

FAO-5880-2018(O&M) &
FAO-16132-2018(O&M)

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

(1) FAO-5880-2018(O&M)

Sukhdev Singh

...Appellant

Versus

Jaspreet Kaur and others

...Respondents

(2) FAO-16132-2018(O&M)

Jaspreet Kaur and others

...Appellants

Versus

Didar Singh and others

...Respondents

Date of Decision:-25.9.2019

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

Present: Mr.Harsh Aggarwal, Advocate
for the appellant in FAO-5880-2018 and
for respondent No.2 in FAO-16132-2018.

Mr.N.S. Chahal, Advocate
for the appellants in FAO-16132-2018 and
for respondents No.1 to 3 in FAO-5880-2018.

H.S. MADAAN, J.

CM-28721-CII-2018 in
FAO-16132-2018

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

Heard.

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

FAO-5880-2018(O&M) &
FAO-16132-2018(O&M)

By this order, I shall dispose of two FAOs i.e. FAO-5880-2018 filed on behalf of appellant Sukhdev Singh and FAO-16132-2018 filed on behalf of appellants/claimants Jaspreet Kaur and others, which have arisen out of the same accident.

Briefly stated, facts of the case are that petitioners Smt.Jaspreet Kaur, aged about 25 years – widow, Baby Noordeep Kaur aged about 4 ½ years and Baby Navdeep Kaur aged about 3 years – minor daughters of Jagsir Singh @ Jaggu, an unfortunate victim of a road side accident had brought a claim petition under Sections 140 and 166 of the Motor Vehicles Act against the respondents i.e. Didar Singh @ Satpal Singh @ Satta – driver, Sukhdev Singh – owner of Maruti Zen Car bearing registration No.HR-26M/9218 (hereinafter referred to as the offending car), claiming compensation to the tune of Rs.50 lakhs. In the claim petition though insurance company of the offending car was mentioned as respondent No.3 but since the car was not insured and particulars of insurance company were not provided, it was deleted vide order dated 28.3.2017. The claimants had impleaded Jaswinder Kaur – mother of deceased as respondent No.4.

As per version of the claimants on 24.8.2016 when Jagsir Singh @ Jaggu along with his father Jagroop Singh was going from village Nathewala to village Sirsiri on a bicycle, then the offending car

being driven by respondent No.1 – Didar Singh @ Satpal Singh @ Satta in a rash and negligent manner came from village Sirsiri side and hit the bicycle of deceased Jagsir Singh and Jagroop Singh, resultantly both the riders fell down and suffered multiple injuries; both the injured were taken to DMC Hospital, Ludhiana, however Jagsir Singh alias Jaggu died on the way to hospital, whereas Jagroop Singh died after a few days of his hospitalization; postmortem examination on the deadbody of Jagsir Singh @ Jaggu was conducted at GGS Medical College & Hospital, Faridkot; the accident was witnessed by Jaswinder Kaur wife of Jagroop Singh, Sardool Singh son of Mohinder Singh, Parkash Singh son of Kartar Singh, Jatinder Kumar son of Sant Lal and Sukhdev Singh son of Naranjan Singh, all residents of Dogar Basti, Faridkot; formal FIR No.88 dated 24.8.2016 for the offences under Sections 304-A/279/337/427 IPC was registered on the basis of statement of Jaswinder Kaur, mother of the deceased at Police Station Sadar, Kotkapura.

According to the claimants, deceased Jagsir Singh alias Jaggu was aged about 30 years; he was working as a labour contractor and in addition to that he was selling milk and he could manage to earn Rs.30,000/- per month from all the avocations; the claimants were dependent upon his earnings; that after death of Jagsir Singh alias Jaggu, his mother Jaswinder Kaur turned the claimants out of the matrimonial home and claimant No.1 – Jaspreet Kaur along with her minor daughters had to go to her parental house at village Kameana, Tehsil and District Faridkot.

On notice, both the respondents appeared and filed joint

written statement contesting the claim petition denying that any accident took place with the vehicle in question. According to them, a false FIR has been registered against respondent No.1 on the basis of which challan was presented in the Court of CJM, Faridkot, however, respondent No.1 has been acquitted in the criminal case vide judgment dated 23.1.2017, therefore, the claim petition is liable to be dismissed. On merits, material assertions in the claim petition were denied and pleas taken in the preliminary objections were reiterated. In the end, both the respondents prayed for dismissal of the claim petition.

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

On conclusion of the trial, the claim petition was allowed by Motor Accidents Claims Tribunal, Faridkot (hereinafter referred to as the Tribunal) and compensation of Rs.15,82,000/- was awarded to the claimants to be paid by respondents No.1 and 2 jointly and severally along with interest @ 7% per annum from the date of filing of the claim petition till realization of the amount. The apportionment of the compensation of Rs.15,42,000/- was as under:

1. Jaspreet Kaur(claimant No.1) - 50%
2. Baby Noordeep Kaur and Baby Navdeep Kaur(claimants No.2 and 3) - 15%(each)
3. Smt.Jaswinder Kaur (respondent No.4)- 20%

In addition to the above, claimant No.1 being widow was also entitled to Rs.40,000/- towards loss of consortium.

The claimants and respondent No.2 - owner were dissatisfied with the said award and they have filed separate appeals before this Court.

Notice of the appeals was issued to the respondents, who put in appearance through counsel.

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

Learned counsel for the appellant-owner Sukhdev Singh has contended that no independent witness was examined by the claimants to prove the manner of the accident and PW3 Jatinder Kumar is an interested witness being known to the claimants; he is a planted witness and his presence at the spot is highly doubtful, which is pointed out by the account of accident given by him; there is no evidence to show that Jatinder Kumar had taken the deceased to hospital; neither Jatinder Kumar nor Sukhdev Singh were cited as witnesses by the police at any stage and their statements made before the police during inquiry are unbelievable; there being delay of one day in lodging of FIR and Jaswinder Kaur author of the FIR or Sardul Singh having not been examined and acquittal earned by respondent No.1 from the trial Court nullifies the entire case of the claimants that accident in which the deceased had lost his life had taken place on account of rash and negligent driving of the offending car by respondent No.1.

On the other hand, learned counsel for the claimants has vehemently opposed the arguments defending the award passed by the Tribunal.

After hearing the learned counsel for the parties and going

through the record, I find that the contentions raised by counsel for appellant Sukhdev Singh are absolutely without any merit. 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.

A perusal of deposition of Jatinder Kumar goes to show that he deposed in a natural and convincing manner facing his cross-examination well. He does not come out to be a planted witness as alleged by learned counsel for the appellant Sukhdev Singh. Merely because, he did not accompany the injured to hospital and the police did not cite him as a witness does not go to show that he was not present at the spot and had not seen the accident. Delay of one day in lodging of FIR may be a relevant factor in a criminal case but it is not much material while deciding a claim petition under Section 166 of the Motor Vehicles Act.

The fact remains that respondent No.1 was booked by the police for

causing the accident. The police had carried out the necessary investigation, finding involvement of the car in the accident and respondent No.1 being responsible for the mishap on account of his rash and negligent driving of that car. He was sent up to face trial and even if he has been acquitted by the trial Court that does not have much effect upon the proceedings under Section 166 of the Motor Vehicles Act, which are of summary nature. The judgment by a criminal Court is not binding upon the Tribunal deciding a petition under Section 166 of the Motor Vehicles Act. The Tribunal is to reach its own conclusion on the basis of evidence adduced before it. The judgment of criminal Court may be having some relevance in deciding quantum of rashness and negligence of driver of the offending vehicle but that is not the final word. The judgment of acquittal can well be challenged by the prosecution or the complainant in appeal. It is quite possible that the accused was acquitted for some technical reason or by giving him benefit of doubt. In any case, the acquittal earned by respondent No.1 in the criminal case does not have much effect upon the present proceedings. Furthermore, the claimant is not required to examine each and every person, who had seen the accident. Only one person, who could provide eye-witness account of the accident is sufficient to be examined. Therefore, non examination of Jaswinder Kaur and Sardul Singh does not make much difference. Similarly the contention that both of them had failed to prove the accident in criminal case cannot be taken to be adverse to the case of the claimants seeking compensation on account of death of the deceased in the road side accident.

As regards the contention raised by learned counsel for the appellant Sukhdev Singh that the present litigation has been instituted due to matrimonial dispute between respondent/claimant Jaspreet Kaur and her mother-in-law Jaswinder Kaur respondent No.4 and the matter had gone to the police, that does not have any relevance to the present proceedings. Even otherwise, it is specific case of the claimants that after death of deceased Jagsir Singh @ Jaggu, Jaswinder Kaur had turned the claimants out of the matrimonial home. If they have got dispute between themselves, they can resolve the same of their own or take recourse to the remedy available to them.

Though learned counsel for the appellant Sukhdev Singh has submitted that respondents/claimants had accepted Rs.1 ½ lakhs as full and final settlement of their claim apart from medical expenses but that contention cannot be accepted for the reason that in the written statement both the respondents have denied the involvement of their car in the accident and have not stated even a word about any settlement having taken place or any amount of Rs.1 ½ lakhs having been paid to the claimants.

Furthermore, as is evident from the para No.11 of the award, Sukhdev Singh respondent No.2 had appeared as RW1 and during his cross-examination, he denied that written compromise Ex.P5 had taken place between him and the complainant at the police station. He had denied his signatures on that document. It being so, now he cannot take advantage of that document and start claiming that he had paid Rs.1 ½ lakhs to the claimants as full and final settlement and at least that amount

be adjusted towards the compensation payable by him.

One more argument advanced by learned counsel for the appellant Sukhdev Singh was that at the relevant time, the minimum wages for an unskilled labourer were Rs.7,210.52/- p.m. w.e.f. January, 2016, whereas the Tribunal has taken income of the deceased to be Rs.7,500/- per month. Therefore, the amount be reduced.

However, I am not impressed by this contention. It is a specific case of the claimants that the deceased was working as a labour contractor and in addition to that he was selling milk and he managed it earn Rs.30,000/- per month. Though the claimants could not produce any clear evidence in that regard and the Tribunal assessed his monthly income to be Rs.7,500/-. However, I do not find that this income is on the higher side or should be reduced. The Tribunal was justified in adding 40% of the amount towards future prospects and deducting 1/4th of the amount on account of personal and living expenses of the deceased, keeping in view the number of his family members, finding annual dependency of claimants to be Rs.94,500/-. The Tribunal has used multiplier of 16. The age of deceased has been taken to be 30 years. In terms of judgment **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, when the deceased is in the age group of 26 to 30, multiplier of 17 should be applied. Doing that the compensation comes out to Rs.16,06,500/-.

In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, 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/-. The total compensation comes out to Rs. $16,06,500 + 70,000 = 16,76,500/-$.

The Tribunal has awarded compensation of Rs.15,82,000/-.

In this way, the enhanced amount comes out to Rs.94,500/- (16,76,500 - 15,82,000). 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.94,500/-. The other terms and conditions given in the relief clause shall apply to the enhanced amount as well.

With such modification, the ***FAO-16132-2018*** filed on behalf of the appellants/claimant is allowed partly with costs.

Consequently, ***FAO-5880-2018*** filed on behalf of owner is found to be without any merit and is dismissed accordingly.

25.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No