

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

FAO-9653-2014(O&M)

Date of decision:-13.5.2019

Gurjashanjeet Singh and others

...Appellants

Versus

Amandeep Singh

...Respondent

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

Present: Mr.Malkeet Singh, Advocate
for the appellants.

H.S. MADAAN, J.

CM-26719-CII-2014

This is an application under Section 5 of the Limitation Act
for condonation of delay of 480 days in filing of the appeal.

Heard.

For the reasons mentioned in the application, the same stands
allowed and delay of 480 days in filing of the appeal is condoned.

FAO-9653-2014(O&M)

On account of death of Inderpreet Singh Sidhu in a road side
accident, his legal representatives, namely, Sh.Gurjashanjeet Singh –
father, aged about 50 years, Smt.Karamjeet Kaur – mother, aged about 48
years and Ms.Navpreet Kaur – sister, aged about 20 years had brought a
claim petition under Section 166 of the Motor Vehicles Act, 1988 against
the respondent i.e. Amandeep Singh – driver and owner of tractor trolley
having registration No.PB-65K-5099(hereinafter referred to as the

offending vehicle), claiming compensation to the tune of Rs.50 lacs with interest and cost.

As per the case of the petitioners/claimants, on 16.5.2011, Inderpreet Singh Sidhu was coming from Banur on his motorcycle having registration No.HR-01W-4724, driving it at a normal speed; that at about 4:30 p.m. while he was overtaking the offending vehicle in question, which was being driven by respondent in a rash and negligent manner, the driver of the offending vehicle i.e. respondent suddenly turned the same towards Sanata – Durali side without giving any signal, while listening to music by playing the deck loudly, resultantly the offending vehicle hit motorcycle of the deceased Inderpreet Singh Sidhu and he fell down along with his motorcycle in the middle tyres of the offending vehicle on the right side and suffered multiple, serious and grievous injuries and he was immediately taken to PGI, Chandigarh but he succumbed to the injuries suffered by him in the accident; that after the mishap the respondent ran away from the spot leaving the offending vehicle behind. According to the claimants, the deceased was aged about 22 years and was a student of Mechanical Engineering, Final Year, earning Rs.3,500/- per month; that the claimants were fully dependent upon his earnings and due to his death, they had been deprived of his financial support.

On getting notice, the respondent appeared and filed written statement contesting the claim petition taking up preliminary objections to the effect that the petition was not maintainable; that the claimants had no locus standi to file the claim petition; that the claimants had suppressed the true and material facts from the Tribunal and that the claimants were

not dependent on the earnings of the deceased. On merits, material assertions in the claim petition were denied submitting that no accident had taken place with the tractor trolley of respondent and the FIR was falsely lodged against him; that the respondent was not driving the tractor trolley and did not cause any accident; that the deceased might have suffered injuries in a hit and run case with some unknown vehicle and that the claimants were not entitled to any compensation. Refuting the remaining allegations, the answering respondent prayed for dismissal of the claim petition.

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

1. Whether accident took place on 16.5.2011 due to rash and negligent driving of the respondent while driving tractor-trolley No.PB-65K-5099, if so, its effect? OPP.
2. Whether death of Inderpreet Singh Sidhu occurred because of this accident and if so its effect? OPP.
3. If both the issues are proved in affirmative, whether claimants are entitled to receive compensation? OPP.
4. Relief.

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

In order to prove their case, the petitioner/claimant No.1 got his statement recorded as CW1 besides examining Sh.Ram Parshad as CW2 and Sh.Harpreet Singh as CW3.

On the other hand, respondent got his statement recorded as

RW3 besides examining Ms.Gurvinder Kaur, Ahlmad as RW1 and Sh.Ajit Singh as RW2. The respondent also tendered in evidence documents Ex.R1 and Ex.R2.

After hearing learned counsel for the parties, the Tribunal decided issues No.1 and 2 in favour of the respondent and against the claimants, issue No.3 partly in favour of the claimant No.2 and against the respondent and partly against the claimants No.1 and 3 and in favour of the respondent. Resultantly, the claim petition was dismissed by the Tribunal vide Award dated 30.1.2013, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondent. However, the respondent did not appear despite service. Therefore, he was proceeded against ex-parte.

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

The Tribunal while dealing with issues No.1 and 2 had observed that the claimants had failed to produce any cogent and reliable documentary evidence in support of their case and to establish that Inderpreet Singh Sidhu had died due to injuries suffered in the accident caused by rash and negligent driving of the offending vehicle by respondent and rather observed that Inderpreet Singh Sidhu must be held to have died due to injuries suffered by him in an accident involving some unknown vehicle.

I find that the whole approach of the Tribunal was faulty, erroneous, misconceived and unsatisfactory. The claimants had led enough oral as well as documentary evidence to prove that respondent

was author of the accident by his rash and negligent driving of the offending vehicle in which the deceased had lost his life. CW2 Ram Parshad had given eye-witness account of the accident deposing in consonance with the case of the claimants. In his affidavit Ex.CW2/A, he had categorically stated that the accident had taken place due to sole negligence of the driver of the offending vehicle, who was driving it in a rash and negligent manner. The Tribunal has discarded his testimony for the following reasons:-

- (i) at the scene of accident several people had collected and he also stopped but he did not know who were the other persons who had gathered at the scene of the accident; he did not inform the police;
- (ii) he stayed at the scene of the accident for about 20 minutes and in his presence some people took the motorcyclist to some place for which he had no knowledge;
- (iii) he did not know the motorcyclist but he came to know later on when the father of the deceased came to his village after about a week and told him that motorcyclist was his son;
- (iv) the police called him on 20.05.2011 through summons, but the said summons was returned back by him to the police;
- (v) the police did not bring him to the scene of the accident at any time;
- (vi) someone who knew him might have informed the father of the motorcyclist and the police about his presence at the scene of the accident;

- (vii) somebody had taken the details of his scooter, but he did not know the name of any such person;
- (viii) the tractor trolley and the motorcycle remained at the spot of the accident;
- (ix) the driver of the tractor remained present at the spot but he did not know the name of the tractor driver nor anyone told him about his name; and
- (x) he did not mention the name of the tractor driver in his statement recorded under Section 161 of the Code of Criminal Procedure, 1973, and he did not know whether he mentioned the name of the tractor driver in his affidavit Ex.CW2/A or not.

However, the Tribunal was totally unjustified in doing so. 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 gets 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. The testimony of CW2 Ram Parshad was corroborated by the FIR Ex.C1, postmortem report Ex.C2, report under Section 173 Cr.P.C. Ex.C9 vide which the respondent had been sent up to face trial with regard to the present accident, charge-sheet Ex.C11. The FIR contains registration number of the tractor trolley and name of respondent as its driver. The respondent appearing as RW3 in his affidavit Ex.RW3/A had though denied having caused the accident in question but then he had admitted in his cross-examination that he had been prosecuted for commission of offences under Sections 279 and 304-A IPC and he did not file any written complaint against the complainant.

Under the circumstances, the findings recorded by the Tribunal on issues No.1 and 2 are wrong and are set aside. Resultantly, both these issues are decided in favour of the claimants against the respondent.

Now coming to issue No.3, as per the case of the claimants the deceased was aged about 22 years and was a student of Mechanical Engineering, Final Year, earning Rs.3,500/ per month. From the documents proved in evidence by the claimants, the date of birth of the deceased comes out to 1.6.1990. The accident having taken place on 16.5.2011. It means that the deceased was aged about 21 years at the time of accident. The evidence adduced by the claimants goes to show that the

deceased was an engineering student from Punjab Technical University, Jalandhar. He was expected to complete his studies soon and thereafter get a good job. He was earning Rs.3,500/- per month. Keeping in view his high education, he was expected to find a good job and earn at least Rs.15,000-20,000/- per month, which with passage of time would have increased. He would have landed a job earning at least Rs.20,000/- per month.

Learned counsel for the claimants has referred to authority *Chief Works Manager, Southern Railway Carriage Works Versus V. Manimekalai, 2015(88) RCR(Civil) 653*, where in a similar case, it was observed that academic record and pursuit of deceased to achieve a Doctorate Degree in Mechanical Engineering at young age have to be considered for fixing income and that 'Education' should be given due respect and Rs.20,000/- was taken as monthly income of the deceased.

In the present case, I find that considering all facts and circumstances, it would be proper and appropriate to take monthly income of deceased to be Rs.20,000/-.

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 $\text{Rs.20,000} + 8,000 = \text{Rs.28,000/-}$.

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 50% to be made towards personal expenses.

Doing that the dependency of claimants comes out to Rs.14,000/- per month, annual dependency comes out to Rs.14,000 x 12 = Rs.1,68,000/-.

In terms of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.**(supra) multiplier of 18 would be appropriate. Doing that the compensation payable comes out to Rs.1,68,000 x 18 = 30,24,000/-.

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 and Rs.15,000/- as funeral expenses, total Rs.30,000/-. The total compensation comes out to Rs. 30,24,000 + 30,000 = 30,54,000/-. The claimants would be entitled to get interest @ 7.5% per annum from the date of filing of the claim petition till actual realization payable by the respondent.

This issue is also decided in favour of the claimants.

The impugned award is accordingly set aside.

Thus the appeal filed on behalf of the appellants/claimants stand allowed with costs throughout.

13.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No