IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO 5357/2014 (O&M)

Date of decision: 27.01.2023

Gagandeep Kaur and others

……….Appellants

Vs.

Gora Lal and others

……….Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. GK Turka,Advocate for the appellants/claimants.
Mr. SS Sidhu,Advocate for the respondent/Insurance Co.

Nidhi Gupta, J.

This common order shall dispose of cross appeals bearing FAO No.5357/2014 filed by claimants, as well as FAO No.1757/2014 filed by respondent Insurance Company, both appeals arising out of Award dated 30.11.2013 passed by Motor Accident Claims Tribunal, Patiala (hereinafter referred to as 'the Tribunal') passed in MACT No.14/13.6.2011 filed u/s 166 of the Motor Vehicles Act. For the sake of convenience and with the consent of learned counsel for the parties, the facts are being noticed from FAO No.5357/2014, which are even otherwise common.

The claimants in FAO 5357/2014 are seeking enhancement of compensation of Rs.9,35,000/- awarded by the Tribunal. Claimants are Gagandeep Kaur widow of deceased Tejinder Singh; Raminder Singh and Maninder Singh both twins and minor sons; and Mukhtiar Kaur and Balbir Singh parents of the deceased-Tejinder Singh.

Learned Tribunal on the basis of the pleadings of the parties and evidence led by them concluded that deceased Tejinder Singh had died due to injuries suffered by him in a motor vehicular accident that took place on 3.6.2017 due to rash and negligent driving of Tractor bearing registration No. PB-11L-3008 (hereinafter referred to as 'the offending vehicle') owned by Sanjay Kumar-respondent no.2. Ownership of Sanjay Kumar over the offending vehicle was established in view of the fact that the said vehicle was got released by him on superdari by showing his ownership to the Court. It has further come on record that Gora Lal-respondent no.1 only used to take offending vehicle from Sanjay Kumar as a Contractor. The offending vehicle was insured by respondent no.4-National Insurance Company.

At the time of the accident the age of the deceased was taken as 23 years on the basis of his Driving Licence which is Mark-A wherein his date of birth is mentioned as 25.4.1987. Income of the deceased was taken as Rs.5000/- per month on the reasoning that as per Jamabandi Ex.C-16 the deceased owned agricultural land, and in the absence of the deceased the claimants 1,2 and 3 being widow and minor sons of the deceased would have to engage services of someone to look after the land, who would not charge anything less than Rs.5000/- per month. Accordingly, in this view of the matter the learned Tribunal has taken the income of the deceased to be Rs.5000/- per month. Keeping in view the number of dependents, deduction of 1/4th has been made and keeping the in view the age of the deceased, multiplier of 18 has been applied. Rs.20,000/- has been awarded on account of loss of love and affection; funeral expenses to the tune of Rs.5000/-; Rs.1 lac has been awarded to the widow only on account of loss of consortium. Accordingly, total compensation of Rs.9,35,000/- along with interest @ 7.5% per annum has been awarded by the Tribunal.

The offending vehicle was found to be registered and insured in the name of respondent no.2. Accordingly, the owner and insurer of the offending vehicle were held liable to pay compensation jointly and severally. However, respondent no.4-Insurance Company was afforded right to recover compensation amount from respondent no.2-Sanjay Kumar as the name of the driver was never disclosed by him nor his driving licence was brought on record.

FIR No.217 dated 4.6.2013 Ex.C8 and charge sheet Ex.C11 have also been registered in the matter which duly prove the accident. The driver of the offending vehicle is stated to be absconding and untraceable.

It is inter alia submitted by the learned counsel for the claimants/appellants that learned Tribunal is in error in making deduction of $1/4^{th}$ on account of personal expenses as Rs.5000/- per month has been assessed by way of loss of service to enable the claimants to employ a person to do the agricultural work. It is submitted that the deduction on account of personal expenses is made in respect of assessed income and not in cases where loss of services has been assessed. It is further submitted that even otherwise, the learned Tribunal is in error in taking the income of the deceased as only Rs.5000/- as it has come on record that the deceased was owner of agricultural land as is evident from the Jamabandi Ex.C16, and deceased was also running a dairy farm and owned many milch cattle. It is further submitted that amounts granted under other heads are also on lower side and consortium has been granted only to widow of the deceased. It is also submitted that the deceased was only 23 years of age at the time of his death.

On the other hand, it is submitted by the learned counsel for the Insurance Company that in actual fact, this is not a case of motor vehicular accident and is a case of murder. Learned counsel refers to FIR Ex.C8/Annexure A01 with the FAO No.1757/2014. It is submitted that FIR was registered on the statement of Complainant Gurtej Singh, who has categorically stated in the FIR that "*from the dead body it does not look that it is a case of accident. When we along with other relatives and known persons reached the place of incident we observed that Tejinder Singh did not meet with an accident but has been murdered"*. In pursuance of aforesaid statement of Gurtej Singh an FIR u/s 302 IPC was registered. It is submitted that it is only after 56 days of lodging the FIR dated 4.6.2010 that a statement (Annexure A-3) under Section 161 Cr.PC was recorded on 30.7.2010 of one Sukhdev Singh, purported eye witness of the accident who has stated that "*when going on foot I reached just before the office of Gurmeet Singh Sarpanch at about 9.30 p.m., then a bullet motor cycle came from Phagan Majra Bus Stand, which in front of me hit with force the tractor trolley carrying sand (earth) coming from opposite side, of which left side head light was on. The motorcycle rider bounced app. 5/6 ft from the motorcycle and hit the wall along the road. Then I ran to reach there and saw that motorcycle rider received lot of injuries on his head. The number of motorcycle was PB-11M-2626 and Tractor Swaraj of Blue colour and there was blood in front right side of the trolley".* Thereafter another eye witness namely Harpreet Singh recorded his statement 30.7.2010 (Annexure A-4) wherein the stand taken by Sukhdev Singh is repeated. It is submitted that if there were these two eye witnesses to the accident then why were they not even mentioned in the FIR and why had they not come forward immediately after the incident to lodge the FIR and had emerged only after 56 days of the accident.

It is further submitted that as per statements of purported eye witnesses Sukhdev Singh and Harpreet Singh the offending vehicle was of

Blue colour whereas as per the seizure memo of the offending vehicle dated 13.12.2010 (Annexure P-5) the vehicle is described as "Colour green".

Learned counsel further draws attention of this Court to Post Mortem Report Ex.C-10 at page 113 of the LCR to submit that injuries 1 and 2 on the body of the deceased as recorded in the Post Mortem Report are as follows: -

> 1. *Incised wound 12 x 10 cm hemispherical …C flap of skin attached…. Present on the Right-side forehead and adjoining part of head. The underlying bone is chopped off with the edges on the bone clear cut with brain matter coming out of the wound.*
> 2. *Incised wound 14 x 12 cm hemispherical …. With skin attached…present and the …edge of the injury no.1. the underlying bone is chopped off leaving clean cut bony….. and brain matter with intact…. Is present".*

It is further submitted that even the cause of death as recorded in the Post Mortem Report is as follows:-

> *"Cause of death in this case in my opinion is: Coma due to head injury with sufficient to cause death in ordinary course of nature. All the injuries are ante mortem in nature. Injuries No. 1 and 2 caused by Sharp Weapon. Rest of the injuries by blunt weapon".*

It is then submitted that accordingly, in view of the aforesaid facts, it is clear that the present is not a case of accident but is a case of murder and that therefore, the claimants are not entitled to any compensation. It is further submitted that Driver of the offending vehicle is not traceable; and that Gora Lal, respondent no.6 herein was only the Contractor of the offending vehicle who used to hire the offending vehicle from Sanjay Kumar, owner of the vehicle.

It is next submitted that although these facts were on record but have not been considered by the Ld. Tribunal and no explanation has been given in the impugned Award as to how Tribunal could have concluded that this is a case of accident in view of the fact that FIR Ex.C8 was registered u/s 302 IPC.

In rebuttal, it is submitted by the learned counsel for the claimants that the FIR which was originally registered under Section 302 IPC was subsequently converted into an FIR u/s 304-A IPC as is evident from Ex.C9 at page 102 of the LCR which is enquiry report dated 31.8.2010 by DSP City Patiala wherein it is recorded that:

> *"Death of Tejinder Singh was caused due to accident caused due to the negligence of driver of Swaraj tractor trolley, one light of the same being off. Besides this enquiry was made from Gora Lal also who admitted that this accident has been occurred with his tractor trolley. The driver who was driving the tractor trolley was employed some days ago who after causing the accident, fled after parking tractor trolley at village Jhil whose name was Raju Bhaiya resident of Bihar, about which address I know nothing. From the investigation made by Inspector Bharpur Singh S.H.O. Police Station, Tripari no offence under Section 302 IPC was found to be committed. Therefore, in the case the offence under section 302 IPC is liable to be converted to section 304-A IPC".*

It is further recorded in the said Enquiry Report submitted by DSP City-2 Patiala that:

> *"Mewa Singh son of Bant Singh resident of village Faggan Majra got recorded his statement that he went to Gora Lal Thekedar at Jhil Seona road where his tractor trolleys and JCB are parked with regard to lifting earth from his land where he saw that Gora Lal was washing blood from his trolley and he told me to not to talk to anybody in this regard".*

In continued rebuttal, it is further submitted by the learned counsel for the claimants that no criminal proceedings are pending as driver is absconding; Insurance Company has only raised doubt and there is no conclusive proof in favour of averments made by the Insurance Company. It is further submitted that there is no liability on the Insurance Company and the deceased was only 23 year old son of claimants 4 and 5. It is further submitted that even otherwise at page 53 of the LCR eye witness Sukhdev Singh in his cross examination has stated that his statement was recorded on 4.6.2010 at PS Tripari, Patiala. It is submitted that submission of the counsel for the Insurance Company that statement of witnesses was recorded after 56 days is incorrect. It is further submitted that appeal of the Insurance Company is not maintainable as recovery rights have been granted to it.

Heard learned counsel for the parties.

I am in agreement with the submissions advanced by the learned counsel for the claimants.

In my view, submission of ld. Counsel for the Insurance Company to the effect that the present is a case of murder is far fetched and contrary to the facts established on record. A perusal of the rival submissions made on behalf of both the parties as noted above shows that it remains un-controverted that the FIR which was originally registered u/s 302 IPC, was subsequently, upon investigation, converted to Section 304-A IPC. This fact is evident from Ex.C9 Inquiry Report dated 31.8.2010 submitted by DSP City-2, Patiala.

Nothing has been placed on record to discredit statement of eye-witness Sukhdev Singh CW3 available at page 53 of the LCR, who has stated in his cross examination that his statement was recorded on the same day on 4.6.2010 at PS Tripari, Patiala. Moreover, it has come on record that Mewa Singh son of Bant Singh resident of village Faggan Majra got recorded his statement that he went to Gora Lal Thekedar at Jhil Seona road where his tractor trolleys and JCB are parked with regard to lifting earth from his land where he saw that Gora Lal was washing blood from his trolley and Gora Lal told Mewa Singh not to talk to anybody in this regard.

As regards the injuries suffered by the deceased, it has been recorded in the PMR that the cause of death is 'coma due to head injury which is sufficient to cause death in ordinary course of nature'. As per statement of eyewitness Sukhdev Singh, it has been revealed that the motorcycle rider/deceased bounced approximately 5/6 ft from the motorcycle and hit the wall along the road. Accordingly, it is more probable that the deceased suffered the fatal head injury due to the impact of the collision with the offending vehicle because of which he bounced 5/6 ft from the motorcycle and hit the wall.

It is well established position in law that in Motor Accident cases before the Motor Accident Claims Tribunals, claimants are required to prove their case on the preponderance of evidence and not beyond shadow of reasonable doubt as required in criminal trial.

In view of above facts, I see no ground to interfere in the findings of the learned Tribunal that the death of deceased was caused due to injuries suffered by him in the accident that took place on 3.6.2010 on account of rash and negligent driving of the offending vehicle by absconding driver Raju Bhaiya.

A further perusal of the record shows that it has not been disputed that the deceased was owner of about 20 acres of agricultural land. Even going by reasoning by the learned Tribunal that claimants will have to employ someone to do the agricultural work, even then Rs.5000/- per month assessed for the loss of service is less. I accordingly, enhance the same to Rs.7000/- per month. Deceased being 23 years of age, multiplier of 18 has correctly been applied. Thus, the revised assessment on account of loss of service would be Rs.7000x12x18=15,12,000/-. Further, loss of consortium will be Rs.44,000x5 = Rs.2,20,000/-. Head-wise revised assessment of compensation is reworked as under:-

Sr. No.	Head	Reassessed compensation (in Rupees)
1.	Loss of service 7000x12x18	15,12,000/-
2.	Loss of consortium 44,000x5	2,20,000/-
3.	Loss of Estate	16,500/-
4.	Funeral expenses	16,500/-
5.	Total	17,65,000/- alongwith interest @ 7.5% per annum, as awarded by the Tribunal.
6.	Amount awarded by the Tribunal	9,35,000/-
7.	Difference	8,30,000/-

Ratio of apportionment and manner of disbursement of enhanced compensation remains unchanged, and is as determined by the ld. Tribunal.

For the reasons stated above, the appeal filed by the claimants/appellants bearing FAO 5357/2014 is allowed and impugned Award stands modified as above; while the appeal filed by the Insurance Company bearing FAO No.1757/2014 stands dismissed.

A copy of this order be placed on the file of FAO 1757/2014.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

27th January,2023.
Joshi

Whether speaking/reasoned Yes
Whether reportable Yes/No

RAJINDER PARSHAD JOSHI
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I attest to the accuracy and integrity of this document