

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5276-2003 (O&M)

Date of decision: 19.05.2022

Rachhpal Kaur and others

....Appellants

Versus

Punjab State through Secretary to Govt. Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prateek Mahajan, Advocate for the appellants
Mr.Nikhil Chopra, Addl. AG, Punjab

ANIL KSHETARPAL, J (Oral)

1. Assailing the correctness of the award passed by the Motor Accident Claim Tribunal, Amritsar (hereinafter referred to as 'the Tribunal') on 3rd November, 2003, while dismissing their claim petition filed under Section 166 of the Motor Vehicles Act, 1998, the claimants have filed this appeal.. On account of an automobile accident late Sh. Jaswant Singh is stated to have lost his precious life on 29th June, 1998. It has been stated that the Punjab Roadways bus bearing registration plate No. PB- 12-9620, driven by Jaswant Singh s/o Shingara Singh (driver of the bus) had crushed late Sh. Jaswant Singh under the front wheel of the bus. The driver of the bus tried to run away but was stopped by the Head Constables Santokh Singh and Vikramjit Singh. An FIR was registered against Jaswant Singh s/o Shingara Singh (driver)on the same day. The accident took place outside the bus stand. The deceased was a resident of Jalandhar. Since his face was wholly crushed,

therefore, the police cremated the body as a body of an unknown person. His widow came to know about the death of her husband after 4-5 days when Narender Singh, a passenger of the aforesaid bus, informed her about the possibility of her husband Jaswant Singh having died in the accident which took place on 29th June 1998. She filed the claim petition on 7th September, 1998. This claim petition was filed by the widow, three minor children and mother of the deceased. The State of Punjab admitted the accident but stated the accident did not take place on account of rash and negligent driving of Jaswant Singh s/o Shingara Singh (driver of the bus).

2. In order to prove their case, the claimants have examined Narender Singh, the alleged eye witness, who was passenger of the same bus. He was sitting three rows behind the driver. He has stated that on seeing the report about the missing person on the cable network, he informed the family of the deceased about the possibility of him having died in the accident. Apart from him, the claimants also examined Santokh Singh a Head Constable, posted on the bus stand, at the relevant time. Apart from the aforesaid witnesses Smt. Rachhpal Kaur appeared as PW 5 whereas her father-in-law appeared as PW8. In order to prove her case, she produced photographs clicked by the police photographer. It was found that the deceased at the time of accident was wearing brown shoes and a dark pink turban.

3. On the other hand Jaswant Singh s/o Shingara Singh (driver of the bus) appeared and stated that he was the driver of the bus and while filing the written statement he denied the occurrence of

accident and claimed that he has been falsely implicated by Santokh Singh, Head Constable. He claimed that no accident ever took place. The Tribunal has dismissed the claim petition while recording the following reasons:-

(a) no evidence has been brought about the alleged advertisement, given on the cable network about Jaswant Singh's disappearance.

(b) The case as projected by the claimants in evidence is not pleaded in the claim petition.

(c) Inder Singh (deceased's father) while appearing in evidence neither stated about any such advertisement on the cable TV nor the cable TV operator has also not been examined.

(d) PW4 Narender Singh has not only stated that he witnessed the occurrence but also subsequently identified the deceased on the cable TV and informed the family members but he did not name the channel on which the advertisement was seen by him.

(e) The negatives of PW 3/1 to PW3/3 were not produced to prove the photographs.

(f) No effort has been made by the claimant to summon the record from the criminal court in order to prove the criminal proceedings.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the judgment passed by the

Tribunal along with the record of the Tribunal, which was requisitioned. It may be noted here that the claim petition is filed on the basis of a proforma provided under the Motor Vehicles Act, 1998 and the rules framed thereunder. It has been stated in the claim petition that the deceased on receipt of multiple injuries died in the accident on account of accident with bus bearing No. PB-12-9620 belonging to the Punjab Roadways which was driven by Jaswant Singh s/o Shingara Singh on 29th June 1998. The accident took place when deceased came from the southern side and gave signal to the bus to stop but he was crushed by the driver and thereafter driver tried to run away from the spot. In the considered view of the Court, in the pleadings only the material facts and that also in a precise manner, are required to be given as per Order 6 Rule 2 of the Code of Civil Procedure, 1908. In these circumstances, it was not necessary for the claimants to plead in the claim petition as to how they have come to know about the accident. These facts are permissible to be proved while leading evidence. Hence, the first reason recorded by the Tribunal is erroneous.

5. The second reason recorded by the Tribunal is with regard to lack of evidence with respect to the advertisement given on the cable network for Jaswant Singh's disappearance. In this regard, it may be noted here that Inder Singh has appeared in evidence as AW8. His cross examination is only to the following extent:-

“It is incorrect to suggest that I do not own 27 acres of land. It is wrong that I have deposed falsely.”

6. In examination-in-chief, he has stated that his son late Shri

Jaswant Singh died in the accident. Santokh Singh, Head Constable and Narendra Singh, PW 4 have corroborated the case of the claimants. PW4 Narendra Singh stated that on seeing the advertisement on cable network about missing person, informed the family. If Jaswant Singh s/o Shingara Singh (driver of the bus) or the State Government had any doubt, their counsel should have a cross examined Inder Singh in this regard. It was the duty of the respondents to solicit answers/clarification from Inder Singh, when he appeared in evidence. Even otherwise, it is but natural for a father to make efforts if his son disappears. The accident took place on 29th June, 1998. At that time, one of the modes to search a person was to display his photograph on the cable network. Fortunately, in this case Narendra Singh, who is again a resident of the same city Jalandhar informed the family. He stated that he just informed the family that an accident had taken place on the Amritsar bus stand and Jaswant Singh might have died in the same accident that took place in Amritsar. On 29th June, 1998. Narendra Singh has appeared as PW 4. He has witnessed the accident as he was seated three rows behind the driver. He has stated that a sikh gentleman with brown shoes and dark pink Turban had died in the accident. He could not recognise the face because it was badly crushed under the wheel of the bus. He is not shown to be an interested witness. Furthermore, Santokh Singh, Head Constable, who was posted at the bus stand is a natural witness. He has also stated that in an accident a sikh gentleman had died. In these circumstances, the failure to disclose about the channel on which Narendra Singh saw the advertisement cannot be made a basis to dismiss

the claim petition.

7. Similarly, the Tribunal has erred in refusing to look at the photographs of the deceased on the ground that negatives have not been produced. These were a part of the police file. Mukesh Datta, P.W3 is the photographer who had taken the photographs and he has proved the negatives from the summoned file and he has stated that he has seen the negatives in the summoned file, State vs. Jaswant Singh in case No.62 of 18.8.1998 FIR No.70/98 and has proved the negatives Ex.PW3/1 to Ex.PW3/3 and has stated that he has seen the negatives and the negatives are untouched and the photographs are correct as per the negatives. He was not even cross examined on this point. So, the finding of the Tribunal in para 23 that negatives Ex.PW3/1 to Ex.PW3/3 have not been proved on the record and that no reliance can be placed on the said negatives, is absolutely incorrect.

Jaswant Singh, in his cross examination, he has admitted that it is correct that the Jaswant Singh s/o Inder Singh has died in the accident and has further admitted in the second line of his cross-examination that it is correct that the petitioners are the legal heirs of the deceased Jaswant Singh. He has further admitted that I do not remember whether I wrote to the department that I am falsely implicated in the present case by HC Santokh Singh. It is correct that I am facing trial u/s 304-A IPC. So, the finding of the Tribunal in para no.25 of the judgment is incorrect.

8. The claimants were not present at the time of the accident. It is not in the dispute that Jaswant Singh, driver has been challaned by the

police. No objection at the time of production of the photographs, which were duly exhibited was taken. The Tribunal is not governed by strict rules of evidence. Similarly the Tribunal has erred while dismissing the claim petition on the ground that the claimants did not summon the record from the criminal court.

9. In the considered view of the Court, the Tribunal, if required, could have summoned the criminal record itself. These tribunals have been constituted under the Motor Vehicles Act, 1998, which is a beneficial legislation. A Tribunal should have taken a pragmatic view of the matter. On one hand there were poor claimants who had lost their bread earner and on the other hand there was the mighty State. The Presiding Judge of the Tribunal should have been more considerate while taking a decision. Consequently, the conclusion is inevitable as it is not passed after due consideration. Hence, the judgment passed by the Tribunal is set aside.

10. Now, the Bench proceeds to assess the compensation. Late Sh. Jaswant Singh was aged about 30 years at the time of accident. He has left behind a widow, two minor children and mother. Another child was in the womb of his wife, who was born after his death. His father has appeared in evidence and deposed that he is owner of 35 acres of land. They also own a tractor. Independently, Jaswant Singh was also owner of 2.5 acres of land. As per the statement of Smt. Rachhpal Kaur, the deceased was earning Rs. 25,000 to Rs 30,000 per month. The claimants have also examined commission agent in order to prove the sale of the agriculture produce.

11. Keeping in view the aforesaid facts, some amount of guess work is required to be applied for deciding the income of the deceased. Consequently, the income of the deceased is assessed at Rs.12,000 per month. The deceased has left behind five dependents. Hence, deduction for self expenses of the deceased shall be 1/4th. A proper multiplier would be 17. Escalation in the income on account of future prospects, @ 40% in view of judgment passed by Five judges bench in '*National Insurance Company Ltd. vs. Pranay Sethi and other*' **2017 (10) SCC 450**. Under the conventional heads, the claimants are entitled to Rs. 15,000/- towards loss of estate and Rs.15,000/- for funeral expenses. The widow, mother and three children are held entitled to Rs.40,000/- each for loss of filial, spousal and parental consortium. Consequently, the amount of compensation is assessed as under:-

Income	Rs.12,000/- per month
Income after deduction (1/4 th)	Rs.9,000/- per month (12000-3000)
Annual income	9000x12= Rs.1,08,000/-
Future prospects @ 40%	Rs.43,200/-
Income including future prospects	Rs.1,51,200/-
Multiplier	17
Loss of income	151200x17= 25,70,400/-
Loss of estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Loss of consortium (widow, three minor children and mother) @ Rs.40,000/- each	Rs.2,00,000/-
Grand total	Rs.28,00,400/-

The claimants are held entitled to compensation of an amount of Rs.28,00,400/- alongwith interest at the rate of 9% per annum,

from the date of filing of the claim petition till its realization. The appeal stands allowed.

All the pending miscellaneous applications, if any, are also disposed of.

19.05.2022
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE