

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision: 11.4.2019

1. FAO No. 1343 of 2015(O&M)

Union of India and othersAppellants

VERSUS

Francis and anotherRespondents

2. FAO No. 1344 of 2015(O&M)

Union of India and othersAppellants

VERSUS

Johnson and anotherRespondents

3. FAO No. 3236 of 2015(O&M)

Union of India and othersAppellants

VERSUS

Shaina and anotherRespondents

4. FAO No. 5777 of 2014(O&M)

Union of India and othersAppellants

VERSUS

Aman Kumari and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Mahajan, Advocate for the appellants.

Mr. Ritesh Pandey, Advocate for respondent(s)/claimants.

REKHA MITTAL, J. (Oral)

This order will dispose of FAO Nos. 1343, 1344, 3236 of 2015 and 5777 of 2014 as these have emerged out of the same accident in which Garbriel Masih (since deceased), Francis, Saina and Johnson sustained injuries on the fateful day of 11.11.2011 when the deceased was driving motorcycle bearing No.PB-08-AW (Temp)- 9102 and minor injured were traveling on the pillion seat of the aforesaid motorcycle. All these appeals have been preferred by Union of India and others as the alleged offending vehicle truck bearing No.JK-02-W-7438-TC-1210 driven by C. Puran Bahadur belong to Border Security Force. For facility of reference, facts are taken from FAO No.5777 of 2014.

Counsel for the appellants would argue that the appeal has been preferred to assail findings of the Motor Accidents Claims Tribunal, Gurdaspur (in short 'the Tribunal') on issue No.2 on the basis whereof rashness and negligence in driving the alleged offending vehicle has been attributed to C. Puran Bahadur, its driver. It is vehemently argued that testimony of Danial Masih, real brother of deceased Gabriel Masih is not at all sufficient to discharge onus of issue No.2, by the claimants. It is further argued that the Tribunal failed to appreciate testimony of C. Puran Bahadur RW-1 in right perspective. In addition, it is argued that admittedly four persons were traveling on the motorcycle driven by Gabriel Masih, in

violation of the provisions of Section 128 of the Motor Vehicles Act, 1988 (in short 'the Act'). It is further argued that Gabriel Masih was not wearing helmet while driving motorcycle, therefore, he is guilty of violating the relevant rules and negligence can be attributed to him on this account as well.

Counsel representing the respondents/claimants has supported findings of the Tribunal on issue No.2. It is argued that driver of the offending vehicle was put to trial on the basis of FIR lodged by Danial Masih, registered at Police Station Kotli Surat Malhi. Neither the driver nor other respondents before the Tribunal raised an issue with higher authorities in respect of false implication of C. Puran Bahadur for causing the accident.

I have heard counsel for the parties, perused the paper-book and records.

Before adverting to the rival submissions made by counsel for the parties, it is necessary to take note of relevant facts pleaded in para 24 of the claim application and reply thereto filed by respondents No.1 to 4 before the Tribunal. The respondents/claimants have alleged that when the motorcycle driven by Gabriel Masih reached a little behind village Dera Pathana, truck bearing No.JK-02-W-7438-TC-1210 driven by respondent No.4 without blowing horn, rashly and negligently came from opposite side and hit motorcycle of the deceased. The respondents therein, in response to para 24 of the claim application, have categorically pleaded that accident occurred due to sole negligence of motorcyclist. Four passengers including the motorcyclist were going on the motorcycle

against Rules and Regulations of the Act. The motorcyclist was not wearing helmet and possessing valid driving licence at the time of accident. The Border Security Force (BSF) authorities have approached the local police for registration of criminal case against motorcyclist who caused the accident but the police did not take any action in this regard. The driver of the BSF vehicle was running the vehicle on its correct side at a very slow speed and as per traffic rules. He is an experienced driver having vast experience in driving. The motorcyclist was driving rashly and negligently and at a high speed who lost control while negotiating the curve and hit his motorcycle on the fuel tank on the right side of BSF vehicle.

Danial Masih, author of the FIR and an eye-witness to the occurrence appeared in the witness box and tendered into evidence his affidavit Ex.CW2/A by way of examination in chief. In para 2 of the affidavit, he has deposed that the motorcycle was driven on correct side of the road and driver of offending vehicle without blowing horn, rashly and negligently came from opposite side and hit motorcycle of the deceased, as a result of which the deceased died at the spot and his son Francis, daughter Saina and nephew Johnson suffered multiple grievous injuries. In his cross examination, he has admitted that four passengers were riding on the motorcycle and deceased was not wearing helmet. He has denied the suggestion that motorcyclist was driving rashly, negligently and at a very high speed or he lost control while negotiating the curve and hit his motorcycle on the fuel tank on the right side of BSF vehicle.

C. Puran Bahadur, driver of the offending vehicle appeared in the dock and tendered into evidence his duly sworn affidavit Ex.RW1/A wherein he reiterated the facts narrated in reply to para 24 of the claim application. In cross examination, he denied the suggestion that accident occurred due to his rash and negligent driving.

Perusal of the statement of Danial Masih, the sole witness examined by the claimants to prove issue No.2, would reveal that he has not given factual basis to lay foundation that the offending vehicle was driven rashly and negligently. However, he had stated that the motorcycle was driven on correct side of the road. On the other hand, there is no challenge to the statement of C. Puran Bahadur with regard to manner in which the accident in question took place because of the deceased having lost control while negotiating a curve. There is no denial that C. Puran Bahadur faced criminal proceedings for the occurrence. On due investigation of the FIR lodged at the behest of Danial Masih, challan was presented in the Court wherein Puran Bahadur has been indicted for committing offence punishable under Sections 304-A, 337, 338 and 427 IPC. The proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence to be applied. Indisputably, deceased was not wearing a helmet at the time of occurrence in violation of the relevant rules. Perusal of the postmortem report would reveal that the deceased sustained injury to vital centre of brain due to accident and cause of death is cardio respiratory arrest due to injury to brain. Taking a cumulative view of the discussion made hereinbefore when examined in the light of provisions of the Act being benevolent social legislation, it can

safely be held that the present is a case of contributory negligence of both the vehicles involved in the occurrence. Taking into consideration that the offending vehicle is a truck and driver of a bigger vehicle has more responsibility to take care of the smaller vehicles on the road, in my considered opinion, interest of justice would be met if negligence to the extent of 40% is attributed to the deceased and remaining 60% to driver of the offending vehicle. Accordingly, findings of the Tribunal on issue No.2 are modified in the aforesaid terms.

The Tribunal has assessed compensation of Rs.35,63,750/- including a sum of Rs.20,000/- under conventional heads. Counsel for the appellants has not made any submissions to assail quantum of compensation assessed by the Tribunal. The Appellate Court can re-appraise the evidence and pass a judgment that ought to have been passed by the trial Court. This apart, the Tribunal has an obligation to assess just and reasonable compensation to make good the loss the victim family has suffered. Compensation allowed by the Tribunal under conventional heads is inadequate and same is enhanced to Rs.70,000/- (additional amount of Rs.50,000/-) in the light of judgments of Hon'ble the Supreme Court **National Insurance Company Ltd. Vs. Pranay Sethi and others, 2017 SCC 1270** and **Sebastiani Lakra and others Vs. National Insurance Co. Ltd. and another, AIR 2018 SC 5034**, detailed hereunder:-

Loss of consortium	Rs.40,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-

In view of the above, total compensation is Rs.36,13,750/-. In view of findings on issue No.2, claimants shall be entitle to only 60% of the aforesaid amount along with interest in terms of the award. The appellants shall be entitle to recover the excess amount, if any paid, by filing an appropriate application before the Tribunal.

In view of what has been discussed hereinbefore, FAO No.5777 of 2014 is partly allowed in the aforesaid terms. Any miscellaneous application filed by either of the parties shall be deemed to be disposed of.

FAO Nos.1343, 1344, 3236 of 2015

In view of findings recorded in FAO No.5777 of 2014, the accident is to be treated as a case of composite negligence so far as claim made in respect of injuries sustained by minor claimants namely Francis, Saina and Johnson. Counsel for the appellants has not disputed that in a case of composite negligence of two or more vehicles, the claimant(s) is at liberty to claim compensation from either of the joint tortfeasors. Counsel for the appellants has also fairly conceded that compensation allowed in favour of minor claimants in respect of injuries sustained by them has already been released. In the given circumstances, there is no reason to intervene in the awards passed in favour of injured/minor claimants.

For the foregoing reasons, the appeals stand disposed of.

APRIL 11, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no