

FAO No. 2353 of 2016 (O&M)
FAO No. 2680 of 2016 (O&M)
FAO No. 2830 of 2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2353 of 2016 (O&M)

Rakesh Kumar Sood

...Appellant

Versus

Satwinder Singh and others

...Respondents

FAO No. 2680 of 2016 (O&M)

United India Insurance Company Limited

...Appellant

Versus

Satwinder Singh and others

...Respondents

FAO No. 2830 of 2017 (O&M)

Satwinder Singh and another

...Appellants

Versus

Kulwant Singh and others

...Respondents

Reserved on:-26.4.2023

Date of Pronouncement:-3.5.2023

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

Present:- Mr. Kamal Grover, Advocate for the appellant
in FAO No. 2353 of 2016.

Mr. Ram Avtar, Advocate for the appellant
in FAO No. 2680 of 2016 and for respondent No. 6
in FAO No. 2830 of 2017.

Mr. Ravinder Arora, Advocate
for the Oriental Insurance Company.

1. Briefly stated the facts of the case are that on account of unfortunate death of one Gurbaksh Singh in a motor vehicular accident, which took place on 22.2.2014 at about 10.30 A.M, in the area of near Dhaliwal Pipe Factory, village Gurbuxpura, legal representatives of such deceased namely his father Sh. Satwinder Singh, aged about 42 years, mother Smt. Karamjit Kaur, aged about 40 years, brother Harpreet Singh, aged about 18 years, grandfather Sh. Karnail Singh, aged 65 years, paternal grandmother Smt. Surjit Kaur, aged 64 years and great grandfather, aged about 95 years had brought a claim petition under Section 166 of the motor vehicles Act, 1988 (hereinafter referred to as 'The Act') against respondents i.e. Kulwant Singh alias Kanta - driver, Raj Kumar - owner, The Oriental Insurance Company Limited, Branch Office Jaitton, District Faridkot - insurer of Bolero Pick Up bearing registration No. PB-04P-9821 as well as Harman Singh, driver, Rakesh Kumar Sood, registered owner and United India Insurance Company Limited, Malerkotla insurer of Maruti Zen Car bearing registration No. CH-03-L-8685.

2. As per the case of claimants on 22.2.2014 at about 10.30 A.M., claimant Satwinder Singh was sitting in his shop at Malerkotla road Dhuri where Gurbax Singh along with his friends Parteek Sharma and Harman Singh came and informed that they were going to village Manal to meet their friends and then they left the shop in a Maruti Zen Car bearing registration No. CH-03-L-8685. The Car was being driven by Harman Singh respondent

No. 4. Parteek Sharma was sitting on right rear seat whereas Gurbax Singh

was sitting on left rear seat of the Car. As Satwinder Singh was also to go to Barnala in connection with some domestic work, therefore, he along with uncle Bhagwant Singh started journey to Barnala in a separate Car bearing registration No. DL-3C-AF-2676. Their Car was just behind the Maruti Zen Car bearing registration No. CH-03-L-8685. When they had reached near Dhaliwal Pipe Factory, village Gurbuxpura, a stray animal came in front of Maruti Zen Car bearing registration No. CH-03-L-8685. Harman Singh who was driving that Car turned the Car towards the other side of the road to save stray animal. However, respondent No. 1 Kulwant Singh @ Kanta had wrongly parked his Bolero Pick Up bearing registration number PB-04P-9821 in front of pipe factory. Resultantly, Maruti Zen Car struck into Bolero Pick Up and consequently Harman Singh, Parteek Sharma and Gurbaksh Singh received serious injuries. Claimant Satwinder Singh stopped his Car and came to know about name of the driver of Bolero Pick Up as Kulwant Singh @ Kanta. Satwinder Singh took the injured to the hospital where Gurbaksh Singh was declared dead. However, Harman Singh and Parteek Sharma were referred to hospital at Ludhiana keeping in view their critical condition. The postmortem examination on dead body of Gurbaksh Singh was conducted at Civil Hospital, Malerkotla. F.I.R No. 19 dated 22.2.2014 for offences under Sections 279, 337, 304-A, 283 and 427 IPC was got recorded by Satwinder Singh.

3. According to the claimants deceased Gurbaksh Singh was aged about 16 years and he was hale and hearty. He was a student of 10+2 Class in Guru Teg Bahadur Public School, Bardwal. Satwinder Singh, father of deceased Gurbaksh Singh had been running a business of sale and purchase

of tyres under the name and style of S.K Tyres near Guru Nanak Filling Station, Malerkotla Road, Dhuri and their residence is on the first floor of the said shop. After School hours Gurbaksh Singh used to assist his father and was looking after the entire work till closure of the shop and Satwinder Singh was fully dependent upon his services. Satwinder Singh was saving Rs.15,000/- per month on that account. On account of death of Gurbaksh Singh, the claimants have suffered mental shock, depression, pain and agony. They prayed for acceptance of the claim petition.

4. On notice, respondents No. 1 to 3, 5 and 6 had put in appearance whereas respondent No. 4 did not appear despite service as such was proceeded against ex-parte. Respondents No. 1 and 2 filed a joint written reply whereas respondents No. 3, 5 and 6 filed separate replies.

In the joint written reply filed on behalf of respondents No. 1 and 2 they have denied involvement of Bolero Pick Up vehicle in the accident contending that a false F.I.R has been registered against respondent No. 1; it has been so lodged by the claimants in connivance with police officials by concocting a story just to get compensation amount. However, according to respondents No. 1 and 2 the Bolero vehicle in question was insured with respondent No. 3 Insurance Company.

In the written reply submitted on behalf of respondent No. 3, the assertions in the claim petition are refuted. However, it has been contended that liability of Insurance Company, if any, shall be according to terms and conditions of the insurance policy and provisions of Motor Vehicle Act. According to respondent No. 3 Insurance Company respondent No. 1 was not holding a valid driving license at the time of accident and he

was suffering from disqualification to have a valid and effective driving license. The answering respondent contended that no such accident had taken place and compensation amount sought is exorbitant. It was denied that the deceased was helping his father in his business and father of deceased was saving Rs.15,000/- per month on account of services rendered by the deceased in his business. According to such respondent Harman Singh was a minor and was not having a valid and effective driving license to drive the Car. It was further denied that accident was witnessed by Satwinder Singh and Bhagwant Singh.

In the written reply submitted on behalf of respondent No. 5 it was submitted that respondent No. 4 was not negligent in driving the Maruti Zen Car, therefore, claim petition against respondents No. 4 to 6 is not maintainable. The clear allegations are against respondent No. 1, who was driver of Bolero Pick Up. The answering respondent No. 5 sold his Car to Gagandeep Dhiman on 18.1.2009 but he was not impleaded as a party. Since the car was sold much prior to the accident so Harman Singh respondent No. 4 might have been driving the said Car on instructions of the owner of the Car at that time. Then that respondent also prayed for dismissal of claim petition.

In the written reply submitted on behalf of respondent No. 6 it has contended that a wrong F.I.R has been registered by the police to help the claimants to get compensation. The Maruti Zen Car was already insured w.e.f. 12.12.2013 to 11.12.2014 with answering respondent, who as per record, respondent No. 5 Rakesh Kumar Sood was owner of the Maruti Zen Car. Respondent No. 4 was not holding a valid and effective driving license

at the time of accident; Maruti Zen Car was being driven in contravention of terms and conditions of the insurance policy as well as Motor Vehicle Act at the time of accident. According to such Insurance Company its liability shall be adhered subject to provisions of the Act.

5. On the pleadings of the parties following issues were framed :-

1. Whether on 22.2.2014 due to rash and negligent parking of his Bolero Car bearing registration No. PB-04P-9821 by respondent No. 1 he caused the death of Gurbaksh Singh?OPP
2. Whether claimants are entitled to a compensation and if so, to what rate and from whom?OPP
3. Whether respondent No. 1 Kulwant Singh driver of Bolero Car bearing registration No. PB-04P-9821 was not holding valid and effective driving license in his name at the time of alleged accident?OPR
4. Relief

6. After hearing arguments, the Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as the Tribunal) vide Award dated 29.1.2016 had accepted the claim petition awarding compensation of Rs.3,00,000/-with interest at the rate of Rs.7.5% per month to claimants payable by respondents No.5 and 6. Respondent No. 6 was given recovery rights to recover the amount from respondent No. 5.

7. This Award left Rakesh Kumar Sood owner of Maruti Zen Car bearing registration No. CH-03-L-8685, United India Insurance Company Limited as well as claimants No.1 and 2 aggrieved and they have filed separate appeals, notice thereof was given to the respondents therein, who have put in appearance through counsel.

8. The Tribunal, on the basis of evidence adduced before it in the form of oral evidence produced by the claimant i.e. testimony of PW1 Satwinder Singh, F.I.R registered with regard to the accident Ex.P1, postmortem report of Gurbaksh Singh Ex.P2, Medico Legal Injury report of Harman Singh Ex.P3 as well as deposition of PW2 Parteek Sharma keeping in view the fact that respondents No. 4 and 5 had not appeared in the witness box to deny involvement of Maruti Zen Car in the accident had concluded that the rash and negligent driving appears to be by respondent No. 4 as he was neither having a valid driving license nor he could control the Car. If any stray animal has come in his way and hit the vehicle standing on extreme right side of the road that shows that he was on high speed at the time of accident and could not control the vehicle. It has further been observed that though the police had presented the challan against respondent No. 1 but evidence on the file clearly shows that it was respondent No. 4 who was rash and negligent in driving the Car bearing registration No. CH-03-L-8685, resulting into the accident and death of Gurbaksh Singh.

9. Accordingly, it was decided holding that accident had taken place due to rash and negligent driving of respondent No. 4. However, I find that the Tribunal fell in error in absolving driver of Bolero Car of his wrongful act by parking the Bolero vehicle on the road. The conclusion has been drawn simply by perusing the copies of the photographs available on the record. The photographs cannot be given undue importance because photographs do not reflect the factual position correctly in all the cases. If photograph is taken from a particular angle then it may not depict the exact position at the spot. The Tribunal has lost sight of the fact that F.I.R in

question had been lodged against respondent No. 1 Kulwant Singh for wrong parking of his vehicle which prima facie goes to show his negligence. Learned Tribunal also lost sight of the fact that neither respondent No. 1 driver nor respondent No. 2 owner of Bolero vehicle had stepped into the witness box to depose that Bolero vehicle had been wrongly involved in this case and that respondent No. 1 Kulwant Singh had not committed any wrongful act which might have contributed in happening of the accident. Therefore, adverse inference has to be drawn against respondents No. 1 and 2. Rather the eye witness account provided by the claimants in the form of statement of PW1 Satwinder Singh and PW2 Parteek Sharma has gone unrepresented coupled with that was copy of F.I.R Ex.P1, copy of the report submitted by police in that case Ex.P6 against Kulwant Singh respondent No. 1, recovery memo of RC of Bolero Car and DL of Kulwant Singh Ex.P7. Therefore shifting the entire blame on shoulders of respondent No. 4 Harman Singh, driver of the Maruti Zen Car was uncalled for.

10. Under the circumstances, it is to be taken to be a case of contributory negligence by drivers of both the vehicles in equal proportions i.e. 50% each. Since as has been rightly observed by the Tribunal, owner of the Maruti Zen Car had handed it over to Harman Singh for driving and he was not holding a valid driving license at the time of the accident. Respondent No. 5 Rakesh Kumar Sood registered owner of the Maruti Zen Car is liable to pay compensation and with regard to version given by him that he had transferred it to Gagandeep Dhiman. There is not enough cogent and convincing evidence available on record to show that. Therefore, the finding of the Tribunal on issue no. 1 is modified to the extent that the

accident in which Gurbaksh Singh had lost his life had taken place on account of rashness and negligence on the part of respondent No. 1 Kulwant Singh alias Kanta, driver of Bolero Car bearing registration No. PB-04P-9821 and Maruti Zen car bearing registration No. CH-03-L-8685 by respondent No. 4 Harman Singh and in that way it was caused by contributory negligence of drivers of both the vehicles. With regard to the quantum of compensation it has come on record that the deceased was a student of 10+2 Class and was aged about 16 years. A total compensation of Rs. 3 lakhs had been awarded, which comes out to be on very low side.

11. The Tribunal has assessed the compensation in a manner, which is certainly not very proper and appropriate. A 16 years boy had lost his life in a road side accident and granting a lump sum compensation of Rs.3 lakhs is something, which cannot be said to be result of proper and appropriate approach. It may be mentioned here that under Section 164 of the Motor Vehicles Act, in case of death of a person in a motor vehicular accident, a minimum compensation of Rs.5 lakhs is payable by the owner of the offending vehicle or the authorized insurer.

12. In the present case, it is consistent stand of the claimants that deceased was a student of 10+2 class and after his school hours, he used to assist his father in the business of sale purchase of tyres and father of deceased was saving Rs.15,000/- per month on that count. The claimants have led evidence in that regard also in the form of statement of claimant Satwinder Singh appearing as PW1. In judgment **Kishan Gopal and another Versus Lala and others, 2013 (4)RCR(Civil) 276** in case of death of 10

years old child formula of assessing notional income of children and then assessing compensation was used.

13. In this case, the parents of the child had high hopes on him that after getting proper education, he would settle down in life earning handsome amount and providing financial help to his parents. Though in the normal course, he would have got married down and raised his own family also. Therefore, instead of Rs.15,000/- as per claim of the claimants, I quantify the help provided by the deceased to his father in his business and for rendering help in other family matters and works added Rs.5,000/- per month.

14. Keeping in view the age of the deceased, 40% of the amount is to be added towards future prospects, In that way, the notional income of the deceased comes out to be Rs.7,000/-(5000 + 2000).

15. Since the deceased was a bachelor, deduction to the extent of 50% is to be made from such amount as personal expenses. Doing that, the monthly dependency of the claimants/contribution of the deceased to the claimants comes out to Rs.3,500 (7000 – 3500) and annual dependency/contribution comes out to Rs. 3500 x 12 = Rs.42,000/-.

16. Keeping in view the judgment *Smt.Sarla Verma and others Versus Delhi Transport Corporation and another, 2009(3) RCR(Civil)77* by the Apex Court, multiplier of 18 is to be used. Doing that the compensation payable comes out to Rs. 42,000 x 18 = 7,56,000/-

17. 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 get Rs.15,000/- as funeral expenses and Rs.15,000/- for loss of estate.

Doing that the compensation comes out to be Rs.8,26,000/- (7,56,000 + 40,000 + 15,000 + 15,000).

18. The Tribunal has awarded compensation of Rs.3,00,000/-

19. In this way, the enhanced amount comes out to Rs.5,26,000/- (8,26,000 – 3,00,000).

20. The claimants would be entitled to get interest @ 7.5% per annum on the enhanced amount from the date of filing of the claim petition till actual realization of that amount. 50% of the amount would be paid by respondents No.1 to 3 jointly and severally and remaining 50% of the amount would be paid by respondents No.4 to 6 jointly and severally. The enhanced amount shall be distributed amongst the claimants in the same proportion as has been directed in the impugned award. Respondent NO.6 shall have a right to recover the amount paid by it from respondent NO.5 as directed in the impugned award.

21. With such modification, the **FAO No. 2830 of 2017** filed on behalf of the claimants No.1 and 2 is allowed partly with costs. Consequently **FAO No. 2680 of 2016** filed on behalf of the United India Insurance Company stands dismissed.

22. The appellant Rakesh Kumar Sood in FAO No. **2353 of 2016** has challenged the award contending that though appellant is registered owner of the Maruti Zen car involved in the accident but he had already sold the same to Gagandeep Dhaman son late Sh.Shanti Sawrup Dhaman after

receiving full and final payment and signing the transfer papers, therefore said transferee Gagandeep Dhaman was owner of the car for all intents and purposes and he is not liable to pay any compensation. An application for impleading Gagandeep Dhaman as a party has also been filed by such appellant Rakesh Kumar Sood.

23. However, I do not find any merit in the pleas being put forward on behalf of the appellant. Even if, it is taken that Rakesh Kumar Sood had sold of the car to Gagandeep Dhaman but admittedly he was being reflected as owner of the car in the record with regard to its registration. Unless there was change of ownership in record with regard to registration of the car, original owner Rakesh Kumar Sood remains liable and he cannot escape payment of compensation under such cover.

24. It may be mentioned here that though in the written statement filed by him before the Tribunal, Rakesh Kumar Sood had taken this plea but then he did not step into the witness box to depose on oath in that regard. He did not place on file any document in support of that contention. Rather the tenor of the written statement filed by him goes to show that he had contested the case on merits. He did not file any application before the Tribunal to implead Gagandeep Dhaman as a respondent there. As such, his prayer cannot be accepted. In judgment *Naveen Kumar Versus Vijay Kumar and others, 2018(2) JT 136*, the Apex Court had observed that where registered owner purported to transfer vehicle but continues to be reflected in records of registering authority as owner, he would not stand absolved of liability because the principle underlying provisions is that victim of motor accident not to be left in state of uncertainty and claimant for compensation

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ought not to be burdened with following trail of successive transfers, which are not registered with registering authority.

25. Therefore, FAO No. 2353 of 2016 stands dismissed.

Since with the modification, the FAO No. 2830 of 2017 is allowed party and FAO No. 2680 of 2016 & FAO No. 2353 of 2016 stand dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

3.5.2023
P.Singh/Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No