

2023:PHHC:161990

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1709-2014 (O&M)
Date of Decision: December 16, 2023

Balbir Singh and another

...Appellants

VERSUS

Rishi Paswan and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Harpreet Kaur Gill, Advocates
for the appellants.

None for respondents No.1 and 2.

Mr.Rajneesh Malhotra, Advocate
for respondent No.3.

ARCHANA PURI, J.

Challenge in the present appeal is to the judgment of dismissal of the claim petition filed to seek compensation, on account of death of Amritpal Singh, in a motor vehicular accident, which took place on 14.10.2011.

On appraisal of the evidence, brought on record, learned Tribunal concluded about the accident to have taken place entirely on account of rash and negligent driving of the deceased Amritpal Singh and thus, on this account, the claim petition was dismissed, vide impugned judgment.

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Feeling aggrieved with the dismissal of the claim petition, the appellants-claimants have filed the present appeal.

Learned counsel for the parties heard.

The essential facts to be noticed, are as follows:-

That, on 14.10.2011, deceased Amritpal Singh, while driving the motorcycle bearing registration No.PB-10-DG-0741(T) was proceeding from village Sahabana to Bholapur, District Ludhiana. He was followed by Jasbir Singh and Balbir Singh, who were travelling on their separate motorcycle and were behind the motorcycle of Amritpal Singh. Respondent No.1-Rishi Paswan, while driving the tractor bearing registration No.PB-25A-3585 was also proceeding to village Bholapur from Sahabana. At about 8.15-8.30 a.m., when Amritpal Singh turned towards his right side, respondent No.1, who was also following on the same side, increased the speed of his tractor and turned the same, towards right side, as a result whereof, the offending tractor struck against the motorcycle of Amritpal Singh and ran over him. Amritpal Singh was crushed and the motorcycle was damaged. Jasbir Singh and Balbir Singh had stopped their motorcycle and removed Amritpal Singh to CMC, Hospital. However, while on way to the hospital, Amritpal Singh had breathed his last. Also, it is the version of the appellants-claimants that the accident had taken place, on account of rash and negligent driving of the tractor by respondent No.1-Rishi Paswan.

In the claim petition, further it is asserted that Amritpal Singh was about 22 years of age and he was working as Lab Assistant in Ralson India Ltd., G.T. Road, Ludhiana and he was earning Rs.4,016/- per month. He was unmarried and thus, the claim petition has been filed by the parents

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of the deceased.

In reply, respondents No.1 and 2-driver and owner of the offending vehicle, had denied the occurrence of accident and involvement of the tractor in question and the role assigned to respondent No.1. Likewise, respondent No.3-insurance company had also filed separate reply, wherein, preliminary objections were raised, thereby, disputing the maintainability of the claim petition, validity of the permit of the offending vehicle and driving licence of respondent No.1. The occurrence of the accident had also been disputed.

In pursuance of the framing of the issues, Balbir Singh-appellant No.2, who is father of the deceased, stepped into witness box as PW-2. The claimants have also examined Jasbir Singh and Manjot Singh as PW-1 and PW-3, respectively. On the other hand respondent No.1-Rishi Paswan, has stepped into witness box as RW-1. The insurance company had also examined Nirmal Singh as RW-2 and insurer has also tendered into evidence, certified copies of the documents, which are Ex.D2 and Ex.D3.

Keeping in view the aforesaid version, learned Tribunal had made reference to the cross-examination of PW-1 Jasbir Singh, who is author of the FIR and had concluded that the deceased was on katcha path, while the offending vehicle was on the metal portion of the road, at the place of accident and reached the conclusion that the deceased was trying to overtake the tractor from the left side of the tractor and immediately, after overtaking the tractor from the left side of the tractor, the deceased turned his motorcycle towards right side, thereby, suddenly, coming in front of the offending vehicle. In fact, it was observed that deceased was duty bound to

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overtake the tractor, from the right side and after blowing horn and giving warning to respondent No.1. It was also observed that the deceased was duty bound to come in front of the tractor, only after taking his motorcycle reasonably ahead of tractor, thereby, avoiding the accident. Hence, it was concluded that the deceased did not observe any of the aforesaid precautions, as a result whereof, the accident had taken place, solely, on account of rash and negligent driving of the motorcycle by the deceased that the accident had occurred.

In the light of the such conclusion, drawn by learned Tribunal, learned counsel for the appellants-claimants has submitted that the finding, so recorded, is erroneous, as testimonies have not been appraised, in the backdrop of the recitals of the FIR, which was got recorded, soon after the accident and furthermore, the testimony of Balbir Singh, as such, has also not been taken into consideration, who had also witnessed the accident. Further also, it is submitted that in fact, the accident had been denied by respondent No.1-Rishi Paswan and in the light of the same, learned Tribunal, of its own, could not conclude about the manner of accident and impute rashness and negligence, on the part of the deceased.

In view of the submissions, so made, learned counsel for the insurance company has assiduously submitted that fault was, on the part of the deceased, as a result whereof, even, the driver i.e. Rishi Paswan, who faced criminal trial, vis-a-vis, the accident in question, was acquitted by learned Magistrate vide judgment dated 06.01.2014. Much reliance is placed upon this judgment, copy whereof, has been simply placed on record, during the course of arguments.

It should be noted that no application for additional evidence has been filed. It should also be noted that order of acquittal was passed by learned Magistrate, after the decision rendered by learned Tribunal, in the present case.

But anyhow, it should be noted that the acquittal, so recorded by learned trial Court, should not weigh much in the mind of the Court, as the parameters of appraisal and the extent of evidence, to be brought on record to establish the case, is entirely different in criminal proceedings, as compared to the tortious claims/proceedings, in the motor accident claims.

It has been consistently held by the Courts that the Tribunal is to adjudge the case, only on the basis of evidence, produced before it and not to rely, solely on account of material, put forth, before the criminal Court, on the basis, whereof, judgment of acquittal is passed. Of course, fundamental facts, ought to be established. Basically, the test is whether a prudent man, under the peculiar circumstances of a case, assume the existence of certain facts, as true or disbelieve it.

In *Municipal Committee, Jullundur v. Shri Romesh Saggi and others AIR 1970 P&H 137*, a Division Bench of this Court considered the question:-

“Whether the judgment of a criminal court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is conclusive and binding upon the Motor Accident Claims Tribunal dealing with a claim petition under Section 110-C of the Motor Vehicles Act and if not, for what purposes and to what extent can such a judgment be availed of by the parties concerned?”

Answering the same, it was observed as under:-

33. *To sum up in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nature of the onus may vary and the effect of evidence may not be the same. It will, therefore, be contrary to all fundamental concepts of natural justice to treat the findings of the Criminal Court as binding on the Motor Accidents Claims Tribunal, assuming--but not holding--that such a Tribunal is not a Court as defined in Section 3 of the Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.*

34. *It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the Criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.*

35. *For the reasons recorded in OUT separate judgments, we answer the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance with law:--*

"The Judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110-C of the Motor Vehicles Act, and its findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such judgment can however, be relevant only for the purpose and to the extent specified in Section 43 of the Evidence Act."

In *Krishan S/o Mangiram v. Tarawati Widow and Others 2011*

(3) *PLR 29*, it was held that a criminal Court's judgment acquitting a driver would have no relevance in a case before the Tribunal and the Tribunal will consider the issue of negligence on the basis of the evidence adduced before it, uninfluenced by the fact of the pendency of the criminal case or the acquittal therein. It was observed as herein given:-

“3. It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court. It cannot be used for any other purpose, unless it is a case of conviction rendered on admission before the criminal Court where the conviction by the criminal Court on an issue of negligence will have immense value before the Tribunal.”

In *The General Manager, Bihar Road Transport Corporation v.*

Smt. Uma Rani Behura and others 1998 WBLR 344, a Division Bench of the Calcutta High Court held that a judgment of acquittal in a criminal case, is admissible in a civil matter, only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. But the findings of the criminal Court are not binding on the civil case. It was observed as herein given:-

“7. A judgment of acquittal passed in a criminal case is admissible in evidence in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. It is now well settled principle of law that the findings of a criminal Court are not binding on the Civil Court although the converse is true.”

In *Hem Ram and Another v. Krishan Chand and Another*

2015(9) R.C.R (Civil) 311, it was held by the Himachal Pradesh High Court that it is settled position that while a conviction recorded by the Criminal Court is enough to hold that the driver had driven the vehicle rashly and

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negligently, but his acquittal would be no ground to dismiss the claim petitions. It was observed as herein given:-

“28. The question is - whether the findings recorded by the Criminal Court can be made basis for holding that the driver has not driven the vehicle rashly and negligently and the deceased/injured were gratuitous passengers?”

29. It is beaten law of land that if conviction is recorded by the Criminal Court, that is the best ground to hold that the driver had driven the vehicle rashly and negligently, but, if the driver earns acquittal, that cannot be a ground for dismissal of the claim petitions.”

It is indeed trite to state that while finding of a civil Court is binding on the criminal Court, the finding of a criminal court, could not and should not influence the decision of the Tribunal. The Tribunal is to adjudge the case, on the basis of the evidence produced before it and not on the basis of the findings, solely recorded by the criminal court, though the same may put the Tribunal, on some caution for scrutiny purposes.

Thus, there is requirement of independent appraisal of the evidence, as coming forth, before the Tribunal. The mere acquittal of the driver of the offending vehicle in a criminal case, cannot weigh against the evidence and the manner of appreciation, made by the Tribunal, keeping in view that the standard of proof required, being different in the two proceedings.

Moreover, in the present case, the judgment of acquittal was passed, after the decision rendered by learned Tribunal. In the light of the same, the acquittal, *ipso facto*, does not sustain the submission of false manner of accident put forth and the role assigned to Rishi Paswan, more particularly, when Rishi Paswan, in the written statement, has denied the accident in toto.

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In the light of the aforesaid, it should be noted that it is categoric claim of the appellant-claimants that the accident had taken place, due to rash and negligent driving of the tractor bearing registration No.PB-25A-3585. Though, learned Tribunal had made reference to the cross-examination of PW-1 Jasbir Singh, eye witness, in bits and pieces, but however, has not considered the recitals of the affidavit, wherein, he has categorically stated about the accident having been caused, when the deceased turned towards right side and driver of the tractor i.e. respondent No.1, increased the speed of the tractor and turned the same, towards right side. In the affidavit, he has also categorically stated that due to this, the offending vehicle, struck with the motorcycle of the deceased and the tractor trolley, ran over Amritpal Singh and his chest was crushed and it broken the motorcycle of the deceased. Not only this, even, silent sweep was given to the testimony of PW-2 Balbir Singh, who is father of the deceased and who had also witnessed the accident. His version, as spelt out in the affidavit, is also in consonance with the pleaded version of the appellants-claimants.

Furthermore, it should be taken note of that soon after the accident, PW-1 Jasvir Singh had got recorded the FIR, which has been proved as Ex.P1. It was got recorded with promptitude, which also rules out the chances of putting forth a false version of the manner of taking place of the accident. If it be so, as concluded by learned Tribunal, then also, it was required on the part of the respondents to lead sufficient evidence, to rebut the version of the appellants-claimants. In fact, Rishi Paswan, has stepped into witness box as RW-1 and his affidavit is Ex.RA. Therein, he has categorically stated that he has been falsely involved in a false case to get

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the claim. Nowhere, he admitted about the accident or disputed about the manner of taking place of the same. In view of the recitals of the written statement of respondents No.1 and 2 and the testimony of RW-1 Rishi Paswan, if the manner of the accident was disputed, it was open for the respondents, further to have examined the Investigating Officer, who conducted the investigation of the criminal case and presented the challan before learned trial Court.

Definitely, from the evidence, coming forth, it stands established that respondent No.1-Rishi Paswan was facing trial before the criminal Court, when the evidence was adduced in the present case. However, no such, steps have been taken, either by respondents No.1 and 2 or by the insurance company. Things would have been different, had the Investigating Officer, come forth and deposed about the manner of taking place of the accident, but however, no steps have been taken.

Learned Tribunal, while making reference to the cross-examination of PW-1 Jasvir Singh had observed that the tractor was on the metal road and the motorcycle was on katcha portion of the road and on this account, it concluded about the deceased having tried to overtake the tractor from the left side, which was wrongly done, as the overtaking could be from the right side and also while blowing horn and warning respondent No.1, about his going to overtake the tractor and further also, to have turned reasonably ahead of the tractor trolley, to avoid the accident. However, these observations are erroneous. Simply, because of the placing of the vehicles, after the accident, does not ipso facto, lead to the conclusion, about rashness and negligence, on the part of a person, who drove the motorcycle, which

was on the katcha portion, more particularly, when respondent No.1-Rishi Paswan, did not admit about the fact of accident and disputed only about the involvement in the accident and the role assigned to him.

In the light of testimonies of two eye witnesses, coming forth and in view of the recitals of the FIR as well as challan, having presented against respondent No.1-Rishi Paswan, it do amply stand established about the rashness and negligence, on the part of respondent No.1, while driving the tractor trolley, which caused the accident.

Faced with the aforesaid conclusion, learned counsel for the insurance company has submitted that in any case, there was contributory negligence, on the part of the deceased. However, the aforesaid submission is also bereft of merits. To prove the contributory negligence, there must be cogent evidence. In the instant case, there is no specific evidence to prove that the accident had taken place, due to rash and negligent of deceased motorcyclist. In the absence of such evidence, when there is total denial of the accident, on the part of the driver of tractor, this plea of contributory negligence, as such, does not stand established.

Thus, in the light of the aforesaid observations, the findings of learned Tribunal are hereby reversed and it is concluded about the accident to have taken place, due to rash and negligent driving, on the part of respondent No.1-Rishi Paswan, while driving the tractor.

Now, comes the question, with regard to the working upon the compensation, to be granted to the appellants-claimants.

As already observed aforesaid, the compensation has been worked upon by learned Tribunal, but however, in view of the finding

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recorded on issue No.1, with regard to rashness and negligence, the claim petition was dismissed. However, the compensation, so worked upon, by learned Tribunal calls for re-computation, as per settled prevalent law.

Besides, Balbir Singh, father of the deceased, deposing about the avocation followed by the deceased and the extent of his earnings, the appellants-claimants have also examined PW-3 Manjit Singh, Personal Officer of M/s Ralson India Ltd., Ludhiana, who on the basis of the record, deposed about deceased Amritpal Singh to be employee of their company and was being paid Rs.4,106/- per month. He also proved on record the attendance register as well as salary certificate, which clearly establish about the deceased to be earning Rs.4,016/- per month, at the relevant time.

However, learned Tribunal had made an addition of 50%, on the count of 'future prospects', but, considering the age of the deceased to be 22 years, at the relevant time, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition ought to be made to the extent of 40%. As such, after making addition of 40%, the earnings of the deceased comes to be Rs.5622/- per month.

Considering the marital status of the deceased, learned Tribunal had appropriately made deduction to the extent of 50%, on the ground of personal expenses and thus, the dependency is worked upon as Rs.2,811/- per month, annual whereof, comes to be Rs.33,732/-. As per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, appropriate and suitable multiplier, to be applied is '18', as applied by learned Tribunal and by applying the same, the loss of dependency, works out to be **Rs.6,07,176/-**.

Besides the same, the amounts are to be paid under the conventional heads, such like, loss of consortium, loss of estate and funeral expenses as held in *Pranay Sethi's case (supra)*. However, in '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', the concept of consortium, has been dilated in detail and the dependents were entitled to compensation, on the count of 'parental', 'spousal' and 'filial' consortium.

In consonance with the observations made in *Pranay Sethi's case (supra)*, as per clause of addition of 10% under the heads of 'loss of consortium', 'loss of estate' and 'funeral expenses', after every three years from the passing of the judgment, at present, the amount payable, on the count of '**loss of consortium**' comes to be **Rs.48,400/-** to each of the appellant-claimant and for the '**loss of estate**' as well as '**funeral expenses**', it is **Rs.18,150/-**, on each count.

Considering the same, the compensation payable to dependents, on account of death of Amritpal Singh, is re-computed, as herein given:-

Loss of dependency	:	Rs.6,07,176/-
Loss of consortium	:	Rs.96,800/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.7,40,276/-

On the amount of the compensation i.e. **Rs.7,40,276/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the present appeal, till realization of the enhanced amount of compensation. Respondents No.1 to 3 i.e. driver,

owner and insurer of the offending vehicle, are hereby held liable jointly and severally, to pay the compensation.

In view of the aforesaid discussion, the present appeal stands allowed.

December 16, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No