

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 640 of 2012 (O&M)

Date of decision : 15.5.2019

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Nisha Devi and others

.....Appellants

vs.

Proprietor M/s Kundu Construction Company
and others

.....Respondents

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

Present: Mr. Gopal Sharma, Advocate for the appellants

Ms. Vandana Malhotra, Advocate and
Ms. Monika Jangra, Advocate for respondent No.3
- Insurance company.

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H. S. Madaan, J.

On account of death of Hari Ram, statedly aged about 37 years, working as a Reporter with a News Channel, in addition to that having photo studio, in a motor vehicular accident, which took place on 23.5.2009, at about 7.30 P.M., on Jakhala canal over bridge, Kosli- Chawwa road, Police Station Kosli, District Rewari, allegedly on account of rash and negligent driving of road roller No. HAMM-HD-85 by respondent No.2 Nanak, his LRs, i.e. wife Smt Nisha Devi aged about 37 years, minor daughters Baby Laxmi aged about 9 years, Baby Reetika aged about 6 years and minor son Master

Mayank aged about 4 years, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against the respondents i.e. Proprietor M/s Kundu Construction Company, Rohtak – owner, Nanak driver and United India Insurance Company Limited, Rewari, Insurer of road roller No. HAMM-HD-85 (hereinafter referred as 'the offending vehicle'), claiming compensation.

As per case of the claimants, on 23.5.2009, deceased Hari Ram s/o Shiv Shankar, alongwith Satish Kumar s/o Ram Narain, resident of vilage Kosli were going to his village Kosli from village Babepur on a scooter. When they reached on Jakhala Canal minor bridge, a road roller No. HAMM-HD-85 , came from opposite side being driven in a rash and negligent manner by respondent No.2 Nanak and struck on front side of the scooter, as a result Hari Ram fell down on the road and sustained multiple and grievous injuries. While being removed to the hospital, he died on the way. Formal FIR No. 90 dated 24.5.2009 for offences under Sections 279, 304-A IPC, was registered at Police Station Kosli against respondent No.2. According to the claimants, the deceased was having good health and physique and was aged 37 years and was earning Rs.15,000/- as reporter in a news channel and Rs.10,000 to Rs.15000/- per month from his shop of photo studio and claimants were fully dependent upon his income.

On notice, all the respondents were served. Respondents No. 1 and 2 did not appear despite service and they were proceeded against ex parte. Whereas respondent No. 3 Insurance company appeared and filed a written reply contesting the claim petition,

raising various legal objections with regard to maintainability of the petition, cause of action, concealment of true facts by the claimants and respondent No. 2 not having valid and effective driving licence. On merits, respondents denied material assertions in the claim petition submitting that no such accident had taken place; that the offending vehicle was not insured with the answering respondent; the offending vehicle was not being driven under proper permit. In the end such respondent prayed for dismissal of the claim petition.

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

1. Whether the accident which took place on 23.5.2009 at about 7.30 P.M. On Jakhala Canal over bridge at Kosli-Chawwa road P.s. Kosli, District Rewari, had occurred due to rash or negligent driving of road roller No. HAMM-HD-85 by Nanak, respondent No.2? OPP
2. What is the amount of compensation to which petitioners shall be entitled on account of death of Hari Ram in the accident and from whom, if issue No.1 is proved in favour of the petitioners? OPP
3. Whether petitioners have no locus standi and cause of action to file present petition? OPR
4. Whether respondents No. 1 and 2 were not holding a valid and effective driving licence to drive road roller at the time of accident, if so to what effect? OPR
5. Relief.

In order to prove their case, petitioners examined Dr. Rajesh

Kumar, Medical Officer, General Hospital, Rewari as PW-1, Smt. Nisha Devi, widow of the deceased as PW-2 and Rakesh @ Vicky s/o Nathu Ram as PW-3 and closes their evidence after tendering certain documents.

Respondent No.3- Insurance company tendered Insurance Policy Exhibit RA and closed its evidence.

After hearing arguments, the Motor Accidents Claims Tribunal, Rewari, decided issues No. 1 and 2 against the petitioners and in favour of the respondents, whereas issues No. 3 and 4 were also decided against the petitioners.

Consequently, the claim petition was dismissed vide award dated 1.9.2011.

The claimants felt aggrieved by the said award and have approached this Court by way of filing the present appeal, notice of which was given to the respondent – Insurance company. Such Insurance company put in appearance through counsel.

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

At the very outset, it may be stated that the findings recorded by the Tribunal on issues +9No. 1 and 2 are totally wrong, based upon erroneous and misconceived interpretation of factual and legal position. The claimants had led enough oral as well as documentary evidence to prove that respondent No.2 Nanak was author of the accident by his rash and negligent driving of road roller in which Hari Ram had suffered injuries, to which he succumbed. The oral evidence comprised of testimony of PW-2 Rakesh @ Vicky, who

deposed in consonance with the case of the claimant. Though he was cross examined at length on behalf of the appearing respondent, but his credibility could not be shaken on any material point. Merely because of the fact that he had not informed the police regarding the accident does not make his presence at the spot doubtful.

The Tribunal had made much of the fact that this witness has admitted in his cross examination that he had not seen the driver of the road roller at the spot and he was unable to tell the time of the accident as well as his name, parentage of other person who was travelling on the scooter of Hari Ram. Such lack of knowledge on part of PW-3 Rakesh @ Vicky does not make him an un-reliable witness, since otherwise his testimony is found to be convincing and plausible. It has to be taken note of that FIR No. 90 dated 24.5.2009 for offences under Sections 279/304A IPC, was registered at Police Station Kosli, against Nanak respondent No.2. Registration of FIR prima facie goes to show the involvement of the person named in the FIR as driver of the offending vehicle in the accident. From the testimony of PW-1 Dr. Rajesh Kumar, Medical Officer, General Hospital, Rewari, who had performed post mortem examination on the dead body of the deceased, corroborated the case of the claimants. Copy of charge sheet Exhibit P-2 goes to show that respondent no.2 has been served with a charge sheet for offences under Sections 279, 304-A IPC by SDJM, Kosli, on account of causing death of Hari Ram by his rash and negligent driving of road roller. It has to be taken note of that on getting notice, respondents No.1 and 2 owner

and driver of the offending vehicle had not opted to put in appearance to offer a contest. The evidence adduced by the claimants had virtually gone un-rebutted. The respondent-Insurance company had not led any evidence in rebuttal. Rather counsel for respondent No.3 -Insurance company had closed its evidence after tendering Insurance Policy. There was more than sufficient evidence to show the involvement of the offending vehicle in the accident and the same being driven by respondent No.2 – Nanak at the relevant time and his rash and negligent driving of the offending road roller being responsible for the accident. The whole approach of the Tribunal in dealing with the matter has been wrong and erroneous. It has dealt with the case as if it was trying a criminal case. The yardstick for trying a criminal case is entirely different than the claim petition under the Motor Vehicles Act. In a criminal case, life and liberty of a person is at stake. Therefore, the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt. Whereas a claim petition under Section 166 of the Motor Vehicles Act, it is a piece of welfare legislation enacted to provide monetary help to the victims of the road side accidents, as well as, heirs of such victims, if they perish in such mishaps. A liberal and sympathetic view in the matter is required to be taken and not to get bogged down in technicalities.

Thus findings of the trial Court on issue No. 1 is reversed and issue No. 1 is decided in favour of the claimants and against the respondents.

With regard to issue No.2, as per case of the claimants, the deceased was aged about 37 years and was working as a press reporter with a News Channel, earning Rs.15,000/- per month. In addition to that he was earning Rs.10,000/- to 15,000/- per month from his photo studio. From the school certificate of deceased Exhibit P-8 and in the post mortem report of the deceased Exhibit P-1, his age is mentioned to be 37 years. Wife of the deceased, namely, Nisha Devi, claimant, appearing as PW-2, in her affidavit has given such age and avocation of the deceased. In the absence of any rebuttal evidence, I take age of the deceased to be 37 years.

The claimants have not brought any cogent or convincing evidence to show the avocation and income of the deceased. However, keeping in view his educational qualifications and other facts and circumstances of the case and in view of his occupation, that of a photographer, I am of the view that it would proper and appropriate, if his monthly income is taken to be Rs.8,000/-. It is ordered accordingly. To this amount 40% is to be added towards the future prospects. Thus the total monthly income of the deceased is worked out to Rs.11,200/- (Rs.8,000 + 3,200).

Keeping in view the number of dependents upon him to be 4, 1/4th amount is deducted towards his personal expenses, leaving the dependency of the dependents to be Rs.8,400/- per month. (Rs.11,200 – 2,800). The annual dependency of the claimants thus comes out to Rs.8,400 X 12 = Rs. 1,00,800/-.

Considering age of the deceased to be 37 years, in view

of authority *Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77.* multiplier of 15 is required to be applied. By doing that, the compensation is worked out to Rs. 1,00,800 X 15 = Rs. 15,12,000/-.

As per authority *National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,* the claimants are entitled to get a sum of Rs.15,000/- under the Head loss of estate, Rs.40,000/- under the Head loss of consortium, Rs.15,000/- towards funeral expenses, totaling (Rs.15,000 + 40,000 + 15,000) = Rs.70,000/-.

The total compensation amount, as such comes out to Rs.15,12,000 + Rs.70,000/- = Rs. 15,82,000/-.

With regard to issue No.3, the claimants Nisha Devi being widow, claimants Laxmi and Reetika, minor daughters and claimant Mayank – minor son, of the deceased are his legal representatives and legal heirs and as deposed by PW-2 Nisha Devi, they were dependent upon earnings of the deceased, as such they have got locus standi to bring the petition and on death of Hari Ram, the cause of action did arise to them to bring the petition. Thus finding of the Tribunal on issue No.3 is reversed and issue No.3 is decided against the respondents.

With regard to issue No.4, onus to prove this issue was upon the respondent-Insurance company, who had not led any evidence to discharge such burden of proof, rather counsel for the Insurance company closed its evidence after tendering Insurance policy. Copy

of driving licence of respondent No.2 is there on record as Exhibit P-

5. The Insurance company did not make any effort to summon record from the issuing office of Exhibit P-5 to show that the licence was not issued by that office or the licence is otherwise fabricated or fake document. Therefore, findings of the Tribunal on issue No.4 are reversed and issue No. 4 is decided against the insurance company.

In view of the findings given on issues above, the claim petition is bound to succeed. The award passed by the Tribunal is set aside. The claim petition is accepted and claimants are held entitled to get a compensation of Rs.15,82,000/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization. The liability to pay this amount would be joint and several by all the three respondents. The amount of compensation shall be apportioned as follows:-

1. Petitioner No. 1 Nisha Devi – 40%
2. Petitioner No.2 Laxmi, minor -20%
3. Petitioner No.3 Reetika, minor -20%
4. Petitioner No.4 Mayank, minor -20%

It is further 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 attain majority.

The appeal is allowed with costs.

15.5.2019
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(H.S. Madaan)
Judge

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No