IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1118-1992(O&M)
Reserved on:-16.5.2023
Date of Pronouncement:-25.5.2023

Jaspal Kaur and others

...Appellants

Versus

Sikander Singh and others

...Respondents

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

Present: Mr. Varun Sharma, Advocate
for the appellants.

Mr.Harsh Aggarwal, Advocate
for respondent No.3.

Mr.Vinod Chaudhary, Advocate
for respondent No.4.

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H.S. MADAAN, J.

1. Briefly stated, facts of the case are that Jaspal Kaur – widow, Anuradha, Sonia – minor daughters, Sandeep and Sameer Kumar – minor sons of Darshan Singh, an unfortunate victim of the road side accident 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. Sikander Singh – driver, M/s Raj Sandeep Ltd. Ludhiana – owner and United India Insurance Company – insurer of truck bearing registration No.PAT-7124 (hereinafter referred to as the offending truck) and Oriental India Insurance company Ltd, Ludhiana – insurer of car bearing registration No.PJQ-6300 (hereinafter referred to as ill-fated car), claiming compensation on account of death of Darshan Singh in a motor vehicular accident.

2. As per the version of the claimants, on 6.7.1988 Darshan Singh @ Darshan Pal was proceeding in his ill-fated car from his factory to his house and when he had reached near country-made liquor vend of Mundian Kalan, then the offending truck being driven by respondent No.1 – Sikander Singh in a rash and negligent manner came from the opposite side; the deceased had turned his car towards left hand side to avoid hitting a cyclist, in the process, the offending truck rammed it against car of the deceased, resultantly, Darshan Singh sustained fatal injuries. The accident was witnessed by Mohan Lal, a brother of the deceased as well as Chamkaur Singh, Malkiat Singh and Pritpal Singh.

3. On being given notice, respondent No.1 Sikander Singh did not appear despite service and was proceeded against ex-parte. Whereas contest to the claim petition was offered by respondents No.2 and 3. Respondent No.2 in the written statement filed by it controverted the allegations in the claim petition contending that the deceased himself was responsible for the accident by negligent driving of the car. This fact was within knowledge of relatives of the deceased, who were present at the spot but they did not get the postmortem conducted on the dead body. Respondent No.3 insurance company in the separate written statement filed by it had contested the claim petition. Respondents No.2 and 3 prayed for dismissal of the claim petition.

4. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After contest, the claim petition was dismissed by the Motor

Accident Claims Tribunal, Ludhiana (hereinafter referred to as the Tribunal) vide Award dated 12.11.1991, which left the claimants aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents. However, only respondents No.3 and 4 have put in appearance through counsel.

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

7. The claimants in order to establish that the accident in which the deceased had suffered injuries, to which he had succumbed, had taken place on account of rash and negligent driving of offending truck by respondent No.1 Sikander Singh, examined Malkiat Singh as AW2. Said Malkiat Singh had categorically stated that on 6.7.1988 at about 10:00 p.m., when they were taking meals at a Dhaba near liquor vend of Madan Lal on Ludhiana – Chandigarh road, then a car bearing registration No.PJQ-6300 was coming from the side of Chandigarh and a truck bearing registration No.PAT-7124 came from opposite direction and from the lights of the truck it seemed that the truck was being driven rashly and negligently and then there was a collision between the truck and the car. The witness stated that they were sitting at a distance of 20 karams from the site of the accident. He was cross-examined at length on behalf of the respondent but his credibility could not be shattered on any material point. No reason has been suggested or proved prompted by which this witness might have come forward to depose falsely in favour of the claimants and against the respondents. I find the presence at the spot of this witness at the relevant time to be natural and probable and the version provided by

him to be worthy of reliance. The evidence adduced by the claimants has gone unrebutted since driver of the truck, who had been proceeded against ex-parte had not stepped into the witness-box of his own or after having been summoned by the co-respondents, to depose on oath that he was not at fault in happening of the accident and rather the mishap had taken place due to own fault of the deceased. Therefore, the evidence adduced by the claimants had virtually gone unrebutted. The Tribunal had obviously adopted a wrong approach in appreciating the factual position and analyzing the evidence available on the record.

8. Learned Tribunal proceeded to decide the issue as if it was dealing with a criminal case and not a petition for compensation under Section 166 of the Motor Vehicles Act. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

9. Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. Strict rules of evidence and procedure

are not applicable there.

10. The whole approach of the Tribunal was improper and erroneous. Malkiat Singh had stated on oath that accident had taken place on account of rash and negligent driving of the truck and a perusal of his cross-examination goes to show that he had not said anything, which might have gone to put question mark on his credibility or made his deposition doubtful or unworthy of reliance. The Tribunal while deciding issue No.1 had referred to cross examination of AW2 Malkiat Singh wherein he had stated that within a couple of minutes another car came from the side of Chandigarh with Mohan Lal brother of the deceased on the wheels and he did not lodge any report with the police. Non lodging of report with the police does not mean that the accident had not taken place and that too in the manner as claimed by the claimants. The FIR might not have come into being for various reasons one of which is that normally the police hesitates to lodge FIR because more number of FIRs registered reflect more crime in the area reflecting adversely on the functioning of the local police and most of the police officer especially at the level of SHOs try to register minimum FIRs and at times they either get the matter resolved between the parties or simply refuse to register the FIR. There could be some other reasons for non-registration of the FIR. With regard to the report lodged by Mohan Lal a brother of deceased with the police Ex.A5 to the effect that Darshan Singh in order to save a cyclist proceeding ahead had swerved his car to his right side when suddenly the offending truck came from the opposite side and the accident took place, in the process of saving the cyclist by the deceased has been heavily relied

upon by the Tribunal.

11. In my considered view such report even if lodged by Mohan Lal, who had admittedly not seen the accident does not nullify the statement on oath of AW2 Malkiat Singh more particularly when his testimony had gone unrebutted.

12. The Tribunal is to decide the case on the basis of evidence produced before it, rather than giving too much importance to non-registration of the FIR in the case. Therefore, the Tribunal was not justified in deciding issue No.1 against the claimants. The wrong done by the Tribunal is undone and this issue is decided in favour of the claimants against the respondents.

13. It being so, the petitioners/claimants, who are LRs of deceased Darshan Singh are definitely entitled to get compensation from respondent No.1 – Sikander Singh being driver, respondent No.2 - M/s Raj Sandeep Ltd., Ludhiana – owner and respondent No.3 - United India Insurance Company Ltd. - insurer of the offending truck.

14. The thing to be seen is as to how much compensation is to be awarded to the claimants. The Tribunal while assessing the compensation referring to statement of AW1 Jaspal Kaur widow of deceased, who is one of the claimants, she having stated that her husband was a partner in Shiv Shanker Manufacturing Factory and was earning Rs.15,000/- to Rs.16,000/- per month paying her Rs.5,000/- to Rs.6,000/- per month and they were dependent upon earnings of the deceased and further that deceased was aged about 32 years at the time of his death, had taken age of the deceased to be such. However, considering the fact that AW1

Jaspal Kaur had admitted in her cross-examination that other brothers of the deceased were his partners in the firm and after death of deceased, she has become a partner in place of her husband, the Tribunal assessed the monthly value of the work done by the deceased, who was looking after the factory and business and services rendered by him in running the business more effectively were quantified as Rs.1,500/- per month.

15. However, the Tribunal did not make any addition towards the future prospects. 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.1500 + 600 = Rs.2100/-.

16. In terms of ratio of authority ***Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77*** , 1/4th of the amount is to be deducted towards personal and living expenses. Doing that the dependency of claimants comes out to Rs.1575 (2100 -525)/- per month, annual dependency comes out to Rs.1575 x 12 = Rs.18,900/-.

17. Keeping in view the age of deceased to be 32 and in view of judgment ***Smt. Sarla Verma and others (supra),*** a multiplier of 16 is required to be applied. Doing that the compensation payable comes out to Rs.3,02,400/-(18900 x 16).

18. 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.

19. The total compensation comes out to Rs. 3,02,400 + 70,000 = 372400/-.

20. Learned counsel for the respondent No.3 – insurance company has referred to judgment ***Paramjit Kaur and others Versus Nahar Singh and others, 2017(1) Law Herald 619*** wherein it was observed that when driver of the offending vehicle holding two licences and the first licence did not authorize him to drive the vehicle, he was driving at the time of accident, therefore, an insurance company could not have been made liable.

21. This judgment does not help the insurance company in any manner because before the Tribunal, it had not brought any evidence in that regard. In absence of any such evidence, it cannot be said that the driver was holding two licences and if so, what type of vehicles he was authorized to drive etc. Therefore, no question of grant of any recovery rights to the insurance company from the insured arise.

22. Since the Tribunal in discussion under issue No.2 has observed that the truck in question was duly insured with respondent No.3 United India Insurance Company Ltd., Ludhiana vide insurance policy Ex.R1 and no violation of terms and conditions of the insurance policy was found, which might have absolved respondent No.3 – insurance company to pay compensation or would have resulted in grant of any recovery rights to the insurance company from respondent No.2 – insured,

who is owner of the offending truck, respondents No.1 to 3 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.

23. Accordingly, the appeal is accepted. The award in the appeal is set aside and compensation of Rs.3,72,400/- 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.

24. Of the compensation awarded, the liability shall be joint and several of respondents No.1 to 3. The amount shall be apportioned as follows:

1. Petitioner No.1 – Smt.Jaspal Kaur(widow) - 60%
2. Petitioners No.2 to 5 (children) – 10% each

Since the claim petition is of the year 1988 and more than 34 years have elapsed from the date of its institution, petitioners No.2 to 5 – Anuradha, Sonia, Sandeep and Sameer Kamar must have attained majority by now. As such, their shares be released to them straightway instead of depositing those in the form of FDR in some nationalized bank.

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

25.5.2023 **(H.S.MADAAN)**
Brij **JUDGE**

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