

FAO-294-2006 (O&M)

-1-

201

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

-.-

**FAO-294-2006 (O&M)
Date of Decision : 22.03.2024**

Parkash Kaur and Another

....Appellants

VERSUS

Gurmukh Singh and others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. B.S.Jaswal, Advocate for the appellants.

Mr. Paul S. Saini, Advocate with
Mr. Vipul Sharma, Advocate for respondent No.3.

-.-

SUDEEPTI SHARMA, J. (Oral)

1. The present appeal is preferred against the award dated 18.11.2005 passed by the Additional District Judge – cum – Motor Accident Claims Tribunal, Amristar, whereby claim of the appellants has been rejected.

2. The brief facts of the case as mentioned in the claim petition are that on 02.04.2001, the inhabitants of village Cheema Khurd were leveling the road by putting earth, on the road with the help of tractor trolleys, which was going to Rasulpur. After finishing the work Gurmukh Singh son of Vir Singh was going to his house on the tractor trolley. At about 8 P.M when Gurmukh Singh came in front of the house of Jasbir Singh, there was a turning point of the street. When he tried to take turn, the tractor struck against the scooter of Sukhraj Singh, who was coming from the front side and Sukhraj Singh received multiple injuries. He was shifted to Guru Nanak Dev Hospital, Emergency Ward, Amristar where he died on

the same day at about 9.30 PM. It was the case of the claimants that the accident was caused due to rash and negligent driving of the tractor by respondent No.1 (Gurmukh Singh). The matter was reported to the police, on the same day. The claimant contended that the police had taken the thumb impression of Sarwan Singh on blank papers and in connivance with respondent Nos. 1 and 2, the police had not recorded the FIR and only DDR was recorded to the suitability of respondent Nos. 1 and 2. In the claim petition, the claimants have sought compensation to the extent of Rs. 10 lakh.

3. Upon notice, the respondents contested the petition and denied the factum of accident.

4. From the pleading of the parties, the Tribunal framed the following issues:-

1. Whether Sukhraj Singh died in a motor vehicle accident which took place on 02.04.2001 on account of rash and negligent driving of the tractor bearing No.PB-46-B-4378 driven by Gurmukh Singh respondent no.1? OPP.
2. If issue No.1 is proved, whether the claimants are entitled to seek compensation, if so to what extent and from which of the respondents? OPP
3. Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPP
4. Whether the petition is not maintainable in the present form? OPR
5. Whether respondent No.1 Gurmukh Singh was not having valid and effective driving licence at the time of accident? OPP
6. Relief.

4. Learned counsel for the appellant contends that the learned Tribunal did not appreciate the evidence put-forth before it and even after noticing that there

is no denial to the fact of accident as well as to the death of Sukhraj Singh, the claim petition is dismissed. Learned counsel further contends that only on the ground that no evidence was led to substantiate the version that the signatures were taken on blank paper and DDR was written as per suitability of the respondents, claim of the appellant was denied.

5. Per contra, learned counsel for the respondent argued that complainant – Sarwan Singh (PW-1) father of the deceased (Sukhraj Singh) had deposed that his signatures were taken on blank paper, but no evidence was produced regarding the same and no complaint against the police officials was shown. He further submits that there was no eye-witness to the incidence therefore the appeal is liable to be dismissed and no compensation should be granted to the claimant.

6. I have heard learned counsel for the parties and perused the whole record.

7. After going through the records, this Court concludes as under:-

(i) A perusal of the award shows that as per the complaint, the admitted fact is that the accident took place on 02.04.2001 at about 8 PM. Further deceased (Sukhraj Singh) received multiple injuries and he was shifted to Guru Nanak Dev Hospital, Emergency Ward, Amristar, where he died on the same day at 9.30 PM;

(ii) That Sarwan Singh, father of the deceased (Sukhraj Singh) deposed as PW-1 and stated the incidence by way of affidavit which was placed on record as Exhibit PW-1/A.

(iii) A perusal of the award shows that there was no contradiction in the statement in the cross-examination of PW-1 Sarwan Singh as well.

(iv) Further, none of the respondents stepped into witness box to rebut the allegations made by the claimant.

(v) It is not the case that the factum of accident was not proved and perusal of the statement of Sarwan Singh PW-1 shows that deceased (Sukhraj Singh) was coming on scooter and Gurmukh Singh was going to his house on tractor-trolley and when he reached in front of house of Jasbir Singh, there was a turning point and he tried to take the turn rashly and negligently and struck his tractor against Sukhraj Singh (deceased), who was coming from the front side. This shows that it is not the case that the deceased (Sukhraj Singh) was driving rashly and negligently but while turning the tractor-trolley it was Gurmukh Singh who was driving tractor bearing No.PB-46-B-4378. It is also observed that no report of the mechanical examination of the vehicle was there on record.

(vi) Even mother of the deceased (Sukhraj Singh) deposed as PW-2 by way of affidavit Ex.PW-2/A about the death of her son Sukhraj Singh in accident due to rash and negligent driving of the tractor by Gurmukh Singh (respondent No.1).

(vii) Learned Tribunal only on the ground that there was no eye-witness, dismissed the claim petition. Learned Tribunal failed to appreciate the fact that there was no denial or rebuttal to the incidence/statement made by the complainant – Sarwan Singh (PW-1) father of deceased – Sukhraj Singh. Learned Tribunal only on the ground that there is no eye-witness except for the DDR lodged by the father of the deceased (Sukhraj Singh) i.e. Sarwan Singh denied the compensation to the claimant.

(viii) Learned Tribunal after noticing down the examination of PW-1 i.e. Sarwan Singh and his affidavit as Ex. PW-1/A and Parkash Kaur (PW-2), mother of the deceased and her affidavit Ex. PW-2/A with effect to the incidence of accident, denied the claim of the appellant on the ground that there is scanty evidence.

(ix) Further the post mortem of Sukhraj Singh (deceased) was also proved as Ex.A/1.

(x) Even after considering that none of the respondents stepped into witness box to substantiate the plea of denial, the learned Tribunal dismissed the claim petition. The factum of accident was not denied/rebutted by the respondents.

(xi) Further it has been observed that though PW-2 Parkash Kaur mother of the deceased was examined and stated the factum of accident but only on the ground that she was not eye-witness to the accident, the claim of the appellant has been rejected.

(xii) On the one hand, learned Tribunal has decided issue No.1 and 2 against the claimant on the ground that rash and negligent driving of tractor-trolley by respondent No.1 is not established. On the other hand, issue No.3 i.e. Whether the petition is bad for mis-joinder and non-joinder of necessary parties, has been decided against the respondent on the ground that it is specific version of the claimant that the accident had occurred due to rash and negligent driving of the tractor-trolley by respondent No.1 and in view of the specific plea taken by the claimant, there was no necessity to implead the owner and insurer of the scooter. So far as issue No.4 is concerned regarding the maintainability of the claim petition, learned Tribunal has

decided it in favour of the claimant and against the respondents. Issue No.5 “as to whether respondent No.1 Gurmukh Singh was not having valid and effective driving license at the time of accident” is decided against the insurance company since it could not be proved by leading any evidence.

8. Hon’ble Supreme Court in **Sunita and Others Vs. Rajasthan State Road Transport Corporation & Another** [2019(2) R.C.R (Civil) 209] in Para 31 has held as under:-

“31. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some "best" eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in Dulcina Fernandes (supra), faced a similar situation where the evidence of claimant's eye-witness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.”

FAO-294-2006 (O&M)

-7-

9. In view of the above discussion, the present appeal is allowed and the award passed by the Tribunal is set aside.

10. Hon'ble Supreme Court in the case of National Insurance Company Ltd. Vs. Pranay Sethi & Ors. [(2017) 16 SCC 680] has clarified the law under Sections 166, 163-A and 168 of the Motor Vehicles Act, 1988, on the following aspects:-

- (A) Deduction of personal and living expenses to determine multiplicand;
- (B) Selection of multiplier depending on age of deceased;
- (C) Age of deceased on basis for applying multiplier;
- (D) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses, with escalation;
- (E) Future prospects for all categories of persons and for different ages: with permanent job; self-employed or fixed salary.

The relevant portion of the judgment is reproduced as under:-

“ Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000, Rs.40,000 and Rs.15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so

because that will bring in consistency in respect of those heads.”

11. In view of the above, the claimant-appellant is held entitled to the calculated amount as under :

Sr. No.	Heads	Compensation Awarded
1	Income	Rs.2,000/-
2	Future Prospects @ 40%	Rs.8,00 /-
3	Deduction towards Personal Expenses (50%)	Rs.1400/-
4	Total Income	Rs.16,800/- (1400 x 12)
5	Multiplier of 18	Rs.3,02,400/- (16,800 x 18)
6	<u>Loss of Consortium</u> Filial	48,000 x 2 = Rs.96,000/-
7	Loss of Estate	Rs.18,000/-
8	Funeral Expenses	Rs.18,000/-
	Total Compensation	Rs.04,34,400/-

12. So far as the interest part is concerned, as held by Hon’ble Supreme Court in Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma 2019 ACJ 3176 and R.Valli and Others VS. Tamil Nandu State Transport Corporation (2022) 5 Supreme Court Cases 107, the amount so calculated shall carry an interest @9% per annum from the date of filing of claim petition till the date of realization.

13. Pending applications, if any, also stand disposed off.

March 22, 2024
tripti

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No