

FAO-909-2018(O&M) &
FAO-6497-2018(O&M)

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

(1) FAO-909-2018(O&M)

United India Insurance Company Ltd.

...Appellant

Versus

Bhinder Kaur and others

...Respondents

(2) FAO-6497-2018(O&M)

Daljeet Singh and others

...Appellants

Versus

Gurdev Singh and others

...Respondents

Date of Decision:-23.12.2022

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

Present: Mr.Gopal Mittal, Advocate
for the appellant in FAO-909-2018 and
for respondent No.3 in FAO-6497-2018

Mr.Dinesh Sharma, Advocate
for the appellants in FAO-6497-2018 and
for respondents No.1 to 4 in FAO-909-2018.

Mr.Ankur Gupta, Advocate
for respondents No.5 and 6 in FAO-909-2018 and
for respondents No.1 and 2 in FAO-6497-2018.

H.S. MADAAN, J.

1. By this order, I shall dispose of two FAOs i.e. FAO-909-2018

filed on behalf of appellant – United India Insurance Company and FAO-6497-2018 filed on behalf of appellants – Daljeet Singh and others, which have arisen out of the same award.

2. Briefly stated, the facts of the case are that on 13.3.2016, the deceased Malagar Singh after closing his dry-cleaner shop was returning to village Manderan from village Sanghol riding Panther moped bearing registration No.PB-52-3166; at about 7:30 p.m., when he had reached a little distance ahead of Laxmi Rice Mill, Khamanon, then a truck bearing registration No.PB-10P-9852 (hereinafter referred to as the offending truck) being driven by respondent No.1 Gurdev Singh in a rash and negligent manner at high speed without observing traffic rules and without blowing any horn came and struck the same with Moped of Malagar Singh; resultantly Malagar Singh fell down on the road and suffered multiple injuries on his body including head, mouth etc.; he was removed to Civil Hospital Khamanon, but keeping in view his serious condition, he was referred to PGI, Chandigarh, however he died on the way near Kharar.

The accident was witnessed by one Manjit Singh. Postmortem examination on the dead body was carried out Civil Hospital, Khamanon on 14.3.2016. FIR No.23 dated 14.3.2016, under Sections 279, 304-A, 427 IPC was registered with PS Khamanon regarding the accident.

2. The legal representatives of deceased, namely, Smt.Bhinder Kaur – wife aged about 45 years, Daljeet Singh aged about 28 years and Gurjant Singh aged about 25 years – sons and Ms.Mandeep Kaur alias Manjit Kaur aged about 28 years - married daughter, had brought a claim

petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) before Motor Accidents Claims Tribunal, Fatehgarh Sahib (hereinafter referred to as the Tribunal) against respondent No.1 – Gurdev Singh – driver, Jagdish Kumar – owner and United India Insurance Co. Ltd. - insurer of the offending truck bearing registration No.PB-10-P-9852.

3. *Inter alia* in the claim petition, the claimants contended that the deceased was aged about 52 years and was running a dry-cleaner shop at bus stand of village Sanghol; in addition to that he was engaged in avocation of dairy farming and was earning Rs.30,000/- from all sources; he was bearing the household expenses and serving the family to the best of his ability; the claimants had spent Rs.1,50,000/- on his treatment and transportation of dead body, funeral and performing last rites etc.

4. Notice of the claim petition was given to respondents, who put in appearance. Respondents No.1 and 2 filed a joint written statement, whereas respondent No.3 has filed separate written statement.

5. In the joint written statement filed on behalf of respondents No.1 and 2, they had taken up preliminary objections that respondent No.1 is a efficient driver and had not caused any accident and that vehicle in question was insured with respondent No.3 – insurance company. On merits, such respondents refuted the assertions in the claim petition.

6. In the separate written statement filed by respondent No.3 insurance company, it challenged the maintainability of the claim petition stating that the truck in question had been wrongly involved in this case just to get compensation; it has been so done by claimants in connivance

with the police officials of Police Station Khamanon and a false FIR had been got registered there to get easy compensation. Further objections had been taken that driver of the alleged offending truck was not possessing a valid, effective and legal driving licence at the time of alleged accident and this fact was well within the knowledge of respondent No.2 i.e. owner of the truck despite that he permitted respondent No.1 to drive the truck in question showing clear negligence, in that way, the truck was being driven in violation of the terms and conditions of the insurance policy against rules of Motor Vehicles Act and further respondent No.1 and 2 were not having valid RC, fitness certificate and route permit at the time of accident. The age of the deceased being 52 years, his avocation of working as dry-cleaner and dairy farming allegedly earning Rs.30,000/- as claimed by the claimants were also challenged.

7. All the three respondents prayed for dismissal of the claim petition.

8. On the pleadings of the parties following issues were framed:

1. Whether the respondent NO.1 caused death of Malagar Singh by driving truck NO.PB-10P-9852 in a rash and negligent manner on 13.03.2016 at 07:30 P.M. in the area of Khamanon? OPP.
2. Whether the claim petition is not maintainable? OPR
3. Whether driver of the Truck No.PB-10-P-9852 was not having valid driving licence at the time of accident and the said truck had no valid registration certificate and other documents? OPR.
4. Whether the claimants are entitled for compensation as prayed for from the respondents? OPP.

5. Relief.

9. Both the parties led evidence in support of their respective claims.

During the course of evidence, the claimant No.1 Smt.Bhinder Kaur had appeared as CW1, whereas claimant No.3 Gurjant Singh got his statement recorded as CW2. Both of them supported the case of the claimants on material points. CW3 Manjit Singh eye-witness of the accident supported the case of the claimants providing the eye-witness account of the accident. CW4 Isher Singh placed on record certified copy of postmortem report of deceased as Ex.C1, certified copy of FIR as Ex.C2, certified copy of charge-sheet as Ex.C3, certified copy of challan under Section 173 Cr.P.C. as Ex.C4, certified copy of arrest memo of Gurdev Singh as Ex.C5, certified copy of recovery memo of truck as Ex.C6, photographs of the shop of dry-cleaner as Ex.C12 and Ex.C13, original receipts of payment of bill as Ex.C14 and Ex.C15 and original bill as Ex.C17.

In rebuttal, respondents No.1 and 2 tendered in evidence registration certificate of the offending truck as Ex.R1, insurance policy as Ex.R2, route permit of the truck as Ex.R3, versification of the driving licence of Gurdev Singh as Ex.R4, driving licence Ex.R5 and fitness certificate of truck as Ex.R7 for the year 2014-15 and 2015-16.

Counsel for respondent No.3 tendered into evidence certified copy of the insurance policy as Ex.R8, original verification report of permit regarding the offending vehicle as Ex.R9, original verification report of the driving licence of respondent No.1 as Ex.R10 and fitness

certificate of the offending truck as Ex.R11.

10. After hearing arguments, the Tribunal decided issue No.1 against the respondents and in favour of the claimants; issue No.2 was decided holding that respondent No.1 had been able to prove that he was having a valid and effective driving licence at the time of accident; issue No.3 was decided holding that only claimant No.1 Bhinder Kaur is entitled to compensation, whereas claimants No.2 to 4, who are married children of the deceased are not entitled. Therefore vide award dated 31.10.2017 compensation of Rs.9,40,266/- was awarded to claimant No.1, payable by all the respondents jointly and severally, however respondent No.3 was directed to make payment of compensation amount within two months from the date of pronouncement of award, failing which claimant No.1 would be entitled to recover the awarded amount @ 6% per annum from the date of filing of the petition till realisation.

11. The claimants and insurance company felt aggrieved by the award and they have filed separate appeals before this Court, which are being taken up together for decision having arisen out of the same award.

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

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

14. The first and foremost argument advanced by learned counsel for the appellant – insurance company was that truck bearing registration No.PB-10P-9852 was not involved in the accident and it was planted later on in the case by the claimants in connivance with the police to get

compensation. He further submitted that FIR No.23 dated 14.3.2016, which was lodged on the next day of the accident does not contain the registration number and other particulars of the vehicle as well as name of the driver and Manjit Singh cited as eye witness of the accident was not there at the spot at the relevant time and while appearing as CW3 Manjit Singh in his cross-examination stated that he had informed about the alleged accident as well as offending vehicle to the family members of the deceased on 14.3.2016 i.e. on the next day of the accident and son of the deceased had gone along with him to the police station; the FIR was lodged on the statement of Daljeet Singh, who was not examined the claimants.

15. Whereas, learned counsel for the claimants has controverted such assertions of learned counsel for the appellant insurance company stating that the accident had in fact been caused by rash and negligent driving of the offending truck by Gurdev Singh respondent No.1 and claimants had led sufficient oral as well as documentary evidence to establish that.

16. After hearing the rival contentions, I find that the submissions made by counsel for the appellant insurance company lack merit for various reasons.

17. Firstly, FIR lodged regarding the accident not containing the registration number of the truck and its other particulars as well as details of the driver can certainly be not taken to be a suspicious circumstance since the purpose of registration of the FIR is to set the criminal machinery into motion and any person can lodge the FIR, who may or

may not have seen the accident/incident, merely by lodging information that some human being has suffered injuries or lost his life in a road side accident caused due to rash and negligent driving of a particular vehicle prima facie disclose offence under Section 279, 338, 304-A IPC, for which police is bound to register the FIR. It may be mentioned here that FIR is not an encyclopedia of the incident and it need not contain the details of the incident/accident including the manner it took place; the vehicle which caused the accident; the person, who was driving such vehicle etc. It is a matter of investigation. The police after lodging the FIR carries out investigation in the case so as to find out as to how the crime was committed and the person(s) responsible for committing the crime etc. Though prompt lodging of the FIR is desirable but some delay in doing so does not mean that the version given in the FIR is to be disbelieved outrightly, if convincing explanation for the delay is given.

18. In this case, the family members of the deceased must have been shaken and traumatized on hearing news about death of the deceased in the road side accident. It does require some time to regain normalcy and to think about lodging information with the police. It cannot be expected that immediately on learning about death of deceased in the accident his family members or other persons including the eye-witness would have rushed to the police first of all to lodge report there. The law on the subject is very clear that rules of procedure and provisions of evidence are not strictly application to the proceedings before the Tribunal.

19. Section 166 of the Motor Vehicles Act is a piece of welfare

legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there.

20. The Tribunal determining such compensation payable is not expected to adopt very rigid and restricted procedure. Flexibility in the matter is required. Some delay in lodging of the FIR may be a relevant factor in a criminal case but not in proceedings under Section 166 of the Motor Vehicles Act. Since Daljeet Singh, who had lodged the FIR had not himself seen the accident, his non-examination as a witness does not make any difference and cannot be taken adversely qua the case of the claimants. The claimants had examined Manjeet Singh eye-witness from whom Daljeet Singh had derived information on the basis of which he had got registered FIR. Manjeet Singh supported the case of the claimants on material aspects categorically stating that the accident had been caused by respondent No.1 Gurdev Singh by his rash and negligent driving of the offending truck. He was cross-examined at length on behalf of the respondents but he stuck to his guns and could not be shattered on any material point. No motive was suggested or proved prompted by which this witness might have come forward to depose falsely in favour of the claimants and against the respondents.

21. Although according to learned counsel for the appellant – insurance company, the claim petition had been filed by the claimants in collusion with the police as well as driver and owner of the vehicle but

such assertions are not borne out from the record. The owner and driver of the vehicle had filed a joint written statement denying that the truck in question had caused any accident. The witnesses examined by the claimants had been put to cross-examination on their behalf. Even otherwise, from the record no inference can be drawn that the owner and driver of the offending truck were colluding with the claimants. The mere fact that Gurdev Singh respondent No.1 had not stepped into the witness-box to depose on oath the version of the respondents No.1 and 2 in the written statement, rather shows that the evidence adduced by the claimants on issue No.1 has gone unrebutted but then respondent – insurance company also did not make any effort to get his statement recorded by asking him to appear in the witness-box for that purpose. Learned Tribunal while deciding issue No.1 has considered the evidence on file and other facts and circumstances. It stands adequately established that Gurdev Singh was challaned for causing the accident. He was arrested in this case and was charge-sheeted. The truck in question had been seized by the police. Therefore, no different view can be taken with regard to verdict given by the Tribunal in favour of the claimants and against respondents on issue No.1.

22. With regard to the quantum of compensation, I find the same to be just and reasonable and certainly not on the higher side. The Tribunal had taken the age of the deceased to be 52 years considering such age entered in his postmortem report Ex.C1. Although according to the claimants, the deceased was engaged in the avocation of dyeing and colouring of DUPATTAS earning Rs.20,000/- per month besides drawing

additional income of Rs.10,000/- from the avocation of dairy farming. The claimants had examined landlord of the shop Sh.Isher Singh as CW4, who stated that he has rented his shop to the deceased, where he was doing his business of dyeing and colouring of DUPATTAS but the Tribunal for the reasons best known to it rejected his testimony and rather went on to treat the deceased as a skilled labourer and in terms of Punjab Government letter No.23879 dated 4.10.2016 assessed his monthly income to be Rs.8887/- and 10% amount was added towards future prospects, whereas 1/3rd amount was deducted on account of his personal and living expenses and thereafter the compensation was calculated after using multiplier of 11 and adding compensation under conventional heads, the total compensation was worked out to Rs.9,40,266/-. The compensation so worked out is definitely not on higher side and there is no scope for reduction.

23. Therefore, the ***FAO-909-2018*** filed on behalf of the insurance company is bound to fail and is dismissed accordingly.

24. Now coming to FAO-6497-2018 filed on behalf of appellants Daljeet Singh, Gurjant Singh and Mandeep Kaur alias Manjit Kaur, children of the deceased, who were denied share in the compensation for the reasons that Daljeet Singh and Gurjant Singh, who are sons of deceased had attained the age of majority and his daughter Mandeep Kaur @ Manjit Kaur had been married off. But the Tribunal clearly fell in error in doing so. The legal position in that regard has been clarified by the Apex Court in judgment ***National Insurance Company Ltd. Versus Birender and Ors.2020 AIR(SC) 434*** wherein it was observed that even

major married and earning sons of the deceased being legal representatives have a right to apply for compensation in case of accidental death.

25. As far as married daughter of the deceased is concerned, in our traditional society married daughters are given due attention by the parents. They are provided gifts in cash and kind quite frequently more so on festive occasions, in that way, they do draw financial benefit from their parents. With the death of her father, Mandeep Kaur @ Manjit Kaur has not only been deprived of his love and affection but obviously has suffered a pecuniary loss also. She too deserves to be granted a share in the compensation. ***Therefore, FAO-6497-2018 filed on behalf of appellants Daljeet Singh, Gurjant Singh and Mandeep Kaur alias Manjit Kaur deserves to be accepted. The same is allowed.*** The impugned award is modified inasmuch appellants Daljeet Singh, Gurjant Singh and Mandeep Kaur alias Manjit Kaur are also found entitled to get a share in the compensation awarded on account of death of Malagar Singh in the road side accident. The Tribunal was not justified in giving the entire compensation to claimant No.1 Bhinder Kaur. Such direction is modified and it is directed that the compensation awarded would be apportioned amongst all the claimants in following manner:

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|--|---|-----|
| 1. Petitioner No.1 – Bhinder Kaur | - | 55% |
| 2. Petitioner No.2 Daljeet Singh | - | 15% |
| 3. Petitioner No.3 Gurjant Singh | - | 15% |
| 4. Petitioner No.4 Mandeep Kaur
@ Manjit Kaur | - | 15% |

26. It is clarified that in case the Insurance Company has already made the requisite payment to petitioner No.1 Bhinder Kaur, then she would be liable to pay the amounts to the extent of shares given to other appellants and if she does not do so within a month from today, the appellants Daljeet Singh, Gurjant Singh and Mandeep Kaur alias Manjit Kaur would be entitled to file an execution application before Motor Accident Claims Tribunal, Fatehgarh Sahib for recovery of that amount from petitioner No.1- Bhinder Kaur, otherwise if the amount is still unpaid, it would be liability of the insurance company to comply with the order passed in this appeal.

23.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No