

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

FAO-8468-2014(O&M)

Date of decision:-14.1.2019

Surajbhan

...Appellant

Versus

National Insurance Company Ltd. and others

...Respondents

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

Present: Mr.Aditya Yadav, Advocate
for the appellant.

H.S. MADAAN, J.

Petitioners – Smt.Sarbati – mother and Balwan father of Sh.Raj Kumar, an unfortunate victim of a road side accident, had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 against respondents i.e. Sanjay – driver, Surajbhan – owner, National Insurance Company Ltd. – insurer of truck/trailer bearing registration No.HR55G-3231(hereinafter referred to as the truck-trailer) claiming compensation to the tune of Rs.6 lacs along with interest at the rate of 24% per annum on account of death of Raj Kumar in a mishap.

According to the claimants, on 1.4.2010, Raj Kumar was coming towards Rewari from Bawal side in the truck/trailer driven by respondent No.1 Sanjay in a rash and negligent manner; that a TATA-407 having registration No.HR46A/8997 hit the truck-trailer, resultantly, it

dashed against a tree, as such, Raj Kumar suffered injuries and died at the spot; that an FIR No.114 for the offences under Sections 279, 337, 304-A IPC was registered regarding the accident with Police Station Model Town, Rewari; that the accident had been witnessed by Jitender son of Sh.Satnarayan, resident of village Karnawas, Tehsil & District Rewari. According to the claimants, the deceased was having good health; he was only son of his parents; that due to his death, life of claimants become miserable.

It may be mentioned here that both the claimants had expired during the pendency of the claim petition and Neelam daughter of deceased Balwan Singh brought on record as legal representative.

On notice, all the respondents appeared. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 came up with a separate written statement.

In the joint written statement filed on behalf of respondents No.1 and 2, they had taken preliminary objections challenging maintainability of the petition contending that accident in question was caused by deceased Raj Kumar, who was driving the truck-trailer at the time of accident and not by Sanjay as alleged by the petitioners/claimants; that a wrong FIR was lodged; that the truck/trailer was insured with respondent No.3. They refuted the remaining assertions in the claim petition.

In the written statement filed on behalf of respondent No.3, it was contended that accident was not result of rash and negligent driving of truck-trailer and on the day of accident i.e. on 1.4.2010, respondent

No.1 was not having a valid and effective driving licence to drive the vehicle in question; that the answering respondent denied its liability to indemnify the award. It was also denied that the deceased suffered injuries in a motor vehicular accident due to rash and negligent driving of the truck-trolla.

In the end, all the respondents prayed for dismissal of the claim petition.

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

1. Whether Raj Kumar had died in a vehicular accident arising on account of use of trolla bearing registration No.HR55 G 3231 as alleged in the petition? OPP.
2. If issue No.1 is proved whether the petitioners are entitled to compensation? If so to what amount? OPP.
3. Whether the driver of the offending trolla was not holding a valid and effective driving licence on the date of accident, If so its effect? OPR-3.
4. Relief.

Both the parties led evidence in support of their respective claims.

In support of her case, the petitioner herself appeared as PW1 besides examining ASI Shadi Ram as PW2 and Jitender as PW3.

On the other hand, the respondents have examined respondent No.2 Surajbhan as RW1. Thereafter learned counsel for the respondent No.3 closed the evidence. Whereas during the trial, none has

appeared on behalf of respondents No.1 and 2 and they were proceeded against ex parte.

After hearing arguments, the Tribunal awarded compensation as under:

1.	Treatment expenses	Nil(No evidence)
2.	Loss of consortium	Nil(Not applicable)
3.	Loss of estate	Nil(No evidence)
4.	Expenses of last rites & transportation	Rs.10,000/-
5.	Total dependency	Rs.4,69,200/-
	Total	Rs.4,79,200/-

While awarding compensation of Rs.4,79,200/- with interest @ 7% per annum against respondent No.1 as driver, respondent No.2 as registered owner, observed that respondent No.1 was not holding a valid and effective driving licence at the time of accident. It was observed that respondents No.1 and 2 would be jointly liable to indemnify the award but respondent No.3 would pay the award amount first with interest, however would be entitled to recover the same from respondents No.1 and 2 without filing any suit against them. It was observed that the petitioner – sister would be entitled to total awarded amount. 50% awarded amount would be deposited in any nationalized bank for a period of two years in the shape of FDR fetching maximum interest and the remaining amount would be given in cash.

This award left the respondent No.2 – Surajbhan aggrieved and he has preferred an appeal against the said award, notice of which was given to respondents. Initially respondents No.1 and 3 have appeared through counsel but later on there was no representation on their behalf.

I have heard learned counsel for the appellant besides going through the record and I find that the impugned award is not sustainable and is liable to be set aside.

The Tribunal on appreciation of the evidence adduced before it had taken age of the deceased Raj Kumar to be 26 years and taking his occupation as helper/co-driver on truck No.HR55G-3231, as such a skilled labourer, his monthly income to be Rs.4,600 per month. But the Tribunal clearly fell in error since maximum annual income for filing a petition under Section 163-A should be up to Rs.40,000/-. The deceased was unmarried. His sister Neelam was found to have dependency of 50% on earnings of deceased i.e. Rs.2,300/-. the annual dependency was assessed as Rs.27,600/-. The Tribunal has taken multiplier of 17 while working out the dependency. It may be mentioned here that both the parents of the deceased, who had filed the claim petition originally had expired and their daughter Neelam, who was sister of the deceased had been brought on record. As per her own admission appearing as AW1, she stated that she had got married in the year 2011, whereas the accident in question had taken place on 1.4.2010. In my view, the monthly income of the deceased has been taken on higher side and furthermore dependency of Neelam to the extent of 50% taken is not justifiable. With Neelam asserting that deceased was getting Rs.40,000/- per month that would have directly affected the maintainability of the petition under Section 163-A of the Motor Vehicles Act. The approach adopted by the Tribunal has not been as per law rather faulty and erroneous.

According to the case of the appellant, the Tribunal has fallen

into error holding that Sanjay – respondent No.1 was driving truck-trailer, whereas as a matter of fact, it was Raj Kumar, who was driving the truck and who had perished in the accident. As a matter of fact after registration of the FIR, the matter was investigated and it was found that Raj Kumar was driver of the offending vehicle, therefore challan was not presented in this case. The Tribunal wrongly ignored the statement of Surajbhan owner of the truck-trolla and relied upon statement of PW3 Jitender cited as an eye-witness.

Furthermore, Neelam was not unmarried sister or dependent upon earning of deceased and it was a case of contributory negligence also. The Tribunal has passed a wrong award.

After hearing the learned counsel for the appellant and going through the record, I find that the award in question suffers from various illegalities and infirmities. The claim petition was originally filed by parents of deceased and Neelam sister of deceased was not one of the claimants. She was brought on record as legal representative of the claimants but then the Tribunal proceeded to decide the claim if it had been filed by Neelam also. It is highly doubtful as to whether after death of claimants, any cause of action survived to their daughter. This point needed to be thrashed thoroughly. However, learned Tribunal had conveniently awarded compensation.

Secondly, the income of the deceased has been taken by the Tribunal to be Rs.4,600/- per month, which exceeds Rs.40,000/- per annum. The Tribunal has not kept in mind that petition under Section 163-A of Motor Vehicles Act could be filed if the income of deceased was up

to Rs.40,000/- per annum, which is a major lacuna in the case. Petition needed to be dismissed if earning of the deceased was found to be more than Rs.40,000/- per annum. The Tribunal has wrongly taken the income of the deceased and dependency of Neelam while calculating the compensation completely forgetting that it was deciding petition under Section 163-A of the Motor Vehicles Act and while doing so, a structured formula provided in second schedule of Section 163-A of Motor Vehicles Act has to be kept in mind. The Tribunal decided the claim petition under a wrong impression that it was one under Section 166 of the Motor Vehicles Act. Furthermore, the contention raised by appellant/respondent No.2 Surajbhan regarding Raj Kumar, deceased being driver of the truck/trailer and not respondent No.1 Sanjay has not been dealt with in a proper way. Therefore, the award under appeal is not sustainable and is liable to be set aside.

Accordingly, the appeal is accepted, the Award under appeal is set aside and the case is remanded to the Tribunal with a direction to decide the claim petition afresh after hearing learned counsel for the parties keeping in mind that it was a petition under Section 163-A of the Motor Vehicles Act. The Tribunal would fix a short date for arguments and then proceed to decide the case within one month from the date of receipt of copy of this order. The parties through their counsel are directed to appear before the Tribunal on 29.1.2019.

14.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No