



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3590-2010 (O&M)
Date of Decision: September 05, 2024

Pushpa Yadav and others
...Appellants

VERSUS

Sunil Saini and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Ashwani Arora, Advocate
for the appellants.

Mr.Mukesh Kumar Verma, Advocate
for respondents No.1 and 2.

Mr.Sanjeev Kodan, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, assailing the judgment of dismissal of the claim petition, filed by them, to seek compensation, on account of death of Narender Singh Yadav, in a motor vehicular accident.

The facts germane, to be noticed, are as follows:-

That, on 16.02.2009, Narender Singh Yadav along with his son Kunal Yadav, was crossing highway NH-8, when a black Ford Fiesta car bearing registration No.HR-36J-6363, driven at a high speed and in rash and negligent manner by respondent No.1-Sunil Saini, had come and struck

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Narender Singh Yadav, as a result whereof, Narender Singh Yadav sustained injuries and died instantaneously. FIR No.62 dated 17.02.2009 under Sections 279 and 304-A IPC was registered at Police Station Sadar, Gurgaon.

Narender Singh Yadav was asserted to be 54 years old and at the relevant, he was employed in Air India as Senior Security Officer and was getting salary of Rs.30,349/- per month. All the claimants, who are widow, daughter and son, were dependent upon the deceased.

In pursuance of the notice issued, the respondents made appearance and filed respective replies. Respondents No.1 and 2, in their replies, denied the factum of accident and involvement of the car in question, in the accident. They further took the plea that no accident was caused by respondent No.1, while driving car bearing registration No.HR-36J-6363.

Respondent No.3-insurance company, in its reply, denied its liability to indemnify the insured, on the ground that respondent No.1 was not holding valid and effective driving licence, at the time of accident and that there was violation of terms and conditions of the insurance policy.

After framing of the issues, the evidence was adduced. To substantiate the version of accident, Kunal Yadav, son of the deceased, who was accompanying the deceased and as such, was an eye witness, had stepped into witness box as PW-1. Another eye witness, namely, Deepak was examined as PW-2. Besides the aforesaid witnesses, other witnesses examined by the claimants are PW-3 Dr.Neeraj Sharma, Medical Officer, who proved the post-mortem report of the deceased, copy whereof is Ex.P2.



PW-4 G.R.Vats, Assistant Manager Finance, Air India, had proved the salary record of the deceased and PW-5 Vikrant, Addl. Ahlmad, brought the record, relating to the trial faced by respondent No.1-Sunil Saini. Thereafter, the evidence was closed.

However, no evidence was adduced, at the behest of respondents No.1 and 2. Respondent No.3-insurance company, tendered into evidence, insurance policy Ex.R1 and closed the evidence.

On appraisal of the evidence, brought on record, learned Tribunal had disbelieved the testimonies of PW-1 Kunal Yadav and PW-2 Deepak and concluded about the accident to have never taken place, in the manner as alleged and also about no involvement of car, in the accident in question and thus, issue No.1 was decided against the claimants. No findings were recorded on other issues and consequently, the claim petition filed by the appellants-claimants was dismissed, vide impugned judgment.

Being aggrieved by the judgment of dismissal of the claim petition, the appellants-claimants, have filed the present appeal.

In pursuance of the notice issued, respondents made appearance through their respective counsel.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellants-claimants has submitted that learned Tribunal had not appraised the eye witness account, in proper perspective. In fact, it is submitted that PW-1 Kunal Yadav, son of the deceased, who was accompanying him and was an eye witness to the accident, has deposed in most natural manner, but however, his testimony has been erroneously discarded. Likewise, even testimony of



PW-2 Deepak, who had witnessed the accident and had chased respondent No.1, who attempted to fled away, is not considered, in the manner, it ought to be believed. Considering the same, learned counsel for the appellants-claimants has again made reference to the testimonies of both the aforesaid witnesses, as well as testimony of PW-5 Vikrant, who had proved the factum of trial being faced by respondent No.1-Sunil Saini, in a criminal case, qua the accident in question.

However, to counter the claim of the appellants-claimants, learned counsel for the respondents have submitted that in fact, false version was set up by the claimants. Witness Kunal Yadav has been introduced only to make out the case for entitlement for compensation. In fact, the vehicle in question was never involved in the accident in question and no incriminating material is there, vis-a-vis, role of Sunil Saini. In fact, learned counsel for the respondents have assiduously made reference to the judgment of acquittal of Sunil Saini, in a criminal case, copy whereof, has been placed on record, during the course of arguments. In the light of the same, it is submitted that wrongful role has been assigned to Sunil Saini, driver of the car bearing registration No.HR-36J-6363.

In view of the rival submissions made by learned counsel for the parties, at the very outset, it is pertinent to mention that it has been consistently held by the Courts that the Tribunal is to adjudge the case, only on the basis of evidence, produced before it and not to rely, solely on account of material, put forth, before the criminal Court, on the basis, whereof, judgment of acquittal is passed. Of course, fundamental facts, ought to be established. Basically, the test is whether a prudent man, under



the peculiar circumstances of a case, assume the existence of certain facts, as true or disbelieve it.

In *Krishan S/o Mangiram v. Tarawati Widow and Others 2011 (3) PLR 29*, it was held that a criminal Court's judgment acquitting a driver, would have no relevance, in a case before the Tribunal and the Tribunal will consider the issue of negligence, on the basis of the evidence adduced before it, uninfluenced by the fact of the pendency of the criminal case or the acquittal therein. In the aforesaid decision, it was held that the judgment of acquittal, as such, cannot be used for any purpose, unless it is case of conviction rendered on admission before the criminal Court, where the conviction by the criminal Court, on an issue of negligence will have immense value before the Tribunal.

Beneficial reference is made '*The General Manager, Bihar Road Transport Corporation v. Smt. Uma Rani Behura and others 1998 WBLR 344*', wherein, it was held by Division Bench of Calcutta High Court held that a judgment of acquittal in a criminal case, is admissible in a civil matter, only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. But the findings of the criminal Court, are not binding on the civil case. Even, in '*Hem Ram and Another v. Krishan Chand and Another 2015(9) R.C.R (Civil) 311*', it was held by the Himachal Pradesh High Court that it is settled position that while a conviction recorded by the Criminal Court is enough to hold that the driver had driven the vehicle rashly and negligently, but his acquittal would be no ground to dismiss the claim petition.

It is indeed trite to state that while finding of a civil Court is binding



on the criminal Court, the finding of criminal court, could not and should not influence the decision of the Tribunal. The Tribunal is to adjudge the case, on the basis of the evidence produced before it and not on the basis of the findings, solely recorded by the criminal court, though the same may put Tribunal, on some caution for scrutiny purposes.

Thus, there is requirement of independent appraisal of the evidence, as coming forth, before the Tribunal. The mere acquittal of the driver of the offending vehicle in a criminal case, cannot weigh against the evidence and the manner of appreciation, made by the Tribunal, keeping in view that the standard of proof required, being different in the two proceedings.

Consequently, sole reliance, as such, cannot be placed upon the judgment of acquittal passed by learned trial Court, qua the accident in question, more particularly, when the trial was pending, at the time of decision of the claim petition.

Proceeding further, it must be noticed that FIR Ex.P1 was got registered at the behest of Kunal Yadav, who is son of the deceased and who has stepped into witness box as PW-1. Throughout the arguments, much emphasis has been laid upon the number of vehicle, involved in the accident, not having been disclosed by the author of the FIR and even, the name of the driver having not been spelt therein. May it be so. It should be noted that 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 complete encyclopedia of all the attending circumstances. One should not overlook the fact that on account of accident, author of the FIR, also is expected to be in a



traumatic state of mind, soon thereafter, more particularly, when he or she is related to person, who died in the accident and was accompanying him/her, at the relevant time. Thus, on the basis of recitals of the FIR, the version, as such, cannot be ipso facto, assumed and presumed to be incorrect.

No doubt, PW-1 Kunal Yadav, while in the witness box, though had stated about the manner of the accident, but however, he had not given the number of the vehicle or name of the driver. Anyhow, even, PW-2 Deepak has been examined. Though, he is stated to be a planted witness, but the version, so put forth, is not belied from the material coming on record. It is pertinent to mention that PW-2 Deepak had, in categorical manner, stated about having witnessed the accident, as he was following the black Ford Fiesta car, bearing registration No.HR-36J-6363, which was moving ahead of him, at a high speed. He further deposed about the manner, in which the car struck the person, who was crossing the road. He also categorically stated that the car did not stop there and he chased the car and finally caught the driver at Kherki Daula Chowk, where, the car was struck in the traffic jam. He enquired about the name and particulars of the driver, who disclosed himself to be Sunil Saini s/o Bhagwan Dass Saini, resident of Chhippatwara, District Rewari. He also categorically stated that driver was under the influence of the liquor and ran away soon after, as the traffic got cleared. Further, this witness also stated that he had got recorded his statement to the police on 17.02.2009, where, he came to know about the deceased to be a Senior Security Officer in Air India and that his name was Narender Singh Yadav. He also categorically stated that Narender Singh Yadav had died, due to rash and negligent driving of respondent No.1-Sunil



Saini.

Though, this witness was subjected to lengthy cross-examination, but nothing material elicited out to dislodge his version. Solely, on account of his name not mentioned in the FIR, this witness, has been stated to have been planted later on. This FIR was got recorded, after few hours of the accident. On the day, when the FIR was got recorded, in the wee hours, the said witness had got recorded the statement, on that very day. He also categorically stated that he did knew Kunal Yadav, prior to the accident. This has come in the cross-examination of PW-2. It be so, it cannot, in any manner, be said as to why, if he had witnessed the accident, his name did not figure in the statement of Kunal Yadav, who got recorded the FIR.

Not only this, it is further essential to mention that respondents No.1 and 2 have not stepped into witness box. PW-1 Sunil Saini, being the driver of the alleged offending vehicle, was the best person, who could have deposed about the accident, having not caused by him and about non-involvement of the alleged car in the accident. However, he had chosen to remain away from the witness box. Even, the insurance company has not bothered to examine him as a witness. Further, it is pertinent to mention that the version given by PW-2 Deepak, seems to be plausible, which is made out from the material coming forth in the case.

Perusal of the trial Court record reveals that on 27.01.2010, an application for additional evidence, on behalf of respondent No.3-insurance company was filed, which was adjourned for 01.02.2010. On 01.02.2010, the said application was not pressed and the same was withdrawn, not being pressed. Anyhow, this application is also part of the trial Court record, at



page No.221. The paragraph No.2 of the application is very relevant, which for appropriate appraisal, is reproduced in verbatim, as herein given:-

“That on investigation of the insurance company it was found that Sunil respondent No.1 on dated 16.2.2009 after causing accident had run away from the spot and was challaned at Kherki Daula Toll Plaza in drunckerd condition by Anil Kumar Inspector Traffic, East Gurgaon. Photostate copy of challan and investigation report are attached herewith.”

Though, this application for additional evidence, as such, was not pressed, but however, it forms the part of trial Court record and was filed by the insurance company and thus, considering the Motor Vehicles Act, to be benevolent piece of legislation, as such, this document can be taken into consideration for the benefit of the claimants. In this paragraph, it is stated that on investigation of the insurance company, it was found that Sunil respondent No.1, on 16.2.2009, after causing accident, had ran away from the spot and was challaned at Kherki Daula Toll Plaza in drunkard condition. The investigating report is also part of the trial Court record, which is at page No.149, wherein, the Investigator of the insurance company had concluded about the manner of taking place of the accident, as asserted by the claimants and as deposed by Deepak, an eye witness. Therein, it is also stated that the insured vehicle bearing registration No.HR-36J-6363, had met with an accident and the driver of the insured vehicle, had fled away from the spot, but was caught near Kherki Daula Toll Plaza and was found to be drunk.

Keeping in view the report of the Investigator, on the basis whereof, an application for additional evidence was filed, which was later on not pressed, the version given by PW-2 Deepak, is most plausible. He had also



deposed to this effect. Meaning thereby, the insurance company, as such, do not dispute about the identity of the driver, which came forth, during the investigation conducted by their Investigator.

In these circumstances, considering the testimonies of eye witnesses, the factum of accident, involvement of the car bearing registration No.HR-36J-6363 and role assigned to respondent No.1-Sunil Saini, as such, stands amply established and precisely, on this account, the findings recorded by learned Tribunal, on issue No.1, are hereby reversed and this issue is decided in favour of the appellants-claimants.

In the light of the aforesaid conclusion, the findings ought to be recorded, vis-a-vis, compensation to be awarded qua death of Narender Singh Yadav.

From the material coming on record, it stands amply established that Narender Singh Yadav had died in the accident in question on 16.02.2009. He is asserted to be 54 years old. The date of birth of Narender Singh Yadav, as coming forth in the certificate issued by employer department Ex.P3, wherein, the date of birth of the deceased is mentioned as 23.06.1956. Thus, the deceased is established to be falling in the age group of 53-54 years. The appellants-claimants had asserted the salary of the deceased to be Rs.30,349/- per month. PW-4 G.R.Vats, Assistant Manager Finance, Air India, IGI Airport, has been examined, who brought the summoned record, relating to employment of the deceased. He proved the certificate relating to employment of Narender Singh Yadav, which is Ex.P3 and that he was drawing salary of Rs.31,876.72 per month. He has also brought the certified copy of payment of performance linked incentive to



employees amount to Rs.7096/- per month. Further, the PLI slips for the months of October 2008 to February 2009 were proved as Ex.P4 to Ex.P8. The salary slips for the months from September 2008 to January 2009 were proved Ex.P9 to Ex.P13.

Perusal of the salary slips, proved in evidence, reveals that there was variation in the extent of salary drawn by the deceased in various months and this variation was on account of the duration of earnings, on account of overtime. Ex.P9, which is the salary certificate for the month of September 2008, reveals that on account of over-time, the amount, which forms part of his salary is Rs.6636/- and in Ex.P10, on the same count, it was Rs.1179.78. In Ex.P11, on the count of over-time, it was Rs.1127.81. Likewise, it is important to make reference to the performance linked incentive, which have been proved as Ex.P4 to Ex.P8, which also reveals about the variation, on account of performance linked incentive, in the amounts from Rs.5367/- to Rs.7096/-.

Considering the variations coming forth, appropriately, the earnings of the deceased are taken as Rs.31,876/- per month, annual whereof comes to be Rs.3,82,512/-. As per income tax slab existing at the relevant time, the tax on the initial income of Rs.1,50,000/- was 'nil'. The tax for the next amount from Rs.1,50,000/- to Rs.3,00,000/-, was 10% i.e. Rs.15000/-. For the next Rs.3,00,000/- to Rs.5,00,000/-, the tax payable was 20%. In the present case, the taxable amount is Rs.82,512/- (Rs.3,82,512-Rs.3,00,000), the tax payable whereof, fall in the bracket of 20%, which comes to be Rs.16,502/-. Thus, the total tax payable comes to be Rs.31,502/-. After deduction of this amount, the residue annual earnings of the deceased comes



to be Rs.3,82,512-31,502=Rs.3,51,010/-.

Considering the number of dependents, the deduction of 1/3rd ought to be made, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*. Thus, after deducting the same, the loss of dependency is worked upon as Rs.351010-117003=Rs.2,34,007/-.

Considering the deceased to be falling in the age bracket of 53-54 years, as per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 10%, ought to be made, on the count of 'future prospects'. Thus, the annual income of the deceased is worked upon as Rs.234007+23400=Rs.2,57,407/-.

Considering the age of the deceased, as per *Sarla Verma's case (supra)*, the appropriate and suitable multiplier, to be applied is '11', and thus, by applying the same, the loss of dependency, works out to be Rs.257407x11=Rs.28,31,477/-.

Besides the aforesaid, as per '*Magma General Insurance Company Limited vs. Nanu Ram @ Chuhru Ram and others, 2018 (18) SCC 130*', whosoever are the dependents of the deceased/claimants, are entitled to 'parental', 'spousal' or 'filial' consortium, as required. Considering the same, as per *Pranay Sethi's case (supra)*, the compensation, on the count of 'loss of consortium', at present, works out to be Rs.48,400/- to each of the claimants i.e. Rs.48400x3=Rs.1,45,200/- and likewise, on the counts of 'loss of estate' and 'funeral expenses', the compensation payable, comes to be Rs.18,150/-, on each count.

Considering the same, the compensation payable to appellants-claimants, on account of death of Narender Singh Yadav, is computed, as



herein given:-

Loss of dependency	:	Rs.28,31,477/-
Loss of consortium	:	Rs.1,45,200/-
Loss of estate	:	Rs.18,150/-
Funeral expenses	:	Rs.18,150/-
Total	:	Rs.30,12,977/-

On the amount of the compensation as now worked upon i.e. **Rs.30,12,977/-**, the appellants-claimants shall be entitled to the interest, at the rate of 6% per annum, from the date of filing of the claim petition, till realization of the amount of compensation.

Out of the compensation amount, as worked upon, appellants-claimants No.2 and 3, are held entitled to compensation to the extent of **Rs.8,00,000/-** each. The appellant-claimant No.1 is held entitled to residue amount of **Rs.16,12,977/-**.

Respondents No.1 to 3 i.e. driver, owner and insurer of the offending vehicle, are hereby held liable, jointly and severally, to pay the compensation, as now worked upon.

In view of the aforesaid observations, the present appeal stands allowed.

September 05, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No