

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

FAO No.2663 of 2012

Date of Decision:14.01.2019

Hardev Singh

...Appellant

versus

Sukhdev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. B. S. Bhalla, Advocate
for the appellant.

Mr. Rajesh Bhatheja, Advocate,
for respondents no.1 to 4.

Amol Rattan Singh, J.

This is an appeal filed by the owner of a vehicle against whom the impugned Award has been passed by the learned Motor Accidents Claims Tribunal, Moga, on January 13, 2012, thereby awarding respondents no.1 to 4 herein compensation to the tune of Rs.2,08,00/-, on account of the death of Manjit Kaur, wife of the 1st respondent and mother of respondents no.2 to 4, in a road side accident that took place on 20.09.2009.

2. As per the case of the claimants, when Manjit Kaur was going (on foot) to her work at Village Baude, Tehsil Nihal Singh Wala, District Moga, at about 5.00 PM on that date, a vehicle (Marshal Jeep) bearing registration No.HR-01-2310, driven by respondent no.5 herein (Tarsem Singh alias Tek Singh), came and hit her, due to which she received multiple injuries. She was admitted to the Civil Hospital at Moga, where she died.

3. What is to be noticed is that FIR No. 76 is stated to have been

registered on the same date, i.e. 20.09.2009, at Police Station Badhni Kalan, District Moga, making out therein the commission of offences punishable under Section 392 of the IPC and Section 25 of the Arms Act, 1959.

Subsequently, on the same date, Rapat No. 17 (Daily Diary Entry) was also registered, by which an offence punishable under Section 304 of the IPC was added in the FIR itself.

It is again to be noticed that the offence shown to be registered vide the aforesaid Diary No., was one punishable under Section 304 and not Section 304-A of the IPC.

4. Manjit Kaur was stated to have been earning as Rs. 10,000/- per month as per the claimants, by running her own dairy farm and was stated to be 40 years old at the time of her death.

5. Notice having been issued in the claim petition, the present appellant (respondent no. 2 before the Tribunal) filed a written statement stating therein that the claim petition is not maintainable against him, as his jeep had been snatched by a person called Tarsem Singh (i.e. respondent no.1 before the Tribunal and presently respondent no. 5 in this appeal), under threat with a pistol, leading to the registration of the aforesaid FIR; and that the claimants also had knowledge of that fact, as they themselves had said so in para 9 of the petition.

It was further pleaded by the appellant that the vehicle not having been given to the aforesaid Tarsem Singh with the appellants' consent, the claim petition against him was actually liable to be withdrawn.

The rest of the contents of the claim petition were simply denied for want of knowledge, except para 8 thereof to the extent that it was admitted that the accident actually took place at 5.00 PM on 20.09.2009 at Village

Baude.

6. The aforesaid Tarsem Singh also filed a separate written statement, taking preliminary objections that the claim petition was not maintainable and he was not at any fault and that a false FIR was got registered against him.

It was further contended that the claim petition was vague and that the deceased was an 'idle lady', with all contents thereof also denied.

7. On the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

- “1. Whether Manjit Kaur died in motor vehicular accident due to the rash and negligent driving of Tarsem Singh respondent while driving Jeep No. HR 01 2310 in a rash and negligent manner on 20.09.2009 in the area of Village Baude? OPP
2. Whether claimants are entitled to compensation, if yes to which extent and from whom? OPP
3. Relief.”

8. The claimants examined the following witnesses:-

Bhagwan Singh PW1; Sukhdev Singh PW2 (claimant no. 1) and Jagsir Singh PW3.

The respondents examined the following witnesses:-

Sukhmander Singh Election-clerk in the office of the SDM, Nihal Singh Wala, RW1; Hardev Singh respondent no.2- RW2; Thakur Singh RW3; and Tarsem Singh respondent no.1-RW4.

9. On appraising the evidence, the learned Tribunal found that the first claimant, Sukhdev Singh, husband of the deceased, in his cross examination had feigned ignorance on whether any case was pending against Tarsem Singh regarding the theft of the Jeep, though otherwise he supported the case as regards the manner of the accident.

Tarsem Singh, who deposed as RW4, denied the factum of the accident completely, or that he had snatched the Jeep from the appellant-Hardev Singh.

An argument having been raised that the claim petition was not maintainable in view of the fact that the offence qua the accident was also punishable under Section 304 of the IPC and not under Section 304-A of the IPC, that contention was rejected, holding that even the registration of an FIR is not a *sine qua non* for the maintainability of a claim petition under the Motor Vehicles Act, 1988.

As regards the factum of the accident having taken place in the manner described by the claimants, it was found that the death of the deceased was caused due to the rash and negligent driving of Tarsem Singh.

10. On the quantum of the compensation, it was found by the Tribunal that PW1 Bhagwan Singh had admitted in his cross-examination that the deceased was not running any dairy but used to sell milk and that he used to purchase milk from her for about 2 to 3 years, though he did not get any receipt with regard to such purchase.

It was also found that RW3 Thakur Singh, who claimed to be the Numberdar of the village, had testified that she was a “household lady”, who had not kept any buffaloes but had one cow.

Two of her sons, i.e. respondents no.2 and 3 herein were found to be married and were earning their own livelihood, with her husband, i.e. the 1st claimant- respondent herein, also doing labour work, earning Rs.4000/- per month.

To prove the age of the sons, RW1 Sukhmander Singh had proved the voters list of the year 2011 as Ex.R1, showing them to be 35 years

and 24 years old respectively, both of them being married.

Manjit Kaur was shown to be about 50 years old as per the said voters list.

11. On the aforesaid evidence, it was first found by the learned Tribunal that it could not be proved that Manjit Kaur was earning Rs.10,000/- per month by selling of milk, but in fact that she was a “household lady”, who nevertheless rendered services at home, with the claimants also having lost her love and affection.

Her income therefore was assessed to be Rs.1500/- per month or Rs.18,000/- annually.

A multiplier of 11 was applied as per her age, thereby coming to a total sum of Rs.1,98,000/- by way of loss of dependent income.

Her husband was also held entitled to compensation for loss of consortium to the extent of Rs.5000/- with Rs.5000/- also awarded towards funeral expenses.

Hence, the total compensation awarded was Rs.2,08,000/-, as already noticed.

Interest @ 9% per annum was awarded on that amount, running from the date of filing of the claim petition till its realisation.

12. On the issue of liability to pay the compensation, the Tribunal recorded a finding that whether or not the vehicle was snatched from the present appellant by respondent no.5 herein, was not an issue to be decided in the claim petition, with the criminal trial pending before the competent court.

Hence, with the vehicle admittedly found to be that of the present appellant (respondent no.2 before the Tribunal), both he and respondent no.5 herein, i.e.

Tarsem Singh were held jointly and severally liable to pay the compensation,

apportionment of which was also given in the Award, which is not being gone into, this appeal being that of the owner of the vehicle, with no question on such apportionment having been raised.

13. In this appeal, Mr. Bhalla, learned counsel for the appellant, submitted that, admittedly, even as per the claim petition, FIR no.76 dated 20.09.2009 was registered on the same date that the accident took place, making out offences punishable under Section 392 IPC and Section 25/59 of the Arms Act, with the offence punishable under Section 304 of the IPC having been added later by way of DDR/'Rapat' no.17 dated 20.09.2009. He, therefore, submitted that the vehicle having been taken under pressure and threat from the appellant by respondent no. 5 herein, as was also recorded in the FIR, the appellant not being in possession or control of the vehicle at the time that the accident took place, he in any case would not be liable to pay any compensation awarded by the Tribunal.

To substantiate his contention that with no control over the vehicle, the appellant could not be held liable, Mr. Bhalla relied upon two judgments of the Supreme Court, in ***Purnya Kala Devi Versus State of Assam and another, 2014 (2) Apex Court Judgments 127 (SC)*** and ***HDFC Bank Ltd. Versus Kumari Reshma and others, 2015 (1) RCR (Civil) 1.***

14. On the other hand, Mr. Bhateja, learned counsel for the respondent, submitted that the vehicle not having been insured, the entire story given in the FIR was wholly concocted, with the FIR having been admittedly registered at 9.20 PM and nothing having been brought on record as to its final outcome.

He thus submitted that with only ₹ 2,08,000/- having been awarded to the respondents-claimants, though they are not in appeal for the

enhancement of the said compensation, the appellant cannot be absolved of his liability to pay such compensation.

15. Having considered the matter, though Mr. Bhalla, learned counsel for the appellant is correct in contending that if indeed the vehicle had been snatched at gun point from the appellant and had thereafter met with an accident, he would not be liable to pay any compensation, even being the owner thereof, as would also be obvious from the ratio of the judgments of the Supreme Court cited by him in *Purnya Kala Devis'* and *HDFC Bank Ltds'* cases (both supra); yet, it is seen that, firstly, not even the outcome of the FIR has been even attempted to be led by way of any application under Order 41 Rule 27 before this Court and consequently, whether respondent no.5 was found even *prima-facie* guilty in the investigation of having committed an offence punishable under Section 392 IPC or the Arms Act, is not shown before this court.

In fact, in that background, I would also give due credence to the contention of Mr. Bhatheja, learned counsel for the respondents no.1 to 4 (claimants), that information with regard to the car allegedly having been taken at gun point from the appellant, having been given to the police only at 9:20 p.m., even as per the FIR, i.e. about 4 hours and 20 minutes after the accident had taken place, and the snatching of the vehicle, if at all it took place, obviously being even before that, it is doubtful whether the whole story of the alleged snatching was factually correct, or simply a cooked up story to avoid any liability (civil and criminal) of the appellant, especially as the vehicle was admittedly not insured.

16. Secondly, the appellant would also be necessarily liable to pay the compensation, he not having insured the vehicle as he was statutorily

required to do as per sub-section (1) of Section 146 of the Motor Vehicles Act, 1988, which reads as below:-

“146. Necessity for insurance against third party risk.-(1) No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter:

[Provided that in the case of a vehicle carrying, or meant to carry, dangerous or hazardous goods, there shall also be a policy of insurance under the Public Liability Insurance Act, 1991 (6 of 1991).]

Explanation.- A person driving a motor vehicle merely as a paid employee, while there is in force in relation to the use of the vehicle no such policy as is required by this sub-section, shall not be deemed to act in contravention of the sub-section unless he knows or has reason to believe that there is no such policy in force.

XXXXX

XXXXX

XXXXX”

17. Consequently, with the appellant also having stated before the police, as noticed by the learned Tribunal, that he knew respondent no.5, the story of the vehicle having been allegedly snatched by respondent no.5 from the appellant, is not easy to believe.

Further, he not having fulfilled his statutory duty to insure the vehicle to indemnify himself in case liability against a 3rd party arose, I find no ground to entertain this appeal, simply on the ground that an allegation was made by the appellant in the FIR, as also in the claim petition, that the vehicle had been stolen from him at gun point, with that allegation never having been substantiated in any manner whatsoever.

18. Still further, simply because in the claim petition, the respondents-claimants while giving the name and address of the police station in the jurisdiction of which the accident took place, had admitted that an FIR had been registered making out therein the commission of offences punishable under Section 392 of the IPC and Section 25 of the Arms Act, did not mean that they admitted any such occurrence of the snatching of the vehicle had taken place, but were simply informing the court that an FIR to that effect had been registered to their knowledge.

Such knowledge would naturally have been available with them because in the same FIR subsequently, on the same date, an offence punishable under Section 304 of the IPC was added vide Diary no.17.

19. As regards the issue on negligence in causing the accident, no argument has been raised before this court, with it seen that even in the grounds of appeal no challenge to that finding of the Tribunal has been raised.

Consequently, there would be no reason to differ with the finding of the Tribunal on that issue, respondent no.5 in any case not having filed any appeal against any finding of the Tribunal and the Tribunal having found that other than his bare testimony denying that he was at fault in causing any accident at all (the factum of the accident itself being denied by him), there was no reason to disbelieve the testimony of respondent no.1 herein, who was an eye witness to the accident, with even the appellant herein not having denied the factum of the accident.

Hence, the finding on negligence in causing the accident is also upheld by this court.

20. As regards the compensation awarded by the Tribunal, again no specific argument has been raised even in the grounds of appeal, with thus no challenge made to the quantum of compensation, the entire thrust of the appeal being that the vehicle having been snatched by respondent no.5 from the appellant, the appellant cannot be held liable to pay the compensation, with that contention in any case having been already rejected by this court hereinabove.

21. Also, though it is seen that no deduction towards the personal expenses of the deceased has been made by the Tribunal while granting compensation under the head of loss of income to the claimants, it is further seen that the loss of consortium has been restricted to Rs.5000/- in all, whereas even as per the judgment of the Constitution Bench in **National Insurance Company Ltd. v. Pranay Sethi (2017) 16 SCC 680**, that amount is to be Rs.40,000/-, with the funeral expenses also to be Rs.15,000/- whereas only Rs.5000/- have been awarded.

Consequently, the compensation of Rs.2,08,000/- is not found to be excessive in any manner for the death of a lady of the house, upon whom multifarious responsibilities fall, other than the fact that the respondent-claimants were deprived of her love and affection too early.

In fact, this court would like to observe that possibly the compensation may be on the lower side, but with no appeal having been filed by the claimants for enhancement thereof in the past 6 years since the Award was passed, naturally, nothing further need be said on that.

20. In view of the aforesaid findings, I find no merit in this appeal, which is dismissed with costs of Rs.20,000/-, respondent no.1 (claimant and

husband of the deceased), having been found to be an unskilled labourer only, who has unnecessarily been dragged to this court.

January 14, 2019
shabha/dinesh

(AMOL RATTAN SINGH)
JUDGE

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|-------------------------------|-----|
| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | Yes |