

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

FAO-9736-2014(O&M)

Date of decision:-9.5.2019

Sarabjit Singh

...Appellant

Versus

Punjab State through its Secretary Transport and others

...Respondents

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

Present: Mr.Sushil Saini, Advocate
for the appellant.

Ms.Rukhsaar Dhindsa, AAG, Punjab.

H.S. MADAAN, J.

CM-26910-CII-2014

Prayer made in the application is for condoning the delay of
19 days in refiling the appeal.

Heard. Sufficient cause has been shown for condoning of
delay in filing of the appeal. The application is, therefore, accepted and
the delay of 19 days in filing of the appeal is condoned.

FAO-9736-2014

The petitioner/claimant Sarabjit Singh had brought a claim
petition under Section 163-A of the Motor Vehicles Act, 1988 against
Punjab State through its Secretary Transport, Chandigarh, General
Manager, Punjab Roadways, Jalandhar Depot – II, Jalandhar – owners,
Gurinder Singh alias Gindu – driver and insurer of bus bearing

registration No.PB-08-BQ-9172 (particulars of the insurer to be disclosed by respondents No.1 to 3) as well as Managing Director, Punjab State Bus Stand Managing Company Ltd. (PUNBUS), Chandigarh and General Manager, Punjab Roadways/Depot Manager (PUNBUS), Jalandhar Depot-2, Jalandhar, claiming compensation on account of death of his wife Binder Kaur in a road side accident.

As per the version of the petitioner/claimant on 16.11.2012 deceased Binder Kaur along with her husband – Sarabjit Singh - claimant and their minor son Abhijot Singh, aged about 3 years had gone to Jandiala from village Balia Manjpur for medical check-up; that Binder Kaur was having pregnancy of eight months; that after medical check-up all three of them were returning to their village on motorcycle make 'Boxer bearing registration No.PB-18-F-6552', which was being driven by Sarabjit Singh – claimant, whereas Binder Kaur and Abhijot Singh were pillion riding; that at about 11:30 a.m., when they reached at GT Road, bus stand, Malhian and when taking turn near the divider of the road, in the meantime, a bus bearing registration No.PB-08-BQ-9172 (hereinafter referred to as the offending vehicle) came from the side of Jalandhar being driven by respondent No.3 – Gurinder Singh alias Gindu in a rash and negligent manner and it hit the motorcycle being driven by the claimant, as a result all the three riders of motorcycle fell down on the road and received multiple injuries; the offending vehicle run over body of Abhijot Singh and he died at the spot, whereas Binder Kaur and the claimant had suffered multiple injuries and they were taken to Guru Ram Dass Hospital, Vallah for medical treatment; that Binder Kaur died on way to

hospital, whereas claimant was got admitted in the hospital; that the fetus in womb of Binder Kaur also died. According to the claimant, he was driving the motorcycle at moderate speed observing the traffic rules and the accident had taken place solely due to rash and negligent driving of the offending vehicle by respondent No.3; that formal FIR No.240 dated 16.11.2012 for the offences under Sections 304-A/279/337/338/427 IPC was registered on the basis of statement of Sukha Singh. According to the claimant Binder Kaur was aged about 24 years and she was quite hale and hearty not suffering from any disease at the time of her death; that she was rendering valuable services and guidance to the family members; that by death of Binder Kaur, the future of the claimant would be adversely affected having suffered loss of love and affection and of guidance.

On notice, respondents No.5 and 6 appeared and filed written statement contesting the claim petition raising preliminary objections that the insurance company of the motorcycle had not been impleaded as a party; that the driver of the offending vehicle was not at all rash or negligent in driving the same. On merits, the answering respondents came up with a plea that the bus in question had not hit the motorcycle but it was the motorcyclist, who by coming from the road side without caring for the traffic coming on the main road entered the main road and struck the motorcycle against the bus in between the left side window of the bus; that as a matter of fact on 16.11.2012, the bus in question was on route from Jalandhar to Amritsar; that the bus left Jalandhar at about 9:50 a.m. for Amritsar and when at about 11:30 a.m., the bus reached near village Mallian, then from the left side of village Mallian, a motorcycle came

being driven by the claimant having a lady and a child as pillion riders; that the motorcyclist while coming on the main road did not care to see right or left side and with full speed came on the main road; in the meantime, the bus had reached at the spot; that due to carelessness of the motorcyclist, he struck his motorcycle in between the left side windows of the bus; that the driver tried his level best to avoid the accident, in the process the bus struck with the divider raised in between the road. Nevertheless the accident took place and the lady and little child died at the spot; that the bus driver was not at fault. Refuting the remaining allegations, such respondents prayed for dismissal of the claim petition.

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

1. Whether Binder Kaur wife of Sarabjit Singh died on 18.11.2012 in a road side accident due to rash and negligent driving by driver of bus No.PB-08-BQ-9172? OPA.
2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, to what amount and from whom? OPA.
3. Whether the claimant is legal heir of Binder Kaur deceased? OPP.
4. Whether the claim petition is not maintainable? OPR.
5. Whether the driver of the said bus was not holding a valid and effective driving licence at the time of alleged accident, if so its effect? OPR.
6. Relief.

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

To substantiate his case, the claimant himself got recorded his statement as PW1.

On the other hand, respondent No.3 – Gurinder Singh appeared as RW1.

After hearing arguments, the Tribunal decided issue No.1 in favour of the claimants and against the respondents, issue No.2 in favour of the petitioner and against the respondents, issue No.3 in favour of the petitioner and against the respondents, issue No.4 against the respondents and in favour of the petitioner, issue No.5 against the respondents and in favour of the claimant. Resultantly, while allowing the petition vide award dated 17.4.2014, the Tribunal awarded compensation of Rs.1,90,000/- along with interest @ 6% per annum from the date of filing of the petition till realization to the claimant and respondents No.1, 3, 5 and 6 were made liable jointly and severally to pay the compensation.

Feeling that the compensation awarded to him was on lower side, the claimant has filed the present appeal, notice of which was given to respondents.

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

The Tribunal has correctly calculated the compensation payable adopting the structured formula under Section 163-A of the Motor Vehicles Act, taking age of the deceased to be 30 years as per the case of the claimant and as reflected in her postmortem report Ex.P2. The deceased being a house wife not engaged in any job or avocation, her earning was taken as Rs.15,000/- per annum as per second schedule under

Section 163-A providing notional income for compensation to those who had no income prior to the accident. 1/3rd of the amount was rightly deducted in consideration of her expenses, which the deceased would have incurred towards maintaining herself had she been alive, as such, dependency of the claimants was found to be Rs.10,000/- per annum. The multiplier of 18 was rightly used as mentioned in the second schedule and then compensation payable comes out as Rs.1,80,000/-. A sum of Rs.2,500/- on account of funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate were awarded. Though the funeral expenses as per schedule should have been awarded to the extent of Rs.2,000/- and the Tribunal by awarded Rs.2,500/- has exceeded that limit but since the respondents had neither filed any appeal nor cross-objections and the amount granted was not very high, I allow the compensation as such. The total compensation was rightly assessed as Rs.1,90,000/- payable by respondents No.1, 3, 5 and 6 jointly and severally. There is no scope for enhancement of the compensation. The yardstick adopted for granting compensation under Section 166 of the Motor Vehicles Act can certainly be not used while assessing compensation under Section 163-A of the Act since structured formula is there to work out the compensation under that provision.

Thus, finding no merits in the appeal, the same stands dismissed.

9.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No