

2023:PHHC:122383

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4297-2015 (O&M) and
Date of Decision: August 18, 2023

Oriental Insurance Company Ltd.

...Appellant

VERSUS

Jaswinder Kaur and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.R.C.Gupta, Advocate
for the appellant.

Mr.Ashwani Arora and Mr.Vipul Sharma, Advocates
for respondents No.1 and 2.

Respondent No.3-ex parte.

Mr.Vijay Lath and Mr.Ajay S. Dhiman, Advocates
for respondent No.4

Service qua respondent No.5 dispensed with.

ARCHANA PURI, J.

The present appeal has been filed by the Insurance Company, thereby, assailing the Award dated 03.04.2015 passed by learned Motor Accident Claims Tribunal, vide which, compensation was granted to the respondents-claimants, on account of death of Vikramjit Singh, in a motor vehicular accident, which took place on 14.02.2014.

The essential facts of the case, are as follows:-

On fateful day i.e. 14.02.2014, Vikramjit Singh along with his brother Dilbagh Singh, had gone to Gurdwara Daflanasar at village Marauli Kalan, to pay obeisance. At about 7.30 a.m., while Vikramjit Singh was returning

FAO-4297-2015

to his house and he was walking on the extreme left side of the road, in the meanwhile, a car bearing registration No.PB-65L-4957, came from the side of Ludhiana, which was driven by Malkiat Singh (respondent No.2 before learned Tribunal), in a rash and negligent manner and struck against Vikramjit Singh, who received serious injuries and died instantaneously. The accident was witnessed by Dilbagh Singh and one Karnail Singh. The accident took place, on account of rashness and negligence of the aforesaid car, driven by Malkiat Singh.

Also, in the claim petition, it was averred that the deceased remained Sarpanch of the village and Chairman of Land Mortgage Bank. His son, Rajwant Singh-proforma respondent No.4, had shifted to USA and thereafter, Vikramjit Singh had also shifted to USA in 2013. He started working as Accountant with AJ Trucking and was earning 3200 US Dollars i.e. Rs.1,85,000/- per month. He was also having agricultural land and was earning Rs.3 lakh per month.

Qua the accident in question, FIR No.45 dated 14.02.2014 was registered under Sections 279 and 304-A IPC, at police station Morinda.

In this context, the claimants i.e. widow and one son of the deceased had filed the claim petition, thereby, seeking compensation to the extent of Rs.70 lakhs. One of the son of the deceased namely, Rajwant Singh was impleaded as proforma-respondent No.4.

In pursuance of the notice issued, the respondents had made appearance. However, respondents No.1 and 2 denied about taking place of the accident and involvement of the car bearing registration No.PB-65L-4957. Even, respondent No.3-insurance company had so denied.

On appraisal of the evidence brought on record, learned Tribunal vide impugned Award had granted compensation to the extent of Rs.7,87,000/- to the widow of deceased namely, Jaswinder Kaur.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellant-insurance company has assiduously submitted that learned Tribunal has not appraised the evidence coming on record, in correct perspective and erroneously concluded about the involvement of car bearing registration No.PB-65L-4957, in the accident and also about the role assigned to Malkiat Singh, its driver. In fact, it is submitted that FIR was registered against unknown vehicle and unknown driver. Karnail Singh, who had been examined, being eye witness to the accident, was never named in the FIR, as having witnessed the accident. He has been falsely set up, at a subsequent stage, in an exaggerated move, to assist the respondents-claimants to seek compensation.

Furthermore, learned counsel submits that learned Tribunal had come to an abrupt and presumptuous conclusion about monthly earnings of the deceased to be Rs.12,000/- per month. No satisfactory evidence, in this regard, had come on record. As such, learned counsel for the appellant has made a prayer for acceptance of appeal, while setting aside the Award and to dismiss the claim petition.

Per contra, learned counsel for the respondents-claimants has refuted the claim of the appellant. It is submitted that evidence has been appraised by learned Tribunal, in the correct manner, while considering the fact of criminal trial, faced by Malkiat Singh, driver of the offending vehicle

FAO-4297-2015

and his having never taken any steps to plead about his false implication. Moreover, he has also not filed any appeal to assail the Award, wherein, liability has also been fastened upon him.

So far as, fact of accident is concerned, Jagwant Singh, one of the claimant, who is son of the deceased, has stepped into witness box as PW-1 and also proved his affidavit Ex.PW1/A. He has deposed about the death of his father, in pursuance of the accident, which took place on 14.02.2014, while Vikramjit Singh was returning from Gurdwara Sahib. He also deposed that accident was caused by Malkiat Singh, while driving car bearing registration No.PB-65L-4957, in a rash and negligent manner. He further deposed about source of earnings of his father, as asserted in the claim petition. The affidavit Ex.PW4/A of Rajwant Singh, another son of deceased, also lends credence to the version, so put forth by PW-1 Jagwant Singh. He also placed on record, the certificate of AJ Trucking Ex.P1, passport of deceased Ex.P2 and his passport Ex.P3.

Besides the aforesaid, to establish the earnings of the deceased, from the agricultural pursuit, the claimants had examined PW-5 Sarabjit Singh, who deposed about Vikramjit Singh-deceased, to be selling his produce to him. He proved on record J-forms for the period 2011-12 and for the period 2012-13, which are Ex.P4 to Ex.P9. Copy of Jamabandi has come on record as Ex.P12.

On the other hand, Malkiat Singh, driver of the offending vehicle, stepped into witness box as RW-1 and tendered into evidence, his affidavit Ex.RW1/A, wherein, he has deposed about no accident to have taken place with car bearing registration No.PB-65L-4957 and about false

FAO-4297-2015

FIR having been registered against him. Besides the same, he has also tendered into evidence copy of his driving licence Ex.R3.

The sole eye witness to the accident is Karnail Singh, who has been examined as PW-2. He has categorically deposed about having witnessed the accident, while he was present at the spot, on his motorcycle, when he had gone to Gurdwara Sahib to pay obeisance. He also categorically deposed about the manner, in which the accident was caused by the driver of car bearing registration No.PB-65L-4957, which struck into Vikramjit Singh, who was going on foot, along with katcha berm. He further deposed that the offending car came from the side of Ludhiana, at a very high speed and was driven in a rash and negligent manner by Malkiat Singh (respondent No.2 before learned Tribunal), which struck against Vikramjit Singh and thereafter, the driver escaped from the spot, with his car. He also categorically deposed that he followed the car for about half a kilometer and thereafter, the driver of the car, managed to escape further.

Besides the aforesaid witness, PW-3 ASI Harmesh Kumar, who is Investigating Officer, has also deposed about the manner of investigation conducted by him in FIR in question and also deposed about challan having presented before Illaqa Magistrate and accused Malkiat Singh is facing trial. Copy of challan report is Ex.P15 and copy of chargesheet against the driver is Ex.P14.

In the light of the aforesaid evidence, coming forth, it is pertinent to mention that RW-1 Malkiat Singh, who was the best witness, to dispute about the fact and manner of accident, while facing cross-examination, has categorically admitted about facing the trial in a criminal

FAO-4297-2015

case and also, in the cross-examination, he conceded that he is working as driver on the car bearing registration No.PB-65L-4957, which is owned by Paramjit Singh. Furthermore, he had also stated that he did not move any application before higher authorities, for registration of false case against him.

While considering the statement of PW-2 Karnail Singh and cross-examination of RW-1 Malkiat Singh, so coming forth, it should also be noted that the FIR was got registered in the present case with promptitude. The accident had taken place at about 7.30 hrs on 14.02.2014 and the information was received at police station at 12.25 hrs. The FIR was registered at the instance of Gurmeet Singh s/o Garib Singh. Very true, as so pointed out, the said author of FIR has not so been examined, but, hardly it matters. Karnail Singh, eye witness to the occurrence has been examined as PW-2. Though, he is stated to have been set up, at a later stage, as his name was not mentioned in the FIR, but however, it matters not much. By the very nature of things, an FIR is only aimed at intimating of the occurrence to the police. It cannot and does not purport to be a complete encyclopedia, containing all minute details, with regard to the persons present, at the spot. Moreover, it is pertinent to mention that Karnail Singh had himself categorically stated about having witnessed the accident. Even, Investigating Officer has been examined. Though, the statement of Karnail Singh is stated to have been recorded, at a later stage, but however, the investigation was conducted by the Investigating Officer and only thereupon, challan was presented, thereby, imputing rashness and negligence, on the part of Malkiat Singh. Said Malkiat Singh, who was

facing trial, at the relevant time, when the matter was pending before learned Tribunal, did not challenge his involvement, so alleged, by way of filing of any application to the superior authorities. Moreover, as submitted by learned counsel for the respondents, even no appeal has been filed by the driver, to assail the role assigned to him and the liability, so fastened upon him.

In the given circumstances, the fact of accident and the role assigned to Malkiat Singh, stands amply established. Consequently, the submissions, on this count, made by learned counsel for the insurance company, are bereft of merits.

Faced with the aforesaid conclusion, learned counsel for the appellant has assiduously submitted that the extent of earnings, so concluded by learned Tribunal, has been worked upon on higher side, even though, there is no satisfactory evidence, coming on record, in this regard.

It has to be kept in the mind that learned Tribunal constituted under the Motor Vehicles Act, as provided in Section 168, is required to make an Award, determining the amount of compensation, which is to be in the real sense “**damages**”, which in turn appears to it to be ‘**just and reasonable**’. It has to be always kept in mind that compensation for loss of limbs or life can hardly be weighed in golden scales, but however, at the same time, it has to be borne in mind that compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be “**just**” and it cannot be a bonanza; not a source of profit; but the same should not be a pittance. The Courts are expected to have realistic approach and also have duty to weigh the various factors and

quantify the amount of compensation, which should be just. Of course 'just' compensation is a vexed question, but however, the Courts should strive to provide a realistic recompense, having regard to the realities of life, both in terms of assessment of the extent of loss suffered and its impact.

Every method or mode adopted for assessing the compensation has to be considered, in the background of 'just' compensation, which is the pivotal consideration. Though, the expression 'just' provides a wide discretion to the Tribunal, but however, the determination has to be rational, to be done by a judicious approach. The expression 'just' denotes equitability, fairness and reasonableness and non-arbitrary. If it is so, it cannot be concluded to be just.

In this backdrop, now adverting to the case in hand. As already observed aforesaid, Rajwant Singh, son of the deceased, has deposed about the avocation, so followed by his father and extent of his earnings. Very correct, learned Tribunal had discarded the source of earnings of the deceased from employment by AJ Trucking, as no satisfactory evidence, apart from certificate Ex.P1, about his avocation, having brought on record. However, this certificate, also has been rightly discarded by learned Tribunal, while considering deceased's son Rajwant Singh, to be employed in the same company i.e. AJ Trucking and the certificate having issued by his employer, which does not stand substantiated by any bank statement or salary payment statement of the employer firm.

However, the indulgence of the deceased, in the agricultural pursuit, a such, stands amply established. Jamabandi has been proved on record. Besides the same, PW-5 Sarabjit Singh has been examined, who proved the

FAO-4297-2015

J-forms, in the name of Vikramjit Singh, which are Ex.P4 to Ex.P9. Ex.P4 reveals about the sale produce for an amount of Rs.42915.18, Ex.P5 shows the amount as Rs.65,258.78. Ex.P6 dated 10.05.2011 reveals about the sale of produce to the extent of Rs.96,610.22. Ex.P7 dated 27.10.2012 is for an amount of Rs.1,97,642.85, Ex.P8 is for an amount of Rs.2,12,195.65 and Ex.P9 dated 28.01.2012 reveals about the sale of produce for an amount of Rs.52,329.65. Thus, these J-forms have been considered by learned Tribunal and in the light of the said documents, coupled with the statement of son of the deceased, the earnings, as such, have been appropriately taken to be Rs.12,000/- per month.

While considering the responsibilities of the deceased, even towards his married sons, learned Tribunal had appropriately made deduction to the extent of 1/3rd, towards personal expenses. Thus, after deducting the same, the loss of dependency comes to be Rs.96000/- per annum. The deceased was 65 years old and therefore, multiplier of '7', as applied by learned Tribunal is appropriate one. Even, considering the age of the deceased, no addition, on account of future prospects was required to be made. Thus, considering the same, the compensation, on the count of loss of dependence, as such, is worked upon as Rs.6,72,000/-.

Besides the aforesaid, compensation has been granted, on the counts of loss of consortium, funeral expenses and towards transportation charges, which have been worked upon as Rs.1 lakh, Rs.10,000/- and Rs.5,000/- respectively. No doubt, as submitted by learned counsel for the appellant, compensation, on the count of loss of consortium to Jaswinder Kaur is Rs.1 lakh, which is on a higher side. As per *National*

Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009, compensation to be granted, on the count of loss of consortium is Rs.40,000/-, with 10% enhancement after every three years from the date of judgment, which now works to be Rs.44,000/-. However, as per *Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*, compensation, ought to be granted, on the count of ‘parental’, ‘spousal’ and ‘filial’ consortium. Considering the same, the compensation, so granted to Jaswinder Kaur, cannot be held to be on higher side, if we take into consideration, the compensation, so granted, on the count of loss of consortium, to both the sons of the deceased. Considering the same, the compensation, for funeral expenses and loss of estate, if, are also taken into consideration, though, it has been worked upon on lower side, in this case, the compensation, so granted, does not require modification by this Court.

In view of the aforesaid discussion, the impugned Award calls for no interference by this Court. Hence, the present appeal stands dismissed.

August 18, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No