005 Ex.R2, copy of driving licence Ex.R3.

Thereafter, the evidence of respondent No.1 was closed.

Counsel for respondent No.2 – insurance company tendered in evidence original insurance policy Ex.R4, verification regarding driving licence of Kewal Krishan Kataria Ex.R3 and closed the evidence of insurance company.

After hearing learned counsel for the parties, the claim petition was dismissed by the Tribunal vide Award dated 1.10.2005, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents and respondent No.2 – insurance company put in appearance through counsel to offer a contest.

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

It may be mentioned here that eye-witness account in this

case was provided by claimant Jal Kaur appearing as AW1 submitting affidavit Ex.A1, in which she reiterated on oath case of the claimants as given in the claim petition. Whereas in rebuttal, respondent No.1 – Kewal Krishan Kataria got his statement recorded as RW1 and repeated on oath his case as given in his written statement. It may be mentioned here that though ASI Paramjit Singh had recorded statement of Harchand Singh in the hospital, however, no formal FIR was registered. The FIR had been registered after a considerable time. Though in the FIR the registration number of the vehicle is not mentioned and particulars of the driver are also not given but then as it comes out as a result of investigation by the police that the accident in this case had been caused due to rash and negligent driving of the offending car by Kewal Krishan Kataria and for that reason Kewal Krishan Kataria had been formally arrested in this case and was challaned. He was charge-sheeted and faced trial. Though on conclusion of trial, Chief Judicial Magistrate, Faridkot vide judgment dated 8.4.2005 had acquitted him observing that it cannot be said that the prosecution had been able to prove the charge against the accused and since there was no evidence on file against the accused, he was acquitted of the charge framed by giving him a benefit of doubt.

Now the question arise as to whether such judgment of the criminal Court is binding upon the Tribunal, the answer has to be in negative. Though the judgment may be a relevant piece of evidence while considering as to whether the accident had taken place due to rash and negligent driving of the offending car by its driver but then the Tribunal has to draw its own conclusion on the basis of evidence adduced before it

and merely because the accused has been acquitted in the criminal proceedings, is no ground to reject the claim petition. The eye witness account of the incident was provided by AW1 Jal Kaur. In her cross-examination, she had denied the suggestion that she had not witnessed the accident. Merely because she had submitted an application to Chief Minister, Punjab mentioning therein that her husband had been murdered in suspicious circumstances does not in any way work as estoppel in presenting the facts before the Tribunal, which had come to her knowledge. Her version is corroborated by the fact that formal FIR regarding the accident was registered in which respondent No.1 Kewal Krishan Kataria was nominated as an accused and involvement of offending car was found to be there during the course of investigation. He had been sent up to face trial. Though he was acquitted by the criminal Court but that was by giving him benefit of doubt.

As regards issue No.1, it had been decided holding that the offending vehicle was being driven by Kewal Krishan Kataria, who was authorized person and was having a valid and effective driving licence at the time of accident. This verdict is proper and appropriate and does not call for any interference.

The findings of the Tribunal on issue No.2 are obviously erroneous based upon wrong interpretation of law and misappraisal of evidence. Learned Tribunal proceeded to decide the issue 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 gets 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 finding recorded by the Tribunal on issue No.2 is wrong and not sustainable. The same is set aside and issue is decided in favour of claimants and against the respondents holding Harchand Singh had suffered the injuries in the accident, which took place on 28.12.2002 in the area of village Guru Ki Dhab with Maruti Car bearing No.DL-4CE-5620 being driven by Kewal Krishan Kataria – respondent No.1 in a rash and negligent manner.

In view of the verdict on issue No.2, the claim petition had been dismissed by the Tribunal. But since verdict on that issue has been reversed the claimants are certainly entitled to get compensation from the owner-cum-driver and insurance company of the offending car. In terms of the insurance policy Ex.R4, the offending car in question was insured

with respondent No.2 at the relevant time. In this case no violation of terms and conditions of the insurance policy has been shown, which might have absolved the insurance company to pay compensation.

As regards issue No.3, the Tribunal had taken age of deceased as 60 years at the time of accident and had assessed his monthly income to be Rs.2,400/- by working as a labourer. However, no addition towards future prospects was made.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, keeping in view the age of deceased to be 60 years, 10% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.}2400 + 240 = \text{Rs.}2,640/-$.

Considering the number of dependent family members, $1/3^{\text{rd}}$ of the amount was rightly deducted by the Tribunal towards personal and living expenses of the deceased. Doing that the dependency of claimants comes out to Rs.1,760/- per month, annual dependency comes out to $\text{Rs.}1,760 \times 12 = \text{Rs.}21,120/-$.

The Tribunal has used multiplier of 5, whereas in terms of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, multiplier of 9 should be used. Doing that the compensation payable comes out to $\text{Rs.}21,120 \times 9 = 1,90,080/-$.

The Tribunal has found the claimants entitled to Rs.2,000/- as funeral expenses, Rs.5,000/- as loss of consortium and Rs.2,500/- for loss of estate. But 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. 1,90,080 + 70,000 = 2,60,080/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization payable by both the respondents jointly and severally.

This issue is also decided in favour of the claimants.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.2,60,080/- with interest @ 7.5% p.a. from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimants payable by both the respondents jointly and severally.

21.11.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No