

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

FAO-3244-2021 (O&M)

Date of Decision : October 18, 2022

Punjab State Forest Development Corporation Limited

...Appellant

Vs.

Rajwinder Devi and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Anju Arora, Advocate
for the appellant.

Mr. Munish Gupta, Advocate
for the caveators/respondents No.1, 2 and 4.

ARVIND SINGH SANGWAN, J.

CM-13897-CII-2022

For the reasons stated in the application and with the consent of both the parties, the same is allowed and the hearing of the appeal is pre-poned for today itself.

CM-13349-CII-2021

Prayer in this application under Order XVI Rule 27 read with Section 151 CPC is for granting permission to lead additional evidence, i.e. agreement dated 12.6.2017 (A-6) and 16.6.2017 (A-7).

It is submitted that the agreement between the appellant and M/s J.S. Constructions was entered into on 12.6.2017 and 16.6.2017 and these agreements could not be exhibited before the trial Court.

The counsel appearing for the respondent has no objection to the same.

Accordingly, the application is allowed and both these documents are exhibited as Mark-X-1 and Mark X-2.

FAO-3244-20221

Prayer in this petition is to set aside the award dated 1.10.2021 passed by the Motor Accident Claims Tribunal, Hoshiarpur vide which the Tribunal has partly allowed the claim petition filed by the respondent-claimants and has awarded the amount of Rs.1,00,44,160/- with interest @ 7.5% p.a. from the date of filing of the claim petition till its realization.

While assessing the just and fair compensation, the Tribunal recorded a finding that deceased-Sandeep Kumar was working as Assistant Sub Inspector with CRPF and was drawing a salary of Rs.47,773/- per month. It was held that after deducting the income tax, the annual salary was Rs.5,54,121/- and by taking the dependency of the claimants, who are widow, minor son and the old aged parents, the dependency was taken to be 3/4th of the income of the deceased. Considering the fact that the age of the deceased was 35 years in terms of **Sarla Verma and others Vs. Delhi Transport Corporation and another**, (2009) 6 Supreme Court Cases 121, multiplier of '16' was applied and total compensation of Rs.66,49,456/- was assessed. In the light of the judgment in **National Insurance Company Limited Vs. Pranay Sethi and others**, 2017(4) RCR (Civil) 1009, the future prospects at the rate of 50% was also awarded and an amount of Rs.33,24,728/- was added and total compensation was Rs.99,74,160/-, besides Rs.15,000/- was granted on loss of estate; Rs.40,000/- loss of consortium and Rs.15,000 for funeral expenses were awarded and, thus, Rs.1,00,44,160/- as total compensation were awarded.

The Tribunal further held that respondent No.4(a), being the principal and respondent No.4(b), being the agent of respondent No.4(a) are equally liable to pay compensation to the claimants.

The MACT record is already requisitioned.

Counsel for the appellant has challenged the findings primarily on the ground that the liability of the appellant Punjab State Forest Development Corporation Limited respondent No.4(a) has been wrongly fastened.

Counsel for the appellant has primarily argued that the liability has been wrongly fastened on Punjab State Forest Development Corporation Limited (hereinafter referred to as 'the Corporation').

In reply to para 26 of the written statement filed by the appellant, it is stated that vide receipts dated 12.6.2017 and 16.6.2017, in terms of an agreement between the Corporation with respondent No.4(b), i.e. M/s J.S. Constructions, the possession of the keys handed over and, thereafter, it was M/s J.S. Constructions, who has to cut the trees and, therefore, no liability can be fastened on the Corporation as the trees were given to the construction company. It is also submitted that the Corporation is not the owner of the alleged tractor-trolley No.AP-20-F-8238. Counsel for the appellant has further argued that the Tribunal has wrongly recorded a finding that there is a relationship of Principal and Agent between respondent No.4(a)-appellant and respondent No.4(b), that the company to whom the trees were sold by the Corporation.

Counsel for the appellant has referred to the statement of AW1-claimant-Rajwinder Devi to submit that in cross-examination it has come that the wife and the minor children are drawing the pension of the deceased and this amount has not been taken into consideration by the Tribunal.

Counsel for the appellant has further referred to the statement of AW2-SI Kailash Bhatt from the office of DIG, CRPF, Chandigarh Range, who has stated that as per the service record, the deceased was drawing Rs.47,773/- as gross salary and his widow and children are granted the family pension.

Counsel for the appellant has further referred to the statement of AW3-Ahlmad to the Court of the JMIC, Jalandhar, who has brought the summoned record with regard to FIR No.49 dated 4.3.2018 registered under Section 304-A IPC and Sections 283, 337, 427 IPC at Police Station Adampur against one Mohammad Saleem. Counsel further submitted that Mohammad Saleem is not an employee of the appellant-Corporation and the tractor-trolley bearing registration No.AP-20F-8283 is in the name of Mohammad Rabeeb. Counsel further argued that even the Corporation is not the owner of the said trolley.

Counsel for the appellant has then referred to the statement of RW1 Bhupinder Singh, Project Officer, who has filed this affidavit Ex.RW1/A, along with certain documents as Ex.R2 to R5 to submit that the Corporation has sold the trees to J.S. Constructions, Punjab and, therefore, no liability can be fastened.

Counsel for the appellant has also relied upon exhibited documents R2 to R5 to submit that vide these documents, an agreement was entered between the Corporation and M/s J.S. Constructions, wherein it was agreed that respondent No.4(b) on making the payment had taken the possession of the trees and, thereafter, there was no liability of the Corporation.

Counsel for the appellant has also argued that the Tribunal has awarded the amount on a higher side as the family pension drawn by the claimants has not been deducted from the total compensation.

In reply, the counsel for the respondent claimants has submitted that the respondent No.1, the driver of the tractor-trolley or the owner neither filed any written statement nor chose to appear in the witness-box to deny the factum of accident and, therefore, the death of Sandeep Kumar in the accident due to rash and negligent driving of respondent No.2 is duly proved.

Counsel for the respondent has also relied upon the possession receipts dated 12.6.2017 entered upon with respondent No.4A-the Corporation with M/s J.S. Constructions Company, wherein in Clause 9, it is stated that the purchaser will take possession of the trees within three days from the date of signing of the agreement and under Clause 37, it is provided that the purchaser will use heavy machinery which will likely to damage plantation or other unsold trees after getting permission in writing from the competent authority.

Much reliance is placed by the counsel for the respondent on Clause 35 of the agreements, which are allowed in additional evidence as Mark X-1 and Mark X-2, which reads *"after successful completion of contract as per the condition of the contract and the provision of this agreement the security amount shall be released in favour of the purchaser within a period of two months."*

It is argued by the counsel for the appellant that similarly another agreement was entered on 16.6.2017 (both- A6 and A7 relied upon by the appellant itself).

Counsel for the respondent-claimant submits that till the time, the security amount was not released in favour of the purchaser, both the agreements were in vogue and there was a relationship of principal and agent between respondent No.4(a) and 4(b), i.e. the appellant and the contractor.

On a Court query, upon instructions from the concerned official, counsel for the appellant could not dispute that the security amount was not released till the time the accident took place.

Counsel for the respondent has relied upon judgment of the Hon'ble Supreme Court, 2014 (2) RCR (Civil) 591 **Purnya Kala Devi Vs. State of Assam and another**, to submit that where a fatal road accident is caused by a bus which was under requisition of the State government, the government will be considered the deemed owner of the vehicle and liable to pay compensation. The operative part of the judgment reads as under :-

"13. Though the above point was pressed into service, the High Court, without adverting to [Section 5](#) of the Assam Act, merely on the basis of the definition of "owner" as contained in [Section 2\(30\)](#) of the 1988 Act, mulcted the award payable by the owner of the vehicle. The High Court failed to appreciate that at the relevant time the offending vehicle was under the requisition of Respondent No. 1 – State of Assam under the provisions of the [Assam Act](#). Therefore, Respondent No. 1 was squarely covered under the definition of "owner" as contained in [Section 2\(30\)](#) of the 1988 Act. The High Court failed to appreciate the underlying legislative intention in including in the definition of "owner" a person in possession of a vehicle either under an agreement of lease or agreement of hypothecation or under a hire-purchase agreement to the effect that a person in control and possession of the vehicle should be construed as the "owner" and not alone the registered owner. The High Court further failed to appreciate the legislative intention that the registered owner of the vehicle

should not be held liable if the vehicle was not in his possession and control. The High Court also failed to appreciate that [Section 146](#) of the 1988 Act requires that no person shall use or cause or allow any other person to use a motor vehicle in a public place without an insurance policy meeting the requirements of Chapter XI of the 1988 Act and the State Government has violated the statutory provisions of the 1988 Act. The Tribunal also erred in accepting the allegation of Respondent No. 2 that the vehicle was released on the date of the accident at 10.30 a.m. and the accident occurred at 10.30 a.m. without any evidence even though in the claim petition, it was stated that the accident had occurred at 10.15 a.m.

14. In the light of what is stated above, we accept the stand taken by the appellant and hold that the appellant/claimant is entitled to receive a sum of Rs. 1,94,400/- as fixed by the High Court with interest at the rate of 9% per annum from the date of claim petition till the date of deposit and the same is payable by the State of Assam. The amount shall be deposited before the Tribunal within a period of eight weeks from the date of receipt of copy of this order and on such deposit being made, the appellant – Purnya Kala Devi is permitted to withdraw the same. The appeal is allowed on the above terms.”

Counsel for the respondent-claimant submits that since the trees were cut by the contractor in an agreement with the appellant-owner of the trees and the same were being transported by the Contractor, the Tribunal has rightly recorded a finding in favour of the

claimants that the liability of the Corporation and the Construction Company is joint.

After hearing the counsel for the parties, I find no merit in the appeal.

The Tribunal under Issue No.1 has recorded a finding that and an adverse inference is drawn as the driver-respondent No.1, who has not entered into witness-box to rebut the allegation of rash and negligent driving resulting into death of Sandeep Kumar. The Tribunal has also recorded a finding that AW1, the eye-witness of the accident has duly proved the rash and negligent driving of respondent No.1 and coupled with the fact that respondent No.1 is facing a criminal trial in an FIR registered for the rash and negligent driving of respondent No.1- Mohammad Saleem in causing the accident resulting into death of Sandeep Kumar is duly proved.

The Tribunal has also recorded a correct finding under Issue No.2, while assessing the just and fair compensation and has further rightly held that the respondents No.4(a) and 4(b) are being principal and agent are equally liable to pay the compensation to the claimant.

Even otherwise as per the evidence on record it is clear that the road side trees were got cut by the appellant-Corporation as per the written agreement itself and the work was assigned to respondent No.4(b)-M/s J.S. Constructions to cut and remove the trees and therefore, in terms of the agreement, as noticed above, which was in vogue even on the date of accident, there was a relationship of principal and agent between them.

Mere fact that the appellant Corporation is not the owner of offending vehicle, in view of the judgment of the Hon'ble Supreme Court in **Purnya Kala Devi's** case (supra) since it was a requisitioned vehicle to transport the trees which were cut from the forest land under an

agreement between appellant and the Construction Company. Even if the appellant cannot be held as a registered owner but can be construed as owner of the offending vehicle. Accordingly, the MACT has rightly held that the appellant as well as the Construction Company are equally liable to pay the compensation to the claimants.

In view of the above, there is no merit in the petition and the same is, therefore, dismissed.

October 18, 2022
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No