IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. FAO No.2652 of 2001 (O&M)

Radhey Shyam & another

… Appellants

Versus

Sunder Singh & others

… Respondents

2. FAO No.2661 of 2001 (O&M)

Maya Devi & another

… Appellants

Versus

Sunder Singh & others

… Respondents

Date of decision: 2nd May, 2022

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Sunil Panwar, Advocate for the appellants

Service of respondents No.1 and 2 – dispensed with.

Mr. D.P. Gupta, Advocate
for respondent No.3/Insurance Co.

<u>FATEH DEEP SINGH, J.</u>

The Court of learned Motor Accident Claims Tribunal, Rohtak vide a consolidated Award dated 06.03.2001 disposed off claim petitions bearing No.5 of 2000 titled 'Radhey Shaym & another vs. Sunder Singh & others' and another petition No.6 of 2000 titled 'Maya Devi & another vs. Sunder Singh & others' under Section 166 of the Motor Vehicles Act, 1988 (in short, 'the Act') and as a consequence of the same had allowed both the claim petitions and awarded ₹ 1.00 lakh in petition No.5 of 2000 and ₹ 80,000/- in claim petition No.6 of 2000 along with interest at the rate of 9% per annum from the date of filing of the petitions till realization. The same is subject matter of challenge in these two first appeals against order filed by claimants Radhey Shyam and Maya.

Since in both these matters, common questions of law and facts are involved wherein similar evidence has come about necessitates their joint disposal together by way of this common judgment.

It is worthwhile to refer here that the initial records stood destroyed in the fire that engulfed the record room of this Court and thus, the present disposal is based on what remnants are available.

Heard Mr. Sunil Panwar, Advocate for the claimant/appellants; Mr. D.P. Gupta, Advocate representing respondent No.3/Insurance Company and perused the records.

It was on 02.08.1999 Sonu and Monu both deceased along with others were returning from Haridwar being part of the *Kabris* and had rested on their way when in the early morning on 03.08.1999 a vehicle make Tata 407 bearing registration No.HR-46A-1870 being driven rashly and negligently at a very high speed by respondent No.1 Sunder Singh and which vehicle was owned by Suresh Kumar respondent No.2 and insured with United India Insurance Co. Ltd. respondent No.3, struck against the resting pilgrims leading to death of these two persons. FIR No.121 dated 03.08.1999 under Sections 279 and 304-A etc. IPC against the driver was registered with Police Station Israna.

It is undisputed that deceased Sonu was a student of 8th class while deceased Monu was a student of 6th class and the claim petitions have been preferred by their unfortunate parents being both brothers, seeking compensation for the loss of their lives.

Driver and owner did not put in appearance. The insurer in their reply denied the averments for want of knowledge of the accident taking a plea that the insurer was not liable to pay compensation as the offending vehicle was being driven contrary to the terms and conditions of the insurance policy and denied any right of the claimants going to the extent of taking a plea that Sunder Singh driver of the offending vehicle was not having legal, valid and effective driving licence at the time of accident. The Tribunal framed the following issues:-

1. Whether present accident is the outcome of rash and negligent driving of respondent No.1 Sunder Singh driver while driving vehicle bearing No.HR-46A/1870, on 3.8.99 at 4.30 a.m. in village Dahar, PS Israna, Distt Panipat in which Sonu and Monu died? OPP

2. If issue No.1 is proved in affirmative, to what amount and from whom petitioners are entitled to recover? OPP
3. Whether respondent No.1 was holding a valid driving licence on the date of accident? OPR
4. Relief.

Claimants examined one of the claimant Radhey Shyam as PW1 while claimant Maya Devi stepped into the witness box as PW2 and examined Naresh an eye-witness of the accident as PW3 proving copy of the FIR Ex.P3, post-mortem reports of Sonu and Monu Ex.P1 and Ex.P2 respectively. On the other hand insurer examined RW1 R.K. Sharma, ADM of the insurance company and Licencing Clerk Zile Singh as RW2 proving insurance policy Ex.R1 and thereafter closed their evidence. It is subsequent thereto, the Awards in question were passed.

Appreciating the submissions of the two sides, the accident leading to the unfortunate death of both these young brothers who happen to be students of 6^{th} and 8^{th} class respectively, is well established by the FIR Ex.P3, post mortem reports Ex.P1 and Ex.P2, as well as eye-witness account of PW3 Naresh and there is no rebuttal to this evidence by the driver or the owner who have not bothered to step into the witness box or filed their written statement and thus, rebut the case of the claimants. Thus, in the light of the same, issue No.1 stands duly established.

In the light of the evidence and the submissions of the two sides, the most rallying point revolves around the findings on issues No.2 and 3 as to compensation and whether the driver of the offending vehicle at the time of accident was holding a legal, valid and effective driving licence and that the offending vehicle at the time of accident was being driven in contravention of the terms of the insurance policy?

Since admittedly, Monu was a student of class 6 and Sonu that of class 8 and being minor children school going, but this does not deters the Court from assessing compensation to which the unfortunate parents are entitled to and for which this Court adopts the formula for assessing notional income of both the children. Had the children been alive, they would have been certainly contributing a lot towards their parents in their old age besides would have earned their livelihood and would have been continuous source of love, affection and protection for their parents and claimants being unfortunate mother and father have lost their both sons in itself is an irreparable loss at this juncture. The Tribunal has totally gone alien to the objective of the Act which is for the betterment of the claimants and has strictly adhered to the irrational approach. This Court keeping in view the relevant ages of both the deceased and their educational pursuits by some amount of guess work and hypothetical calculations take the notional income of each of them in lump sum to be ₹ 3,00,000/-. Keeping in view the loss of the family, the claimants before this Court, this Court deems it imperative to grant an amount on account of loss of love and affection in the light of age, source of psychological satisfaction. The parents must have spent money on the last rites and ceremonies of the deceased and under all these heads a sum of ₹1,50,000/- is granted in case of each of the deceased. Thus, the total compensation comes to ₹ 4,50,000/- in case of each of the deceased. Besides, interest @ 9% p.a. as awarded by the Tribunal shall be payable from the date of filing the claim petition till realization of the amount.

Admittedly, the own evidence of the insurer RW1 R.K. Sharma ADM had proved the insurance policy as Ex.R1. The evidence of licencing clerk of the Licencing Authority RW2 Zile Singh shows that a licence under Sr.No.886254 has been issued by the authorities and the mere simplicitor statement of this witness that the chassis number of the vehicle for which this licence has been issued, are not incorporated in the register, does not affects the case of the claimants and as per the entry he would not be eligible to drive Tata 407 vehicle. Merely because an observation has come about in the impugned Award by the Tribunal that licencing authority was not maintaining its record in accordance with the provisions of Section 26 of the Motor Vehicles Act, 1988, will not in any manner impact the claim of the claimants and since the driving licence was valid at the time of accident and if as has been held by the Tribunal that it was not authorizing the driver to drive the offending vehicle they will not absolve the driver, owner and insurer of its liability towards the claimants. Thus, in the light of what has come up before this Court, respondent Sunder Singh being driver, Suresh Kumar being owner and United India Insurance Co. Ltd. being the insurer, shall be jointly and severally liable to pay the compensation amount. The claimants shall reserve the right to first claim the amount from the insurer who have the right of recovery of the appropriate amount from the owner and driver jointly and severally. The claimants being mother and father of both the deceased, shall be equally entitled to the amount of compensation so awarded.

In the light of these observations, both the appeals stand disposed off.

(FATEH DEEP SINGH)
JUDGE

May 2, 2022
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No