

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

FAO-1553-2010(O&M)

Date of decision:-26.7.2019

Geeta Devi and others

...Appellants

Versus

Sandeep and others

...Respondents

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

Argued by: Mr. Raman Chawla, Advocate,
for the appellants.

Mr.Amit Arora, Advocate
for respondents No.1 and 2.

H.S. MADAAN, J.

Petitioners Geeta Devi, aged about 25 years – widow, Master Manjeet aged about 6 years and Master Aman aged about 4 years – minor sons and Baby Guddi, aged about 2 years – minor daughter of Sh.Satyawan son of Sh.Bhoop Singh, who had perished in a road side accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as the Tribunal) against the respondents i.e. Sandeep – driver and Somveer – owner of motorcycle bearing registration No.HR-16E-1879 (hereinafter referred to as the offending vehicle), claiming compensation to the tune of Rs.50 lakhs.

In the claim petition, they had impleaded insurance company of the said motorcycle without giving its particulars mentioning that those were to be disclosed by respondents No.1 and 2 but it was not so done, as

such, the insurance company is to be taken as not being there as respondent.

As per the case of the claimants, Satyawan deceased was aged about 30 years and was engaged in avocation of agriculture, dairy farming and trading and his total income from all the sources was Rs.30,000/- per month. They further contended that on the fateful day i.e. on 21.10.2006, the deceased was pillion riding motorcycle bearing registration No.HR-22-1166 being driven by his cousin having the same name i.e. Satyawan son of Partap Singh; that they were returning from the fields of Sh.Hoshiar Singh; however the offending vehicle being driven by respondent No.1 Sandeep in a rash and negligent manner at a very high speed came from Khanak side and struck against their motorcycle, resultantly the ill-fated motorcycle bearing registration No.HR-22-1166 got entangled with the offending vehicle and Satyawan, now deceased was also dragged along with the motorcycle for some distance and he suffered multiple injuries including those on head; that he was removed to Sharma Hospital, Tosham for treatment but keeping in view his serious condition, he was referred to Sarvodya Hospital, Hisar; unfortunately Satyawan succumbed to the injuries after 5 days; that an FIR No.223 dated 26.10.2006 for the offences under Sections 279 and 304-A IPC was registered regarding the accident on the basis of statement of Satyawan son of Partap Singh; that postmortem examination on the dead body of the deceased was conducted at General Hospital, Hisar.

On notice, respondents No.1 and 2 had appeared and filed separate written statements contesting the claim petition.

In the written statement filed by respondent No.1, he had raised various legal objections challenging maintainability of the claim petition contending that the motorcycle on which the deceased was riding had struck against the Neel Gai (roze), which had appeared on the road all of a sudden; that the deceased fell down on the road and sustained injuries on his person; that there was no impact of motorcycle either with the motorcycle of the deceased or with the deceased; that the answering respondent was coming from Khanak side and going towards village Dadam; that he had noticed the accident, which had already taken place and when he tried to go ahead, his motorcycle slipped, he fell down on the road and sustained minor abrasions; that he has been falsely involved in this case as well as in the criminal case just to extract money from him. He further contended that the claim petition was bad on account of non-joinder and misjoinder of necessary parties since owner, driver and insurer of the motorcycle, on which the deceased was travelling had not been impleaded as respondents. On merits, such respondent denied happening of any such accident contending that FIR lodged is false and baseless. Such respondent denied that he was rash and negligent or had caused the same accident. In the end, he prayed for dismissal of the claim petition.

Respondent No.2 in the separate written statement filed by him, has also taken up almost the same stand as taken by respondent No.1 further contending that the accident is said to have been taken place on 21.10.2006, however, FIR was lodged on 26.10.2006 only after death of Satyawan son of Bhoop Singh; that Satyawan son of Partap Singh the alleged driver of the motorcycle had made statement to the police, which

was entered in the Roznamcha of Police Station Tosham and it was to the effect that a Neel Gai (roze) had suddenly appeared on the road due to which balance of motorcycle was lost by him; he had fallen on the side of the sand *tilla* not suffering any injury, whereas Satyawar had fallen on the road and had suffered head injuries and Sandeep son of Sh.Amrit had also suffered injuries and nobody was at fault in happening of the accident. The said version was corroborated by the Panchayat. The brother of deceased Satbir had also made statement to the police on those very lines. The version was incorporated in the DDR entered in the Police Station Tosham and if the respondent No.1 was at fault, FIR should have been lodged on the same day. Refuting the remaining assertions in the petition, such respondent also prayed for dismissal of the claim petition.

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

1. Whether the accident took place due to rash and negligent driving of Hero Honda motorcycle bearing registration No.HR-16-E-1879 by respondent No.1 Sandeep resulting into death of Sh.Satyawan, as alleged? OPP.
2. If issue No.1 is proved, whether claimants are entitled for compensation, if so, to what amount and from whom? OPP.
3. Whether the petition is not filed in accordance with provisions of law and is not maintainable? OPR.
4. Whether the petition is bad for non-joinder and mis-joinder of parties? OPR.
5. Relief.

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

After hearing learned counsel for the parties, the claim petition was dismissed by the Tribunal vide Award dated 30.5.2009, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents. Only respondents No.1 and 2 appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the award in question is not sustainable and is liable to be set aside.

The claimants had brought enough evidence on record, both oral as well as documentary to show that respondent No.1 – Sandeep was author of the accident by his rash and negligent driving of the offending vehicle. However, the Tribunal wrongly disbelieved that evidence and decided issue No.1 against the claimants. The Tribunal has doubted the version of the claimants for the reason that FIR in this case was lodged on 26.10.2006 with Police Station Tosham when as a matter of fact the accident had taken place on 21.10.2006. The complainant in the FIR happened to be Satyawar son of Partap Singh, who had not suffered any injury.

The findings of the Tribunal on issue No.1 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 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.

Delay may be an important aspect while deciding a criminal case. However, too much significance cannot be attached to delay in lodging FIR while deciding a claim petition. After the accident Satyawar son of Bhoop Singh had been taken to hospital and after about five days, he had expired. Naturally it was first priority for the relatives of the deceased to take him to hospital and to get medical treatment for him so as to make earnest efforts to save his life rather than going to the police station first to lodge report regarding the accident. As regards the observations that Satyawar son of Partap Singh had made a statement to the police that a Neel Gai had suddenly appeared on the road as a result of which the accident had taken place, the Tribunal has given too much

importance to that aspect ignoring the fact that said Satyawar had appeared in the Court as PW2 and provided eye-witness account of the accident furnishing his affidavit Ex.PW2/A categorically stating that the accident in which Satyawar son of Bhoop Singh had suffered injuries, had taken place on account of rash and negligent driving of the offending motorcycle by respondent No.1 – Sandeep and he had lodged FIR with regard to the accident. He was subjected to lengthy cross-examination on behalf of the respondents but he remained unshaken and his credibility could not be shattered on any material point. He had categorically denied having made any statement Ex.R1 to the police, though he had admitted his signatures thereon. He had denied knowledge with regard to entering of any DDR with respect to the accident by the police, rather he stated that he had made statement regarding the accident to the police on 25.10.2006 only. The statement in Court of Satyawar son of Partap Singh appears to be much more convincing and reliable than the alleged statement made by him to the police Ex.R1, which formed basis for recording of the DDR. Then Sandeep – respondent No.1 though in his affidavit Ex.RW2/A had repeated his version as given in his written statement but then in his cross-examination, he stated that the FIR has been lodged against him and he has not moved any application before the higher police authorities for cancellation of FIR against him. ASI Satbir Singh examined by respondents to prove the settlement between the parties, in his cross-examination had stated that he was Investigating Officer of the case registered vide FIR No.223 dated 26.10.2006 and after investigation he had arrested accused Sandeep, thereafter filing challan against him in the

Court. He categorically stated that in settlement it was recorded that accident had taken place due to some Neel Gai, however in the investigation, it transpired that it had been caused by Sandeep. He was a witness examined by the respondents themselves. As such, respondents cannot wriggle out of the admission by their own witness. Then in the written statement, respondent No.1 admits his presence at the spot and his having suffered injuries though coming up with a plea that the accident had already taken place and while he was going nearby, he slipped and suffered injuries. This case seems to be highly unconvincing and improbable. The version set up by the claimants is much more convincing probable and plausible, which is supported by the fact that formal FIR has been registered against respondent No.1 for causing the accident by his rash and negligent driving of the motorcycle. After registration of the FIR, the matter was investigated by the police and then he was sent up to face trial. If respondent No.1 had not caused the accident, then the police would not have forwarded him to the Court to face trial by filing challan against him. As per his own statement till date, he has not submitted any written application to the higher authorities complaining against his alleged false implication in this case. If he had been roped in wrongly, he would not have kept quiet with damoclean sword of conviction hanging over his head. His silence and inaction goes to show that his plea of false implication lacks merits. The respondent No.1 has been charge-sheeted by the criminal Court with regard to causing the accident, therefore, the finding of the Tribunal on issue No.1 cannot stand judicial scrutiny. The same is set aside and issue No.1 is decided in favour of the claimants

against respondents holding that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1 resulting in causing injuries to Satyawan son of Bhoop Singh, to which he succumbed subsequently.

Similarly the finding of the Tribunal on issue No.2 is wrong. In view of the detailed discussion above, the respondent No.1 being driver and respondent No.2 being owner of the offending vehicle are liable to pay compensation to the claimants, who are legal representatives of the deceased and who as it comes out from the evidence were dependent upon the earnings of the deceased.

Now the question is that of quantum of compensation. As per the case of claimants, the deceased was aged about 30 years and was engaged in avocation of agriculture, dairy farming and trading earning Rs.30,000/ per month. PW1 Smt.Geeta Devi in her affidavit Ex.PW1/A has asserted so. However, in her cross-examination, she stated that her husband was illiterate; he was not having any land; he was not keeping any animal for the purpose of dairy, though she stated that he used to purchase milk and sell it in the market, as such was a milk vendor but no cogent and convincing evidence is there in the form of statement of some person, who might have purchasing milk from the deceased, which could lead to an inference that he was a milk vendor. She stated that the deceased used to deal in milk selling only, that means the assertions with regard to the deceased being engaged in an avocation of agriculture, trading etc. are not correct. It is not established on the record that he was a milk vendor. However, keeping in view all the facts and circumstances, I

find it proper and appropriate to take his monthly income to be Rs.5,000/- per month.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as $\text{Rs.5,000} + 2000 = \text{Rs.7,000/-}$.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** where the number of dependent family members are four, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.5,250/- per month, annual dependency comes out to $\text{Rs.5,250} \times 12 = \text{Rs.63,000/-}$

Keeping in view the age of deceased and in view of judgment **Smt. Sarla Verma and others (supra)**, a multiplier of 17 is required to be applied. Doing that the compensation payable comes out to Rs.10,71,000/-(63,000 x 17). 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 $\text{Rs. } 10,71,000 + 70,000 = 11,41,000/-$. Both the respondents being driver and owner of the offending vehicle are liable to pay the compensation jointly and severally.

Thus finding on issue No.2 is reversed and it is decided in

favour of the claimants/petitioners and against the respondents.

Issue No.3 had been decided by the Tribunal against the respondents. However, the claim petition filed by the claimants, who are legal representatives of the deceased against both the respondents is perfectly maintainable under Section 166 of the Motor Vehicles Act, 1988. This issue is thus decided accordingly.

Issue No.4 had been decided against the respondents. Even otherwise, the petition is not found to be bad for non-joinder and mis-joinder of necessary parties.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.11,41,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides costs of the petition is awarded to claimants.

Of the compensation awarded, the liability shall be joint and several of both the respondents. The amount shall be apportioned as follows:

1. Petitioner No.1 – Geeta Devi - 40%
2. Petitioners No.2 to 4– Manjeet, Aman, Guddi(minors) – 20% each

It is directed that the shares of minor petitioners/claimants shall be kept deposited in the form of fixed deposit with some nationalized bank for the period till they attained majority.

26.7.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No