

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-2341-2017(O&M)

Reserved on:-2.5.2023

Date of Pronouncement:-9.5.2023

Surinder Pal

...Appellant

Versus

Arun Kumar and others

...Respondents

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

Present: Mr.Vikas Kumar, Advocate
for the appellant.

None for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that Arun Kumar and Krishan Kumar, both sons of Mool Chand, residents of village Rail Majra, Tehsil Balachaur, District Shaheed Bhagat Singh Nagar had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) against respondents i.e. Surinder Pal – owner, Nirmal Singh – driver of car bearing registration No.PB-10-AR-0933 (hereinafter referred to as the offending car). In the claim petition, the petitioners/claimants had written insurance company of the car in question without mentioning its particulars stating that those were to be disclosed by respondent No.1 being owner of the offending car. Since such particulars were not disclosed, those could not be entered.

2. As per the averments of the claimants, on 3.4.2014 at about 7:15 p.m. claimant No.1 Arun Kumar along with his father Mool Chand deceased and one Ajay Kumar was standing in front of truck union, Anson on kachha strip; in the meanwhile, a car make Ford Ikon of white colour (offending car) being driven by respondent No.2 Nirmal Singh in a rash and negligent manner came and crushed Mool Chand; resultantly Mool Chand received multiple injuries on his head, hands, left foot, left leg and on neck etc.; he was taken to Civil Hospital, Ropar from where he was referred to PGI, Chandigarh, where he succumbed to the injuries on the intervening night of 6/7.4.2014.

An FIR No.18 dated 7.4.2014 for the offences under Sections 279/304-A IPC was registered with Police Station Kathgarh. According to the claimants, the deceased was the only bread winner of their family and they were totally dependent upon his earnings; the deceased was earning Rs.20,000/- per month since he was doing agricultural as well as labour work; the the claimants have lost the love and affection and society of their deceased father, therefore, they are entitled to get compensation.

3. Notice of the claim petition was given to both the respondents. Only respondent No.1 put in appearance and filed written reply contesting the claim petition, whereas respondent No.2 did not appear despite service and was proceeded against ex-parte.

In the written reply filed on behalf of respondent No.1, he had raised various legal objections on merits contending that in his statement given in the Court at Balachaur, petitioner/claimant No.1 had not identified the driver, therefore, it is clear that neither the car in

question was involved in the accident nor respondent No.2 Nirmal Singh was its driver. Refuting the remaining assertions, he prayed for dismissal of the claim petition.

4. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

5. After hearing arguments, the Motor Accident Claims Tribunal, SBS Nagar (hereinafter referred to as the Tribunal) accepted the claim petition and compensation of Rs.2,75,040/- was granted in favour of the claimants holding that respondents No.1 and 2 are jointly and severally liable to pay this amount with interest @ 6% per annum from the date of filing of the claim petition till its realization. It was further observed that in case the awarded amount is not paid within the period of three months from the date of award, the claimants shall be entitled to get interest @ 9% per annum thereon from the date of award till realization.

6. This award left the respondent No.2 – owner of the offending car aggrieved and he had approached this Court by filing the present appeal.

7. Notice of the appeal was given to the respondents. Initially respondents No.1 and 2 have put in appearance through counsel but later on there was no representation on their behalf as well as on behalf of respondent No.3.

8. I have heard learned counsel for the petitioner besides going through the record.

9. In this case the Tribunal referring to the evidence brought on

record by the parties has given a clear verdict that the accident, which took place on 3.4.2014 at about 7:15 p.m. in the area of truck union, Anson within jurisdiction of Police Station Kathgarh in which Mool Chand has suffered injuries, to which he had succumbed, had taken place on account of rash and negligent driving of the offending car by respondent No.2 Nirmal Singh. It being so, the owner and driver of the offending car were found liable to pay compensation. The car was not found to have insured with any insurance company at the relevant time.

10. The submission made by learned counsel for the appellant that the car in question was not involved in the accident comes out to be wrong in view of enough, cogent and convincing evidence brought on record by the appellants to show involvement of the car in question and Nirmal Singh being responsible for the accident by rash and negligent driving of that car, resulting in death of Mool Chand.

11. The owner of the car has approached this Court by way of filing an appeal for the reason that since the claimants happened to be major sons of the deceased and were not dependent upon his earnings, as such they were not entitled to claim any compensation.

12. However, this contention is not acceptable for the reason that the Apex Court in judgment **Smt.Manjuri Bera Versus The Oriental Insurance Company Ltd. and Anr.** in Civil Appeal No.1702 of 2007 arising out of SLP(C) No.14943 of 2004 has clearly observed that legal representative of a person, who had died in a motor vehicular accident is entitled to get compensation even if he was not dependent on the deceased and there was no loss of dependency. Therefore, this argument is rejected.

13. The compensation awarded can certainly be not taken to be on higher side, rather it is on very low side. Since the claimants have neither filed any cross appeal nor cross-objections, therefore the compensation is not being enhanced. Nevertheless there is no merit in the appeal filed by the appellant - owner of the car.

14. Thus, the appeal stands dismissed.

Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

9.5.2023

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No