

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

FAO-4833-2015(O&M)

Date of decision:-18.7.2019

Smt.Sushila Devi and another

...Appellants

Versus

Pardeep Kumar and others

...Respondents

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

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

Mr.Vinod Gupta, Advocate,
for respondent No.3-Insurance Company.

H.S. MADAAN, J.

On account of unfortunate demise of Sanjay in a road side accident, which took place on 14.10.2013 at about 1:00/1:30 a.m. in the area within the jurisdiction of Police Station Khol, statedly on account of rash and negligent driving of car bearing registration No.RJ-32-CA/0736 (hereinafter referred to as the offending vehicle) by Pardeep Kumar - respondent No.1, parents of said deceased, namely, Smt.Sushila Devi, aged about 55 years – mother and Sh.Kehar Singh, aged about 60 years – father had brought a claim petition under Section 166 of the Motor Vehicles Act against the respondents i.e. Pardeep Kumar – driver,

Sundershan – owner and New India Assurance Company Ltd. - insurer of the offending vehicle, claiming compensation to the tune of Rs.50 lakhs.

On getting notice, all the three respondents appeared and filed written statements contesting the claim petition, denying the involvement of the offending vehicle in the accident and praying for dismissal of the claim petition.

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

1. Whether deceased Sanjay Kumar lost his life due to rash and negligent driving of offending vehicle bearing No.RJ-32-CA/0736 by respondent No.1 on 14.10.2013? OPP.
2. Whether the petitioners are entitled to get compensation, if so to what amount and from whom? OPP.
3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident? OPR No.3.
4. 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 4.4.2015, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents. However, only respondent No.3 – insurance company has 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 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.

In the instant case, an FIR with regard to the accident had been got registered as FIR No.254 dated 14.10.2013 for the offences under Sections 279 and 304-A IPC with Police Station Khol by Sudesh Kumar, real brother of the deceased. After registration of the FIR, the matter was investigated, respondent No.1 was arrested in the case and he

was sent up to face trial. PW4 Sh.Swatantar, Criminal Ahlmad in the Court of JMIC, Rewari had deposed in that regard. The claimants had examined PW2 Anil Kumar, who had provided eye-witness account of the accident fully supporting the case of the claimants. Interestingly, respondent No.1, who could have been the best witness to state that he had not caused the accident by his rash and negligent driving of the offending vehicle, felt shy of appearing in the witness-box to depose so on oath. Similarly respondent No.2 – Sundershan could not summon courage to appear as his own witness to state that the car belonging to him and being driven by respondent No.1 was not involved in the mishap, resulting in death of Sanjay. Respondent No.1 had just tendered in evidence copy of his driving licence, copy of registration certificate and copy of insurance cover note, whereas respondent No.3 had placed on file copy of insurance policy, copy of site plan and copy of statement of Anil Kumar. The oral as well as documentary evidence adduced by the claimants has virtually gone un rebutted. However, the Tribunal with a suspicious mind tried to find faults in the case of claimants, which as a matter of fact were not there.

The first ground for disbelieving the version of claimants was that brother of deceased, namely, Sudesh Kumar had not stepped into the witness box. This was no reason to doubt the truthfulness of the case of the claimants. If he had appeared as a witness for the claimant, then an objection might have been raised that he being a brother of the deceased and son of the claimants, was an interested witness and should not be relied upon. The claimants had examined PW2 Anil Kumar to provide eye

witness account of the accident deposing in a cogent and convincing manner remaining unshattered in his cross-examination and his presence at the spot comes out to be natural and probable, the Tribunal should not have found fault with the case of claimants for non-examination of Sudesh Kumar. The Tribunal jumped to a conclusion that PW2 Anil Kumar is a procured witness without any justifiable ground and the reasons given are product of conjectures and surmises. The Tribunal went on to decide this claim petition as if it was dealing with a criminal trial and not a claim petition under Motor Vehicles Act, whereas strict rules of evidence are not to be applied. The reasoning for discarding deposition of PW2 Anil Kumar is totally unjustified. For what reason, the Tribunal has come to the conclusion that it was a hit and run accident and realizing that compensation in such a case would be meagre, the petitioners appeared to have found a convenient person, who was prepared to get his name and vehicle involved and there was no threat or punishment in criminal case inasmuch as the identity of driver was not established has not been explained satisfactorily. The Tribunal should have decided the case with an independent mind adopting judicious approach instead of having some pre conceived notions. After registration of the FIR, the matter was investigated by the police and when involvement of the offending vehicle was found and respondent No.1 came out to be its driver at the relevant time, he was sent up to face trial. Therefore, doubting the police investigating agency in such a manner is most uncalled for. The finding recorded by the Tribunal on issue No.1 is totally wrong and is liable to be set aside.

Thus, finding on issue No.1 is reversed and it is decided in favour of the claimants/petitioners and against the respondents holding that Sanjay Kumar had lost his life due to rash and negligent driving of offending vehicle by respondent No.1 on 14.10.2013.

Now coming to issue No.2. The Tribunal has assessed the compensation with a half hearted mind. Considering his date of birth as mentioned in the National Trade Certificate as 10.2.1988 and the date of accident to be 14.10.2013, his age was determined to be 25 years and 8 months. The Tribunal discarded the testimony of petitioner Sushila Devi that deceased Sanjay was a diploma holder from ITI in Welder (Gas and Electric) Trade and was working in a private company apart from running a shuttering shop earning Rs.30,000/- for the reason that except for production of National Trade Certificate, no other document had been produced to prove income of the deceased and in absence thereof, he was to be taken as a skilled worker. Therefore, on an presumption his wages were taken to be Rs.5,200/- per month.

Learned counsel for the claimants has referred to order dated 28.2.2014 passed by Deputy Commissioner, Rewari providing maximum rates of wages of the employees paid out from the contingencies for various department in District Rewari for the period 1.4.2014 to 31.3.2015. In this category for Moulder (ITI Passed), maximum wages are mentioned to be Rs.8,600/-. Since the accident is of the year 2013, therefore I think it proper to assess his wages to be Rs.8,000/- 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 Rs.8,000 + 3200 = Rs.11,200/-.

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 the deceased is bachelor, 50% deduction towards personal expenses should be made. Doing that the dependency of claimants comes out to Rs.5,600/- per month, annual dependency comes out to Rs.5,600 x 12 = Rs.67,200/-.

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.11,42,400/-(67,200 x 17). The claimants are entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- more on account of loss of estate. The total compensation payable is worked out to Rs.11,72,400/- (11,42,400 + 30000).

Thus finding on issue No.2 is modified accordingly.

The finding on issue No.3 is also reversed and in view of the material available on record, it is decided in favour of the claimants and against the respondent No.3.

Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.11,72,400/- with interest @ 7.5% p.a. from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimants payable by all the three respondents jointly and severally. The amount of compensation shall be

apportioned among both the claimants in equal shares.

18.7.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No