

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

FAO-463-2009(O&M)

Date of decision:-15.10.2019

Smt.Asha Devi and others

...Appellants

Versus

Vijender and others

...Respondents

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

Present: Mr. Anshuman Dalal, Advocate,
for the appellants.

Mr.Rahul Pathania, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, facts of the case are that on 25.9.2006 at about 6:00/6:15 p.m., deceased Samunder Singh had left his village Behal for going to village Chang to meet his parents; he was riding motorcycle bearing registration No.HR-17/3104 make Splendor; when he had reached on Chang road near Bandron Wala Johar, then an unknown vehicle hit the motorcycle with the result Samunder Singh fell down in the nearby standing bushes, suffered injuries and died; an FIR No.420 dated 26.9.2006 for the offences under Sections 279 and 304-A IPC was registered at Police Station Sadar, Bhiwani. During the course of

investigation, Vijender – respondent No.1 was found to be driver of the vehicle make TATA Spacio bearing registration No.HR-61/3682, which had caused the accident. The owner of such vehicle was found to be Shamsher – respondent No.2. Respondent No.1 - Vijender was arrested in the FIR case.

The legal heirs of the deceased Samunder Singh, namely, his widow – Smt.Asha Devi, aged about 35 years, minor daughter – Baby Sonal aged about 12 years, minor son – Master Yogesh, aged about 8 years, mother – Smt.Shanti Devi aged about 65 years and father – Sh.Ram Kishan, aged about 70 years had brought a claim petition under Section 163-A of the Motor Vehicles Act against the respondents i.e. Vijender – driver, Shamsher – owner and National Insurance Company Ltd. - insurer of TATA Spacio bearing registration No.HR-61/3682(hereinafter referred to as the offending vehicle), claiming compensation.

According to the claimants, the deceased was aged about 40 years at the time of his death in the road side accident and he was earning Rs.3,000/- per month by doing cultivation and dairy farming; the claimants were dependent upon his earnings; that they have incurred Rs.2,000/- for transportation for carrying dead body of deceased.

Notice of the claim petition was given to the respondents. All the three respondents appeared and filed written statements. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed by respondents No.1 and 2, they have taken up various legal objections with regard to locus standi

of the petitioners/claimants to bring the claim petition, cause of action having arisen to them in that regard, maintainability of the petition and the same being bad for non-joinder and mis-joinder of necessary parties etc. On merits, the answering respondents contended that happening of the accident is not in their knowledge and it might have taken place due to some other reasons. According to such respondents, a false FIR has been got registered against respondent No.1. Nevertheless the vehicle was duly insured with respondent No.3 – insurance company at the relevant time and the liability to pay compensation is of such insurance company.

Respondent No.3 – insurance company in the written statement submitted by it had also raked up various legal objections contending that the insured had violated the terms and conditions of the insurance policy and the insurance company was not informed regarding the accident; that the vehicle has been wrongly planted in this case; that respondent No.1 was not having a valid and effective driving licence.

In the end, all the respondents prayed for dismissal of the claim petition.

Issues on merits were framed and both the parties were afforded adequate opportunities to lead their evidence.

After hearing learned counsel for the parties, the Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as the Tribunal) decided issue No.1 against the petitioners and in favour of the respondents; no verdict on issue No.2 was given, issue No.3 was decided against the petitioners, issue No.4 against the claimants, issue No.5 against the petitioners, issue No.6 against the petitioners, issue No.7

against the petitioners, issue No.8 was disposed of without giving any clear cut verdict. Resultantly, the claim petition was dismissed by the Tribunal vide award dated 15.10.2008, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents. However, only respondent No.3 – insurance company has appeared through counsel.

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

It needs to be observed here that the entire approach of the Tribunal in deciding the claim petition has been wrong and improper. The award shows non application of mind and adoption of a non-judicious approach. The Tribunal lost sight of the fact that it was deciding a petition under Section 163-A of the Motor Vehicles Act, which is a piece of welfare legislation and is a special provision as to payment of compensation on structured formula basis. The starting lines makes the intention of legislature clear wherein it is mentioned that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Thus it is very clear that rashness or negligence on the part of the driver of the motor vehicle is not to be taken into consideration. Thus it can be termed to be no fault liability. The crucial thing to be seen is as to whether the accident in question had taken

place by use of the motor vehicle. In the instant case, the claimants had led sufficient evidence both oral as well as documentary to show that the accident had taken place on account of use of the offending vehicle, rather to put it precisely, there is considerable evidence to show that the said vehicle was being driven in a rash and negligent manner. Though FIR No.420 dated 26.9.2006 had been registered with regard to the accident, the registration number of the vehicle involved in the accident and particulars of the driver are not there but then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime.

During the course of investigation involvement of the offending vehicle was found to be there in the accident and at the relevant time Vijender – respondent No.1 was its driver. The claimants had examined PW2 Siri Pal, Assistant Ahlmad to the Court of ACJM, Bhiwani, who had brought the summoned file bearing case No.419-1/2.12.2006 titled 'State Versus Bijender', FIR No.420 dated 26.9.2006 for the offences under Sections 279/304-A IPC, Police Station Sadar, Bhiwani pending for 18.12.2008 for PWs stating that charge in that case had been framed against the accused Vijender on 15.5.2007. The postmortem examination had been conducted on the dead body of the deceased and his postmortem report Ex.P2 was proved on the record. The

Tribunal has adopted a hyper-technical approach observing that though the claim petition has been filed under Section 163-A of the Motor Vehicles Act but the pleadings as well as evidence led by the petitioners are as per Section 166 of the Motor Vehicles Act. It has been observed that the claimant cannot pursue his remedies thereunder simultaneously.

This reasoning is superfluous and fallacious. The claimants have filed a claim petition under Section 163-A of the Motor Vehicles Act. It is for the claimants to decide as to under which provision of law they want to file the claim petition. Merely because in a petition under Section 163-A of the Motor Vehicles Act, there are certain allegations that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1 – driver, who is facing trial in a criminal case for causing the accident does not convert the petition to be one under Section 166 of the Motor Vehicles Act. The Court is to see the relief part and as to whether the income of the deceased was up to Rs.40,000/- per annum or more than that. If the income was more than Rs.40,000/- per annum, then of course petition under Section 163-A of the Act is not maintainable. In this case though earlier the claimants had taken up a plea that deceased was earning Rs.10,000/- per month but subsequently they got the petition amended so as to claim that the income of the deceased was up to Rs.40,000/- per annum. Once the amendment was allowed by the Tribunal, the claimants cannot be condemned for giving income of the deceased to be Rs.10,000/- per month initially. The petitioners had successfully proved that Samunder Singh had died due to the use of the offending vehicle, therefore, the verdict with regard to issue

No.1 should have been given in favour of the claimants. But the Tribunal erred in deciding that issue against the claimants. That error is rectified and issue is decided in favour of the claimants against the respondents.

With regard to issue No.2, the Tribunal has not proceeded to calculate the compensation payable to the petitioners/claimants. However, the compensation is to be determined in view of the structured formula. The age of the deceased comes out to be 40 years and his monthly income to be Rs.3,000/-. 1/3rd of the amount is to be deducted towards personal and living expenses of the deceased. In that way, the dependency of the claimants comes out to Rs.2,000/- per month, annual dependency to be Rs.24,000/-(2000 x 12). As per second schedule under Section 163-A of the Motor Vehicles Act when the deceased was in the age group of 35 to 40 years, then multiplier of 16 is to be used. Doing that the compensation comes out to Rs.3,84,000/- (24,000 x 16).

As per the second schedule, the claimants are entitled to Rs.2,000/- as funeral expenses, widow to get Rs.5,000/- on account of loss of consortium and Rs.2,500/- under the head loss of estate. Thus the total compensation comes out to Rs.3,93,500/-. Since the vehicle in question was duly insured with respondent No.3 – insurance company at the relevant time and there is no reason to absolve such insurance company of its liability to pay compensation. Therefore, all the respondents are jointly and severally liable to pay the compensation. Thus the issue is decided in favour of claimants/petitioners and against the respondents.

Now coming to issue No.3. A very strange finding has been given by the Tribunal on this issue, which is to the following effect:

21. Amendment regarding the income was allowed vide order dated 19.3.2008 to cover the case under Section 163-A of the MV Act but the evidence led on the file is under Section 166 of the Motor Vehicles Act, impleading driver and owner of the Tata Spacio bearing No.HR-61-3682, however, the same was not being used by the deceased, for which the claim is sought, so this issue is decided against the petitioners.

Such observations do not make any sense rather reflects the confused thinking of the Officer presiding over the Tribunal. Once the amendment was allowed by the Tribunal to the claimants to amend the claim petition to mention the income of the deceased to be Rs.3,000/- per month, the Tribunal could not go back and look into as to what was originally pleaded by the claimants. If the Tribunal so felt it could have refused to allow the amendment and dismissed the claim petition under Section 163-A of the Act but then allowing the amendment and then doing back tracking is not permissible. The claim petition is perfectly maintainable under Section 163-A and verdict given on this issue is totally wrong and is set aside. Thus, the issue is decided against the respondents and in favour of the petitioners.

As regards finding on issue No.4, in view of the discussion above, the petition is found to have been filed in accordance with law. The verdict given by the Tribunal in favour of the respondents against the claimants is set aside and this issue is decided in favour of the claimants and against the respondents.

Coming to the finding given on issues No.5 and 6, the Tribunal has given reasoning holding that petitioners are estopped by their own act and conduct from filing the claim petition. The said reasoning is without any head and tail and does not make any sense. The petitioners being legal heirs and legal representatives of deceased Samunder Singh, who had died in a motor vehicular accident by use of the offending vehicle have rightly filed a claim petition under Section 163-A of the Motor Vehicles Act against the driver, owner and insurance company of the said offending vehicle. There is nothing to show that they are estopped by their act and conduct from filing the claim petition or the claim petition is bad for misjoinder and non-joinder of the necessary parties. The verdict given by the Tribunal on both the issues is reversed and those issues are decided against the respondents and in favour of the claimants.

As regards issue No.7, the Tribunal has concluded that the petition is result of collusion in between the petitioners and respondent No.1. On the basis of what evidence, the Tribunal has arrived at this conclusion has not been explained. It has just been mentioned that the petition ought to have been filed under Section 166 of the MV Act but the same has been filed under Section 163-A of the MV Act, therefore it is result of collusion between the petitioners and respondent No.1. Such type of reasoning is not expected from judicially trained mind. Whether petition is to be filed under Section 166 or 163-A of the Act is option of the petitioners/claimants and they cannot be treated with suspicion for filing a claim petition under a particular provision and not under the other provision, which option they could have exercised in alternative. It needs

to be mentioned here that though in the FIR the vehicle number and name of its driver are not mentioned but during the course of investigation, the involvement of vehicle in question was found and respondent No.1 was found to be its driver at that time. If we presume that there was collusion between claimants and respondent No.1, the said presumption is not justified for the reason that once the involvement of the vehicle is found to be there in the accident regarding which a criminal case stands registered, the vehicle is taken into custody by the police during investigation and a lot of effort is required to get it released on superdari and then to produce it in the Court on each and every date of hearing. A person booked for the offences under Sections 279 and 304-A IPC etc. for causing the accident is required to get himself released on bail and then attend the dates of hearing in the Court with real chances of getting convicted in the case and put behind bars. Therefore, the collusion between the claimants and respondent No.1 cannot be presumed in a light manner by conjectures and guesswork. The Tribunal was totally unjustified in arriving at this conclusion. The verdict given in that regard is set aside and this issue is decided against respondent No.3.

As regards issue No.8, no clear verdict in that regard has been given by the Tribunal though observing that respondent No.1 had placed on file his driving licence Ex.R/1, which was not rebutted by respondent No.3 and the vehicle bearing No.HR-61/3682 was duly insured as per Ex.R2(insurance policy). Even otherwise, there is nothing to show that respondent No.1 was not possessing a valid and effecting driving licence at the time of the accident.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.3,93,500/- 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 all the three respondents jointly and severally.

Of the compensation awarded, the amount shall be apportioned as follows:

1. Petitioner No.1 – Smt.Asha Devi - 30%
2. Petitioners No.2 and 3(children) – 25% each
3. Petitioners No.4 and 5 (mother and father) - 10% each

Since the claim petition was filed in the year 2007 and 12 years have elapsed therefrom, therefore it comes out that minor claimant No.2 Sonal, who was aged about 12 years at that time and claimant No.3 Yogesh, who was aged about 8 years must have attained majority. Therefore, shares of all the claimants be released to them without putting any rider with regard to deposit of part or whole of their shares in the form of FDR with some nationalized bank.

15.10.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No