

FAO-2454-2010(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2454-2010 (O&M)

Date of decision: March 23, 2023

New India Assurance Company Ltd.

....Appellant

versus

Jai Bhagwan and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Vinod Gupta, Advocate for appellant-Insurance Company.

Mr. Tara Chand Dhaliwal, Advocate for respondents No.1 and 2.

None for respondents No.3 and 4, despite service.

ARUN MONGA, J. (ORAL)

Appellant before this Court is Insurance Company challenging impugned Award dated 26.02.2010 rendered by learned Motor Accidents Claims Tribunal, Bhiwani (for brevity, 'Tribunal') whereby, claimants were granted compensation of Rs.2,48,000/- on account of death of Vishnu in a motor vehicular accident.

2. Succinct facts, as noted by learned Tribunal, are as below:

"Brief facts of the case emerging from the petition are that on 25.11.2008, deceased Vishnu was traveling on a tractor for labour work and when he was returning to Bhiwani on the said tractor after loading the earth, the respondent no.1, driver of said tractor, started driving the tractor in rash and negligent manner and at high speed, as a result of which said Vishnu jumped from the trolley of the tractor and came under the rear wheel of the tractor trolley. The respondent no. 1 stopped his tractor at some distance. The accident was witnessed by petitioner No.1 as he had also gone to load with earth another tractor trolley which was being driven by Ganesh son of Balwan, resident of Lohar Bazar. The petitioner with the help of one Hari Kishan shifted Vishnu to Ranbir Hospital, Bhiwani as his condition was critical, so he was referred to PGIMS Rohtak, where he died as he had sustained grievous and fatal injuries on his person due to rash and negligent driving on the part of driver of the offending tractor. The post mortem on the dead body of deceased Vishnu was conducted in PGIMS Rohtak. Later on, the matter was reported to the police by petitioner Jai Bhagwan and consequently FIR No.438 dated 25.11.2008 under sections 279/304A IPC was registered at Police Station Sadar, Bhiwani."

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3. Upon notice, respondents No.3 and 4 herein (driver and owner of alleged offending vehicle) filed joint written statement raising preliminary objections that claimant/ respondents No.1 and 2 herein have no locus standi and cause of action to file claim petition and that claim petition was bad for mis-joinder of necessary parties. It was averred that no such accident ever took place due to negligence of respondent No.3-driver with the tractor in question and a false case was registered against him. Claimants mentioned wrong story of accident and so, no liability could be fastened upon them. It was further averred that no compensation was payable by them because tractor in question bearing registration No.HR-16/8846 stood insured with New India Assurance Co. Ltd. and driver of tractor was having a valid and effective driving licence. All other averments were denied and dismissal of the claim petition was prayed.

3.1 Appellant-Insurance Company filed its separate written statement denying contents of claim petition in toto and pleaded that insured (respondent No.4 herein) had contravened terms and conditions of insurance policy inasmuch as driver of Tractor was not holding a valid and effective driving licence and insured/respondent No.4 herein violated the terms and conditions of the insurance policy. Allegations of claimants with regard to death of Vishnu in the alleged accident and entitlement to the amount claimed by claimants were also refuted. It was averred that claim petition was filed by claimant/respondents No.1 and 2 herein in collusion with respondents No.3 and 4 simply to grab compensation.

4. Learned Tribunal framed the following issues:

- “1. *Whether the accident in question took place on 25.11.2008 due to rash and negligent driving of respondent no.1 while driving vehicle No.HR-16/8846 and due to which Vishnu son of petitioners died? OPP*
2. *If issue No.1 is proved, whether the petitioners are entitled to receive compensation, if so, how much and from whom? OPParties*
3. *Whether the petition is not maintainable in the present form? OPR*
4. *Whether the respondent/owner violated the terms and conditions of the insurance policy? OPR Insurance Company.*

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5. *Whether the respondent driver had a valid and effective diving licence at the relevant time? OPR*
6. *Relief.”*

5. On appraisal of record/evidence, learned Tribunal decided issues No.1& 2 in favour of claimants. Issue No.3 was decided against appellant and respondents No.3 and 4 herein. Issues No.4 & 5 were decided against appellant herein. Consequently, claim petition was allowed and claimants were awarded compensation of Rs.2,48,000/- in equal shares along with interest at the rate of 6% per annum from the date of petition till realization.

6. I have heard learned counsel for parties and perused the record.

7. Impugned Award dated 26.02.2010 passed by learned Tribunal is premised, *inter alia*, on the following reasoning:

“9. *The burden to prove this issue was upon the petitioners and inorder to discharge their onus, they examined Jai Bhagwanauthor of the FIR as PW.1, who has specifically deposed that on 25.11.2008, when his son was traveling on tractor no.HR16F/8846 for labour work and he was returning to Bhiwani after loading the earth, the tractor was being driven by its driver i.e. respondent no.1 in a rash and negligent manner and at a very high speed, as a result of which his son namely, Vishnu jumped from the tractor-trolley and was run over by the trolley of the said tractor. The respondent no.1 however, stopped the offending tractor at some distance. He witnessed the said accident which was caused due to the sole rash and negligent driving of respondent no.1 i.e., driver of said tractor. Thereafter, said Vishnu was shifted to Ranvir Hospital, Bhiwani, from where he was referred to PGIMS Rohtak and he died there. Autopsy of dead body of deceased was conducted vide PMR, Ex.P1. Thereafter, on the basis of his statement, FIR Ex. P2 was registered against the respondent no.1. Statement of PW.2 Jai Bhagwan further finds corroboration from the statement of PW.1 Smt. Darshna Devi.*

Both these witnesses were cross-examined at length but their veracity could not be shakened and they well stood the test of cross examination.

10. *Respondent No.1, the driver of the offending vehicle, though has taken a specific stand in the written statement that no such accident took place with the offending vehicle and when he stepped into the witness box asRW.01, it was nowhere stated by him that he moved any application before higher authorities about his false implication in the criminal case, rather, during cross examination by learned counsel for the petitioners, he admitted that at the time of accident, he was driving the tractor no HR16F/8846 of Bhim Singh and was going to load the 'Khad Mitti from the field of Hanuman. He also admitted that Vishnu was traveling in the said trolley. Had he been falsely implicated in criminal case, he must have complained to the higher authorities for his false implication. Further, he also admitted that the FIR no.438 dated*

25.11.2008 was lodged against him. From the perusal of copy of FIR, Ex.P2, it is clear that matter was reported to police on the same day. The matter was brought to the notice of police with all promptness. Had the FIR been not lodged immediately, then it could have been a different matter. Hence, the stand of the respondent no. 1 that he was not driving the offending vehicle at the relevant time rashly and negligently is devoid of merits. It has also come on record that respondent no.1 is facing criminal prosecution in the accident in question in pursuance of said FIREx.P2 and the law is well settled that where a driver was being tried on account of rash and negligent driving, it would be safe to prima facie hold that the accident occurred on account of rash and negligent driving of the driver. Reference in this connection may be made to *Girdhari Lal Versus Radhey Shyam and others*, 1993 (2) P.L.R. 109.

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13. Claimant Jai Bhagwan while appearing as PW-2 has deposed that deceased Vishnu was his son. He also deposed about the manner in which accident took place and his son died. At the time of death, his son was 21 years old. He was doing the labour work and was running a shop and as such, his monthly income was more than Rs.12,000/-. Due to death of Vishnu son of petitioners, their future has completely been darkened solely due to rash and negligent driving of tractor by respondent no.1. They also spent a sum of Rs.25,000/- on last rites and transportation of the dead body. The deceased was the only earning member of the family and he used to give all his earnings to them to meet out day to day expenses in routine life. After his death there is nobody to look-after or to earn anything. In the circumstances, learned counsel for the claimants has requested for grant of compensation as claimed in the petition.

14. The arguments of learned counsel for the claimants cannot be accepted as a whole. However, the amount of compensation claimed by the petitioners is highly exaggerated. No cogent and convincing evidence has been produced on record to prove the extent of income of the deceased. The amount of Rs. 12,000/- per month towards income as alleged by claimants cannot be taken into consideration to assess compensation because if deceased was earning this much amount, he must have furnished income tax returns but there is no such document on file proving that he was furnishing income tax return and earning to this extent. In the circumstances, when there is no proof regarding income of deceased, it cannot be presumed that the deceased was earning this much amount. It is well settled that in such like cases when there is no exact proof regarding income of the deceased, the court may deviate from the structured formula. The principle that is to be applied in a case of this nature is that the amount of compensation should be just and fair.

15. Keeping in view the totality of facts and circumstances of the case, the income of deceased Vishnu is assessed as Rs.3600/- per month because even an un-skilled labourer can earn to this extent. He might have spent $\frac{1}{2}$ of his income i.e., Rs.1800/- upon himself and remaining $\frac{1}{2}$ income i.e. Rs.1800/- upon his family. Thus, the annual dependency of the claimants upon the deceased is assessed as Rs.21,600/-. A perusal of copy mark-A of the post mortem report reveals that at the time of death, the age of deceased Vishnu was 21 years. He was unmarried and issueless. It is well settled that when an unmarried and issueless person dies in a motor vehicular accident then at the time of adopting multiplier, the age of his parents should be considered. In the instant case petitioner no. 1 Jai Bhagwan, who is father of deceased is

aged about 45 years and petitioner no.2, Smt. Darshna Devi, who is mother of deceased is aged about 40 years. So with this age and in the circumstances of the case in hand, in my opinion, multiplier of 11 is most appropriate to assess compensation. Thus, claimants are entitled to compensation to the tune of Rs.2,37,600/-. The claimants are also entitled to compensation to the tune of Rs.10,400/- towards funeral expenses, transportation, last rites etc. The total amount of compensation comes to Rs.2,48,000/-.

16. Now the next question to be determined under this issue is as to by whom the said amount of compensation is payable.

17. While deciding issue no.1, it has been held that the accident in question was caused due to the rash and negligent driving of respondent no.1. Admittedly, respondent No.1 was the driver, respondent no.2 was the owner of the Tractor in question, so, there is no question of escaping the liability to pay the compensation to the claimants by respondents no. 1 and 2, hence it is held that they are jointly and severally liable to pay the said amount of compensation to the claimants.

18. From perusal of insurance policy Ex.R3 and Ex.R4 the offending tractor bearing registration no HR16F/8846 was duly insured with the New India Assurance Company Limited from 27.09.2008 to 26.09.2009 and the accident in question took place on 25.11.2008, meaning thereby, the offending tractor was duly insured at the relevant time. The stand of the respondent no.3 insurance company that it was not liable to pay any compensation because the insured had violated the terms and conditions of the insurance policy as the vehicle was insured only for agriculture purposes whereas it was being used for commercial purposes for loading and unloading of earth, is not tenable because at the time of accident the vehicle in question was returning after unloaded of earth/Khad Mitti and the deceased being labourer was traveling in the said tractor which, in my opinion, was being used for agriculture purposes. So, the insurance company is also liable to pay the compensation.

There cannot be any dispute about the proposition of law laid down in the authoritative pronouncements relied upon by the learned counsel for respondent no.3 such as *The Oriental Insurance Co. Ltd. Vs. D. Laxman & Ors.* 2007(3) (Supp) L.J.R. 251; *Desh Raj and another Versus Khushi Ram and others* 2006 A.C.J. 1926; *United India Insurance Co. Ltd. Vs. Suryakantabai and others* 2009 A.C.J.391 and *Royal Sundaram Alliance Insurance Co. Ltd. Versus Jhool Bai and others*, 2009 A.C.J. 758 but the insurance company cannot derive any benefit from the above discussed authoritative pronouncements as the same, in my opinion, are not applicable to the case in hand, being distinguishable on facts.

19. In view of my above discussion, this issue is accordingly decided in favour of the claimants to the effect that the claimants are entitled to receive a total sum of Rs.2 48,000/- as compensation in respect of death of Vishnu and respondents No. 1 to 3 being the driver, owner and insurer of the offending vehicle are liable jointly and severally to pay the above said amount of compensation.”

8. Having heard arguments of learned counsels for parties, there is no room for interference in the aforesaid valid reasons recorded by learned Tribunal.

9.1 There is another aspect of the matter. But since no appeal or cross-objections have been filed, same is not being dealt with. To my mind, the compensation awarded seems to be too meagre and low and, ordinarily had there been a counter appeal, this Court would have shown indulgence in favour of the claimants, whose young son died in the accident. Matter is being put to rest by dismissing appeal simplicitor instead of taking any further recourse since respondents No.1 and 2/claimants have chosen to give it a quietus.

12. Pending application(s), if any, shall also stand disposed of.

Whether reportable:	Yes/No
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