

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

FAO-1795-2019(O&M)

Reserved on:-9.5.2023

Date of Pronouncement:-18.5.2023

Amarjit Kaur and another

...Appellants

Versus

Ajaib Singh and others

...Respondents

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

Present: Mr. Sanjeev Goyal, Advocate
for the appellants.

Mr.S.S. Sidhu, Advocate
for respondent No.3.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that on account of death of one Amandeep Kaur, aged about 27 years in a motor vehicular accident, which took place on 22.3.2016 at about 11:00 a.m. in the area a little ahead of village Burj Gill within jurisdiction of Police Station Phul, statedly on account of rash and negligent driving of truck bearing registration No.PB-03Y-8665 (hereinafter referred to as the offending truck) by Ajaib Singh – respondent No.1, mother of deceased, namely Amarjit Kaur, aged about 53 years and brother of deceased, namely Jasdeep Singh, aged about 24 years, both residents of village Bihla, Tehsil Tapa, District Barnala had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against the respondents i.e. Ajaib Singh – driver, Ram Singh – owner and New India Insurance Company Ltd. - insurer of the offending truck.

2. After contest, the claim petition was dismissed by the Motor Accident Claims Tribunal, Barnala (hereinafter referred to as the Tribunal) vide Award dated 2.11.2018, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents. However, only respondent No.3 insurance company has put in appearance through counsel to offer a contest. Whereas respondents No.1 and 2 did not appear despite service, as such they were proceeded against ex-parte.

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

4. A perusal of the impugned award goes to show that the Tribunal had dismissed the claim petition mainly for the reason that the claimants had failed to prove that the accident had taken place due to rash and negligent driving of offending truck by respondent No.1 – Ajaib Singh. The factor, which weighed heavily on the mind of the Tribunal while arriving at this conclusion was that PW2 Jaspal Singh eye-witness while appearing before the criminal Court in his statement copy Ex.R5 had not identified Ajaib Singh as driver of the offending truck, resultantly Ajaib Singh had been acquitted by the Court of SDJM, Phul vide judgment dated 5.6.2017.

5. However, I find that the whole approach of the Tribunal in doing so was misdirected and erroneous. The law is well settled that judgment of a criminal Court is not binding upon the Tribunal, which has to reach its own conclusion on the basis of evidence produced by the parties. PW2 Jaspal Singh while getting his statement recorded before the

Tribunal had supported the case of the claimants contending that the accident had taken place on account of rash and negligent driving of the offending truck by respondent No.1 Ajaib Singh. He was subjected to lengthy cross-examination but he remained unshattered. The statement of an eye-witness on oath before the Tribunal duly tested by cross-examination could not have been ignored in such a manner and rather needed to be relied upon by the Tribunal. Coupled with that statement was the fact that respondent No.1 – driver of the truck was booked in the criminal case for causing the accident. He was challaned and he faced trial though it resulted in his acquittal.

6. Learned counsel for the appellants has referred to judgment **Krishan s/o Mangiram Versus Tarawati Widow and others, 2012(5) RCR(Civil)492** wherein it was observed that a criminal Court's judgment acquitting a driver is not relevant in a case before the Tribunal because standards of proof of a criminal case are different from tortious claims for the accident victims that are required to be established before the Tribunal and the Tribunal is not to be influenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. In other judgment **Rajwati @ Rajjo & Ors Versus United India Insurance Company Ltd. & Ors., 2023(1) RCR(Civil) 205**, the Apex Court had observed that strict rules of evidence as applicable in criminal trial, are not applicable in motor accident compensation cases.

Another judgment referred to by learned counsel for the appellants/claimants was **Janabai and ors Versu M/s ICICI Lambord Insurance Company Ltd., 2022(4) RCR(Civil) 85** wherein it was

observed that rule of evidence to prove charges in criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988, which is summary in nature. It was further observed that application under the Act has to be decided on basis of evidence led before it and not on the basis of evidence which should have been or led in criminal trial.

7. Even if it is taken that conviction of accused could not be procured in the criminal case, that does not affect the merit of this case since as already discussed above, the yardstick for decision of a criminal case and a claim petition under Section 166 of the Motor Vehicles Act are quite different. The judgment of criminal case is certainly not binding upon the Tribunal. The Tribunal has to reach its own conclusion on the basis of evidence adduced before it. Even it is taken that the eye-witnesses had resiled during the trial, however, if they support the case of claimants in proceedings under Section 166 of Motor Vehicles Act, their depositions cannot be rejected solely for the reason that they had not supported the case of prosecution in the criminal trial.

8. It may be mentioned here that respondent No.1 did not appear in the witness-box to deny that he had caused the accident by his rash and negligent driving. Similarly respondent No.2 did not get his statement recorded to state that the truck belonging to him being driven by respondent No.1 Ajaib Singh had not caused the accident in question. Similarly, respondent No.3 insurance company had neither examined the respondent No.1 the truck driver nor respondent No.2 owner of the truck in support of his contentions. Therefore, the evidence adduced by the

claimants has gone unrebutted and issue No.1 ought to have been decided in favour of the claimants against respondents, whereas verdict with regard to such issue was wrongly given by the Tribunal against the claimants. That wrong is undone and issue No.1 is accordingly adjudged in favour of the petitioners/claimants and against the respondents.

9. With regard to issue No.2 i.e. *“If issue No.1 is proved, whether claimants are entitled for compensation, if so from which of the respondents? OPA”*, the petitioners/claimants being legal representatives of the deceased are entitled to get compensation from all the three respondents, respondent No.1 Ajaib Singh being driver, respondent No.2 Ram Singh being owner and respondent No.3 – insurance company being insurer.

10. The thing to be seen is as to how much compensation is to be awarded to the claimants. As per the evidence available on the record, the deceased was aged about 27 years. She was unmarried and working as a Teacher in the school earning Rs.6,000/- per month. The claimants have placed on record copy of her birth certificate Ex.P11, copy of Aadhar card Ex.P12, copy of voter card Ex.P13, copies of academic qualification of deceased Ex.P14 to Ex.P26, copy of certificate of IELTS Ex.P31. PW1 Upasana Sharma, Teacher from Virakkat Senior Secondary School, Tallewal had brought the school record and stated that Amandeep Kaur was working as teacher in their school on monthly salary of Rs.6,000/-. She proved various documents i.e. application for appointment Ex.P1, appointment letter Ex.P2, salary certificates Ex.P3 and Ex.P4, muster rolls regarding disbursement of salary to Amandeep Kaur as Ex.P5 to Ex.P7.

11. In absence of any rebuttal evidence, the salary of deceased is taken to be Rs.6,000/- per month. In view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, when the age of deceased was below 40 years, 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.6000 + 2400 = Rs.8400/-. Since the deceased was unmarried and would have got married in near future, in terms of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77**, 50% of the amount is to be deducted towards personal and living expenses. Doing that the dependency of claimants comes out to Rs.4200 (8400 -4200)/- per month, annual dependency comes out to Rs.4200 x 12 = Rs.50,400/-.

12. Keeping in view the age of deceased to be 27 and in view of judgment **Smt. Sarla Verma and others (supra)**, a multiplier of 17 is required to be applied. Doing that the compensation payable comes out to Rs.8,56,800/-(50,400 x 17).

13. As per the latest judgment **Shri Ram General Insurance Co. Ltd. Versus Bhagat Singh Rawat & Ors., Civil Appeal Nos.2410-2412/2023 [@ SLP/C] Nos.11669-11671/2020**, the claimants are to be granted a sum of Rs.40,000/- in total under the head loss of consortium. The claimants are further entitled to get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

14. The total compensation comes out to Rs. 8,56,800 + 70,000 = 9,26,800/-. All the respondents are liable to pay the compensation jointly and severally with interest @ 7.5% per annum from the date of filing of

claim petition till actual realization besides costs of the petition.

Thus issue No.2 is decided in favour of the claimants/petitioners and against the respondents.

15. Now coming to issues No.3 and 4, the onus of proving these issues was upon respondent No.3 insurance company. Respondents No.1 and 2 had tendered into evidence photocopy of driving licence of Ajaib Singh as Ex.R1, photocopy of fitness certificate of truck as Ex.R2, photocopy of registration certificate of truck Ex.R3, photocopy of insurance policy as Ex.R4, copy of national permit mark A, Mark B, authority certificate Mark C, pollution certificate Mark D and token tax receipt Mark E. The insurance company has not led any evidence to show that the driving licence of Ajaib Singh, copy of which was placed on record as Ex.R1 was not legal and valid. No defect in such driving licence could be pointed out by learned counsel for the insurance company during arguments. Similarly from the documents brought on record by respondents No.1 and 2 with no defect therein having been pointed out by counsel for the insurance company, it is to be taken that the truck in question was having a valid RC, fitness certificate and insurance policy at the time of accident. There is nothing on record to show that insurance company was absolved of its liability to pay compensation by any alleged violation of terms and conditions of the insurance policy. Thus issues No.3 and 4 are decided against respondent No.3 insurance company and in favour of the claimants.

16. Now coming to issue No.5 i.e. *“Whether the claim is bad for misjoinder and non-joinder of necessary parties? OPR”*. The claimants,

who are mother and brother of the deceased have filed the claim petition against driver, owner and insurance company of the truck involved in the accident. Therefore, all the necessary parties are there and no party has been joined wrongly. The claim petition is certainly not bad for misjoinder and non-joinder of necessary parties.

17. As regards issue No.6 *“Whether the claimants have no locus standi to file the present claim petition against the respondent No.3? OPR/3.* The claimant Amarjit Kaur being mother and Jasdeep Singh being brother of the deceased Amandeep Kaur, who was unmarried have got every locus standi to file the present claim petition and no fault can be found with the same. Thus this issue is decided against respondents No.3 and in favour of the claimants.

18. Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.9,26,800/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides costs of the petition is awarded to claimants.

19. Of the compensation awarded, the liability shall be joint and several of all the respondents. The amount shall be apportioned as follows:

1. Petitioner No.1 – Smt.Amarjit Kaur(mother) - 75%
2. Petitioner No.2 -Jasdeep Singh (brother) – 25% each

Since the main appeal stands accepted, the miscellaneous application(s), if any, stand disposed of accordingly.

18.5.2023

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No