

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1590 of 2013 (O&M)

Date of decision : 3.4.2019

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Smt. Santosh and others

.....Appellants

vs.

Babu Lal and others

.....Respondents

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

Present: Mr. Ajit Sihag, Advocate for the appellants

Mr. Suvir Dewan, Advocate for respondent No.3
- Insurance company.

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H. S. Madaan, J.

Smt. Santosh- wife, Vinod – minor son, Rekha – minor daughter and Smt. Hardei – mother of Ram Phal, an unfortunate victim of a roadside accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988, against the respondents i.e. Babu Lal – driver, Kailash Chand Aggarwal, owner and the Oriental Insurance Co. Ltd., Jaipur through its Divisional Manager, Hisar, insurer of truck No. RJ-14GB-8998 (hereinafter referred as 'the offending vehicle'), claiming compensation to the tune of Rs. 20 lacs.

As per case of the claimants, on 21.4.2011 at about 4.15 a.m.

Ram Phal (since deceased) was driving container No. HR-55L-6051,

proceeding towards Delhi. The container was being driven at a moderate speed. Another container having registration No. HR-55L-6061, being driven by Subhash, having Sangat as cleaner, was following the container being driven by Ram Phal. Both the containers were going on left side of the road. While being in the area near Nimrana turn, the offending truck was going ahead of the container being driven by Ram Phal. The said truck was being driven in a rash and negligent manner and at a very high speed by respondent No.1 Babu Lal. Babu Lal-respondent No.1 suddenly applied brakes of the offending truck, as a result of which container bearing registration No. HR-55L-6051 being driven by Ram Phal, dashed into the offending truck, due to which Ram Phal suffered multiple injuries and died at the spot. An FIR No. 111 dated 21.4.2011, for offences under Sections 279/304A IPC regarding the accident was registered against respondent No.,1 Babu Lal with Police Station Nimrana, District Alwar. Post mortem examination on the dead body of Ram Phal was performed at community Health Centre, Behror, Alwar, Rajasthan.

Thereafter, the claimants brought the claim petition in question contending that the deceased was aged about 45 years, working as a driver; that he was earning Rs.7,500/- per month and had left behind the petitioners as his legal representatives; that petitioners were dependent upon earnings of the deceased and on account of his unfortunate death, they have suffered lot of pain and suffering; that an amount of Rs.50,000/- was spent on performing last rites of the deceased.

On notice, respondents No. 1 and 3 put in appearance, whereas respondent No.2 did not appear despite service, as such was proceeded against ex parte vide order dated 22.11.2011. Respondents No. 1 and 3 filed separate written statements. In the written statement filed by the former, he had taken up various legal objections, challenging maintainability of the claim petition, further contending that no cause of action had arisen to the claimants to file the petition in question and they lack locus standi to do so. On merits, he denied the material assertions in the claim petition, contending that a false criminal case had been got registered against him, just to get the compensation and the offending truck had been wrongly roped in. According to such respondent, he was having a valid and effective driving licence at the time of accident. Therefore, insurance company was liable to indemnify the insurer.

In the written statement filed on behalf of respondent No.3, it had taken up almost the same stand as that of respondent No.1, though adding that driver of the offending truck was not having a valid and effective driving licence. Therefore, the insurance company was not liable to indemnify the owner. Both appearing respondents, craved for dismissal of the claim petition.

From the pleadings of the parties, following issues were struck by the Motor Accident Claims Tribunal, vide order dated 3.1.2012:-

1. Whether accident in question resulting into death of Ram Phal took place on 21.4.2011 on account of rash and negligent driving on the part of respondent No.1 while

driving vehicle bearing No. RJ-14GB-8998? OPP

2. If issue No.1 is proved, whether the petitioners are entitled to claim compensation, if so, how much and from whom?

OPP

3. Whether the insured/owner of the vehicles has violated terms and conditions of the insurance policy, if so to what effect? OPR-3

4. Relief.

Parties led evidence in support of their respective claims. In their evidence, the petitioners examined Subhash as PW-3, Krishan Kumar as PW-4, while petitioner Hardei stepped into the witness box as PW-1 and petitioner Santosh stepped into witness box as PW-2 and led documentary evidence as well.

On the other hand, respondents led documentary evidence only.

After hearing arguments, the Tribunal decided issue No.1 holding that the accident in question had taken place on account of rash and negligent driving of ill fated container by deceased Ram Phal, as well as of the offending truck by respondent No.1 Babu Lal. Issue No.2 was decided partly in favour of the petitioners, whereas issued No.3 was decided against respondent No.3.

Resultantly, the petitioner-claimants were awarded a compensation of Rs.6,32,000/- alongwith interest @ 9% per annum from the date of filing of claim petition till realization, payable by respondents No. 1 to 3, their liability being joint and several.

Apportionment of the compensation amount awarded was also made

and direction given in that regard, vide impugned award dated 9.11.2012.

Feeling aggrieved by the said award, the claimants have approached this Court by filing the present appeal praying for enhancement of the compensation.

Notice of the appeal was given to respondent No.3- Insurance company only.

I have heard learned counsel for the parties, besides going through the record and I find that the appeal has merit.

The Tribunal in its wisdom has held it to be a case of contributory negligence. Whereas in my considered opinion, it was not so. The fact has to be taken note of that neither respondent No.1 -driver of the offending truck, nor respondent No.3 – the Insurance company of the said truck, had taken any such plea. The law is well settled that a fact should be first pleaded and then proved. In the written statement filed by respondent No.1, he had flatly denied happening of any accident by his alleged rash and negligent driving of the offending truck, rather claiming that a false criminal case has been registered against him and the truck has also been roped in wrongly. Similarly respondent No.3 Insurance company has rather taken contradictory plea in para No. 7 of the preliminary objections stating that no accident had taken place with truck No. truck No. RJ-14GB-8998, whereas in para no. 8 alleging that the accident had taken place due to rash and negligent driving of vehicle No. HR 55L-6051 by its driver. Such type of stand taken by the Insurance company will not help it much.

After framing of issues, the parties were called upon to lead evidence. The petitioner claimants had examined Subhash eye witness of the accident as PW-3, who had categorically stated that accident took place on account of rash and negligent driving of truck No. RJ-14GB-8998 by respondent No.1 Babu Ram and that the deceased was driving the container at a moderate speed and after observing all the traffic rules. In his cross examination, nothing came out which can be suggestive of the fact that deceased had also contributed to the happening of the accident by his faulty driving. The crucial witness for the respondents was respondent No.1 Babu Lal himself, but he did not step into the witness box to deny that he had caused the accident due to rash and negligent driving of the offending truck or to state that the accident had taken place on account of fault of the deceased, rather the evidence adduced by the claimants in the form of examining eye witness PW-3 Subhash and placing on record copy of FIR Exhibit P4, copy of report under Section 173 Cr.P.C. as Exhibit P-5, such document showing that respondent No.1 was nominated been responsible for the accident and sent up to face trial on completion of investigation proves the case of the claimants. Such oral and documentary evidence adduced by the claimants has since gone un-rebutted.

The Tribunal merely on the basis of conjectures and guess work, came to the conclusion that it was a case of contributory negligence, for the reason that the deceased should have kept safe distance from the vehicle going ahead. No doubt every vehicle driver going on the road is expected to keep safe distance from the other

vehicles going ahead. But under what circumstances and for what reason much distance could not be maintained between the two vehicles, how much was the traffic on the road at that time, width of the road etc. are the factors to be considered, to determine the culpability of a vehicle driver, for happening of an accident. Under the circumstances, the Tribunal was not justified in coming to the conclusion that it was a case of contributory negligence.

The verdict given by the Tribunal on issue No. 1 in that way is reversed and issue No.1 is decided in favour of the claimants and against respondents, holding that the accident in question resulting into death of Ram Phal, took place on 21.4.2011, on account of rash and negligent driving on the part of respondent No.1 while driving vehicle bearing RJ-14GB-8998.

Now coming to issue No.2, the Tribunal has taken the age of the deceased to be 45 years and his monthly income to be Rs.7,500/-, considering his avocation as a driver. No fault could be found with the Tribunal in doing so.

The Tribunal has added 30% of the actual salary towards future prospects, following the law laid down in authority *Smt. Sarla Verma vs. Delhi Transport Corporation 2009 (3) RCR (Civil) 77.* However, in a recent judgment *National Insurance Company Limited vs. Pranay Sethi and others. 2017 (4) RCR (Civil) 1009,* the Constitutional Bench of the Apex Court has observed that when the deceased was self employed or on a fixed salary, an addition of 25% has to be made where such victim of the accident was between age of 40-50 years. Doing that, the monthly income of the deceased is

worked out to Rs. $\text{Rs.}7,500 + \text{Rs.}1,875 = \text{Rs.}9,375/-$.

The Tribunal has rightly deducted $1/4^{\text{th}}$ of the income towards personal expenses of the deceased. By doing that, the monthly dependency is worked out to $\text{Rs.}9,375 - \text{Rs.}2,344 = \text{Rs.}7,031/-$. The annual dependency thus comes out to $\text{Rs.}7,031 \times 12 = \text{Rs.}84,372/-$.

The Tribunal has rightly adopted multiplier of 14, in terms of law laid down in *Sarla Verma's case (Supra)*. By applying that multiplier the compensation is worked out to $\text{Rs.}84,372 \times 14 = \text{Rs.}11,81,208/-$.

The Tribunal has awarded a sum of $\text{Rs.}5,000/-$ towards funeral expenses and $\text{Rs.}5,000/-$ towards loss of estate, besides awarding a sum of $\text{Rs.}25,000/-$ on account of loss of love and affection. However, as per authority in *Pranay Sethi's case (Supra)*, under the conventional Heads, the claimants are entitled to get a sum of $\text{Rs.}15,000/-$ under the Head loss of estate, $\text{Rs.}40,000/-$ under the Head loss of consortium, $\text{Rs.}15,000/-$ towards funeral expenses, totaling $(\text{Rs.}15,000 + 40,000 + 15,000) = \text{Rs.}70,000/-$.

The total compensation amount as such comes out to $\text{Rs.}11,81,208 + \text{Rs.}70,000/- = \text{Rs.}12,51,208/-$.

The Tribunal has already awarded a sum of $\text{Rs.}6,31,708/-$, rounded off to $\text{Rs.}6,32,000/-$. In this way, the claimants shall be entitled to get additional compensation of $\text{Rs.}12,51,208 - 6,32,000 = \text{Rs.}6,19,208/-$.

The enhanced amount of compensation with interest @

7.5% per annum from the date of filing of appeal till actual realization. Other terms and conditions with regard to apportionment and payment shall remain the same as in the original award.

The finding of the Tribunal on issue No.3 is correct and does not call for any interference. The award is modified accordingly.

The appeal is allowed with costs.

3.4.2019
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(H.S. Madaan)
Judge

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