

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 1210 of 2002 (O&M)

Date of decision : January 06, 2021

Bhupinder Kaur and others

....Appellants

versus

Balwant Singh and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Naresh Kumar, Advocate, for the appellants

Mr. R.C. Gupta, Advocate, for respondent no. 3-Insurance
Company

None for other respondents

Fateh Deep Singh, J.

The court of learned District Judge-cum-Motor Accident Claims Tribunal, Hoshiarpur vide award dated 5.9.2001 disposed off co-jointly two claim petitions. The present appeal is by the claimants dependents of deceased Makhan Singh who had filed MACT Case No. 31 of 5.6.1998, comprising of Bhupindeer Kaur widow, Baljit Kaur, Daljit Kaur daughters and Amrik Singh and Harpreet Singh sons all minors. Undisputedly as is canvassed before this Court during the

course of arguments, Balwant Singh respondent no. 1 happens to be the driver of the offending vehicle, a truck bearing PCF-9947 (in short, the offending truck) and though as is reflected from the records, there are claims and counter claims whether respondent no. 2-Avtar Singh, respondent no. 4-Vinay Kumar and respondent no. 5-Vijay Kumar are the registered owners of the offending truck at the time of accident. Un-refutedly as has been canvassed by counsel for the appellant, the unrebutted documentary evidence comprising of verification report Ex. R/5 of the offending vehicle shows that Vinay Kumar respondent no. 4 happens to be the registered owner of the vehicle at the time of accident. Mere premise that has sought to be raised by counsel for respondent no. 3-Insurance Company that Vinay Kumar respondent no. 4 had filed an application showing respondent no. 5-Vijay Kumar, respondent no. 6-Paramjit Kaur to be the co-owners of the vehicle in question certainly does not appeals to this Court as neither any proof of ownership nor registration certificate of the vehicle has come on the record to that effect. Thus, the findings of the learned trial Tribunal to that effect needs to be upheld.

It is well established on the records that respondent no. 1- Balwant Singh at the time of alleged accident was driving the vehicle and which is further corroborated from the fact that the court trying him in the criminal case bearing FIR No. 75 dated 14.4.1998, under Sections 279, 337, 338, 201 IPC, Police Station Haryana, District

Hoshiarpur, pertaining to this accident has held him guilty of rash and negligent driving and which is further corroborated from the ocular version that has come up before the Claims Tribunal through the testimony of PW4 Manohar Lal eye witness who also happens to be the stamp witness having been injured in this accident being the driver of the ill fated scooter. His testimony cannot be lightly brushed aside on which the deceased Makhan Singh was sitting on the pillion.

The question as far as the legality and validity of the driving licence of driver of the offending vehicle shows that RW2 Satnam Singh, Junior Assistant, Office of District Transport Office, Hoshiarpur has established on the record on the basis of the entries that driving licence issued in the name of respondent no. 1 was valid at the time of the accident i.e. on 14.4.1998 and was to expire on 3.1.2004. The insurer of the offending vehicle respondent no. 3 fairly concedes as to the vehicle being under insurance cover at the time of accident and the only residual contention that has to be resolved is over the very quantum of compensation awarded to the claimants. It is not displaced that the deceased Makhan Singh at the time of his death aged around 30 years, though as per documents he was around 40 years and was running avocation of agriculture as well as a small time business activities and have claimed that he was earning Rs 10,000/- per month at the time of the accident. Though it has been rightly argued on behalf of the contesting respondent that there is no

documentary proof as to the earnings and income of the deceased. However, it is not in any manner displaced that the deceased Makhan Singh was owning a tractor and therefore, by all means must be having handsome income at the time of his death. Though there is no hard and fast rule for assessment of income derived from the agriculture activities keeping in view the relative age of the deceased, the relative ages of the claimants and together with the fact that the deceased at the time of his accident was maintaining a tractor to carry on with his agricultural pursuits keeping in view the age of the deceased that the accident has come about in the year 1998 impels this Court by some amount of guess work and hypothetical calculations to assess the earnings of the deceased to be Rs 10,000/- per month and deducting 1/3rd of this income for own personal needs of the deceased, the deceased by all probability must be contributing approximately Rs 6500/- per month and therefore, annual dependency comes to Rs 78,000/- and after applying the multiplier of 12 which is most appropriate, the claimants are entitled to compensation of Rs 9,36,000/-.

The children at the time of accident admittedly were minors and having regard to the fact that the widow has become so at a young age and during the course of the pendency of this matter which was filed in the year 2002, the children must have grown up and would have been married and had to suffer on account of denial of fatherly

love, affection and protection and which though cannot be compensated in terms of money. However to assuage the feelings of the wrong done to them, an endeavour is being made to lessen their loss and therefore, on account of loss of consortium, she is awarded a sum of Rs 50,000/- and on account of loss of estate, funeral expenses etc, she is awarded Rs 40,000/-.

Keeping in view that the requirement of the children for education food etc. must be on the higher side than that of the widow, they are awarded 21% share each and the widow is awarded 16% share out of the compensation amount of Rs 9,36,000/-. However, widow is entitled for Rs 90,000/- exclusively awarded to her.

Since the vehicle is duly shown to be insured by way of insurance policy Ex. R/5 and therefore, respondent no. 1 being the driver of the offending vehicle, respondent no. 4 being the owner of the offending vehicle and respondent no. 3 being insurer are jointly and severally liable to pay the compensation amount. Besides, this, the appellants are entitled to interest at the rate of 9% per annum from the date of filing of the claim petition till realization of the amount. Since the minor dependents have attained the age of majority by now, this Court does not feel imperative to order deposit of their shares by way of FDRs.

The appeal stands disposed of in the aforesaid terms.

January 06, 2021

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(Fateh Deep Singh)

Judge

Whether speaking/reasoned ?

Whether Reportable ?

Yes/No

Yes/No