

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

FAO-5131-2015(O&M)

Date of decision:-10.9.2019

Smt.Sunita and others

...Appellants

Versus

Sandeep Kumar and others

...Respondents

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

Present: Mr.Gurinder Pal Singh, Advocate
for the appellant.

Mr.Ravinder Arora, Advocate
for respondent No.3.

H.S. MADAAN, J.

Briefly stated, the facts of the case are that on 20.2.2014, Sube Singh along with his relative Bhim Singh had started their journey for Gurgaon on their separate motorcycles; Sube Singh was driving motorcycle having registration No.HR26-AD/9035 and he had started his journey about 20-25 minutes prior to Bhim Singh; Bhim Singh had stopped at petrol pump for getting fuel and when he reached in front of Polytechnic College, Manesar while driving his motorcycle bearing registration No.HR26R/0360, he saw several people assembled on the road; Bhim Singh stopped his motorcycle and saw that Sube Singh having suffered injuries was lying on the road along with his motorcycle; Sube Singh was taken to General Hospital, Gurgaon by arranging a private vehicle but he was declared brought dead there; Bhim Singh had lodged

report regarding the accident to the police of Police Station Manesar and formal FIR No.62 dated 20.2.2014 for the offences under Sections 279, 304-A and 427 IPC was registered against unknown person and unknown vehicle; subsequently during the course of investigation, it transpired that the mishap had been caused due to rash and negligent driving of Innova car bearing registration No.DL3 CAJ 6036 (hereinafter referred to as the offending car) by Sandeep Kumar – respondent No.1.

Smt.Sunita, aged about 38 years – widow, Ms.Priyanka aged about 20 years – daughter, Ms.Archna, aged about 13 years – minor daughter and Master Manjeet aged about 6 years – minor son of Sube Singh had brought claim petition under Section 166 of Motor Vehicles Act, 1988 against respondents i.e. Sandeep Kumar – driver, Dharambir Yadav – owner and Iffco Tokyo General Insurance Company Ltd. - insurer of the offending car, claiming compensation to the tune of Rs.30 lakhs with interest and cost.

As per the version of the claimants at the time of his death, deceased Sube Singh was aged about 44 years and he was employed as a security guard with M/s BS Enterprises, Kapriwas, Dharuhera and getting monthly salary of Rs.8,000/- from that employment; in addition to that avocation, he was doing work of cattle rearing and allied activities from where he managed to earn additional sum of Rs.20,000/- per month, in that way, his total income was Rs.28,000/- per month and the claimants were dependent upon his earnings.

On being put to notice, all the three respondents had appeared and filed written statements. Respondents No.1 and 2 had filed a joint

written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed by the former, they had raised various preliminary objections challenging the maintainability of the claim petition contending that no accident had been caused by the Innova car bearing registration No.DL 3 CAJ 6036 and a wrong FIR was got registered by the claimants in collusion with the police. However, the said vehicle was insured with respondent No.3 – insurance company and if the Tribunal came to the conclusion that claimants were entitled to any compensation, then insurance company would be liable to pay the same. Denying the remaining allegations, such respondents prayed for dismissal of the claim petition.

In the written statement submitted by respondent No.3 – insurance company, it had also denied the involvement of the Innova car in question driven by respondent No.1 in the accident, however, submitting that on the day of the accident, respondent No.1 was not having a valid, effective and appropriate licence and that owner and driver of the vehicle had not informed the answering respondent about the alleged accident; that there were violations of the terms and conditions of the insurance policy, as such the answering respondent was not liable to discharge the liability to indemnify the insured of the payment of compensation. Such respondent had taken up statutory defences available to it while craving for dismissal of the claim petition.

Issues on merits were framed. The parties were afforded adequate opportunities to lead evidence.

After hearing arguments, the Tribunal while allowing the petition partly vide award dated 18.4.2015, awarded compensation of Rs.50,000/- along with interest @ 7% per annum from the date of filing of the petition till the date of realization to the claimants. The liability of the respondents to pay this amount was held to be joint and several.

Feeling that the compensation awarded to them was on lower side, the claimants have filed the present appeal seeking enhancement of compensation, notice of which was given to respondents. Initially respondents No.1 and 2 appeared through counsel but subsequently they did not appear in the Court.

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

It may be mentioned here that the Tribunal has observed that claimants have failed to prove that respondent No.1 was negligent in causing the accident. Therefore, issue No.1 was decided against them. However, such verdict given by the Tribunal is erroneous and is a result of misappraisal of evidence and wrong interpretation of law. The claimants had led sufficient oral as well as documentary evidence to show that the offending car had caused the accident, in which Sube Singh had lost his life and that the accident had taken place on account of rash and negligent driving of the said car by Sandeep Kumar – respondent No.1. The oral evidence adduced included examining of Bhim Singh(PW2), who had lodged the FIR with regard to the accident, though he did not claim that he had seen the accident himself but from his testimony, it can certainly be taken that Sube Singh had died in a road side accident. The

crucial witness, who provided the eye-witness account was PW3 Jagdish. He had stated that on the fateful day, he along with Rajender Singh was going towards Gurgaon from Pachgaon and an Innova car of silver colour was going ahead of them and when they had reached in front of Polytechnic College, Manesar then driver of Innova car struck against the motorcyclist, who was going ahead of him and that the Innova car was being driven in a rash and negligent manner and on account of the sudden impact, the motorcyclist fell down and received injuries; the driver of the Innova car stopped his vehicle for a while and then fled away towards Gurgaon. According to this witness, he followed him and noted down the registration number of the Innova car as DL3 CAJ 6036. He was subjected to cross-examination in which he stated that he did not know the deceased personally and he stopped at the spot only for 3 to 5 minutes. The Tribunal has disbelieved him for the reason that he had stated that he did not know the deceased personally and he had not shifted him to the hospital. That was hardly a reason to discard the testimony of such witness. Nothing had come on record to show that he is favourably inclined towards the claimants and animosity towards the respondents, which might have prompted him to come and depose falsely in favour of the claimants and against the respondents. One more thing to be noted is that a police personnel was present at the spot when he reached there. The Tribunal has drawn a conclusion that police was already there, meaning thereby, that the accident had already taken place before PW3 Jagdish had reached the spot and there was no occasion for him to chase the said Innova car. One more reason for disbelieving him was that if he had noted

down the registration number of the offending vehicle on the spot, then there was no reason for him not to disclose the same to the police or to Bhim Singh. 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 aforesaid 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.

If we see the testimony of this witness in conjunction with the fact that respondent No.1 had not stepped into the witness-box to depose on oath that he was not author of the accident by rash and negligent

driving of the offending vehicle and further respondent No.2 had also opted not to get his statement recorded to state on oath that the Innova Car belonging to him was not involved in the accident and further that respondent No.1 had been arrested in this case and forwarded to face trial in causing the accident as is evident from final report under Section 173 Cr.P.C. along with other documents Ex.P5 to Ex.P16. The natural inference to be drawn is that the version of the claimants is correct. Therefore, verdict given by the Tribunal on issue No.1 is not sustainable and the same is set aside holding that Sube Singh had died in a motor vehicular accident, which took place due to rash and negligent driving of the offending vehicle No.DL3 CAJ 6036 by respondent No.1 – Sandeep Kumar as per version of the claimants. The Tribunal has wrongly come to the conclusion that it was a hit and run case and accident had not taken place in presence of PW3 Jagdish. The Tribunal has given too much importance to the fact that the name of culprit and registration number of the offending vehicle are not mentioned in the FIR. But then FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime.

On analysis of the evidence adduced by the parties, the Tribunal has decided issue No.3 against the respondent No.3 – insurance company observing that on the day of accident respondent No.1 was

holding a valid and effective driving licence. The verdict so given is proper and appropriate and does not call for any interference.

As regards the findings given on issue No.2 relating to quantum of compensation, the claimant No.1 – Smt.Sunita Devi – widow of deceased appearing as PW1 had stated that her husband was aged about 43 years; he was having good physique and was employed as security guard with M/s B.S. Enterprises, Kapriwas, Dharuhera and drawing Rs.8,000/- per month as salary and in addition to that he was earning Rs.20,000/- by doing work of cattle rearing and allied activities, thus his total income was Rs.28,000/- per month. She had admitted that she was not in possession of any record to substantiate these assertions. Nevertheless, the claimants had examined Surender Singh, Senior Executive (HR & Administration) Care of Shiv Engineering Industries village Kapriwas, who had deposed that deceased was regular employee of their concern under the contractor M/s B.S. Enterprises and Consultant, which provide them manpower; he used to get Rs.6,000/- per month and his ESI number was 6912964643 and GPF number was RJ/15782/81. He had proved the salary certificate of the deceased as Ex.P3.

The Tribunal has disbelieved the testimony of this witness by giving unconvincing reasons and granted compensation of Rs.50,000/- only in terms of Section 140 of the Motor Vehicles Act. The Tribunal was not justified in doing so. However, I find that the deposition of this witness is believable and doing that monthly income of the deceased can safely be taken to Rs.6,000/- from his employment with M/s B.S. Enterprises and Consultant as a security guard.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, keeping in view the age of deceased, 25% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.6000 + 1500 = Rs.7,500/-.

In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** deduction of 1/4 should be made towards self expenses. Doing that the dependency of claimants comes out to Rs.5,625/- per month, annual dependency comes out to Rs.5,625 x 12 = Rs.67,500/-.

Applying multiplier of 14 in view of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra) the compensation payable comes out to Rs.67,500 x 14 = 9,45,000/-.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors.**(supra), the claimants are entitled to get compensation under conventional heads i.e. Rs.15,000/- on account of loss of estate, Rs.40,000/- towards loss of consortium and Rs.15,000/- as funeral expenses, total Rs.70,000/-.

Thus, the total compensation comes out to Rs.10,15,000/- (945000 + 70000).

The Tribunal has awarded compensation of Rs.50,000/-.

In this way, the enhanced amount comes out to Rs.9,65,000/- (10,15,000 - 50,000). The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the appeal till actual realization on the enhanced amount of Rs.9,65,000/-. The other terms and conditions

given in the relief clause shall apply to the enhanced amount as well.

With such modification, the appeal is allowed partly.

10.9.2019

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No