



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

FAO-814-2015 (O&M)

Date of Decision : 12.12.2024

Rajwant Kaur and Ors

... Appellant(s)

Versus

Balwinder Singh and Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

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

Mr. Lalit Garg, Advocate for the respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the claimant-appellants challenging the order dated 03.07.2014 passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as 'Tribunal') whereby the claim petition has been dismissed.

2. Since the facts, as recorded in the impugned award passed by the Tribunal, are not in dispute, the same are not being reproduced herein for the sake of brevity.

3. Learned counsel for the claimant-appellants contends that the claimant-appellants had filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming the income of the deceased to be Rs.10,000/- per month but subsequently, on an application for amendment of the claim petition, the same was allowed to be amended to Section 163-A of the Act by the Tribunal confining the income to be Rs.3,300/- per month.

However, the Tribunal dismissed the claim petition on the ground that the claimant-appellants could not lead fresh evidence on record. The learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** to contend that motor accidents claim cases are to be decided on the touchstone of preponderance of probabilities.

4. *Per contra* the learned counsel for the respondent No.3 states that though the findings of the Tribunal on issue Nos.1 and 2 are correct, however, the Tribunal has erred in not deciding the issue No.4 on merits so far as the validity of the Driving Licence of the driver of the offending vehicle is concerned.

5. Heard.

6. In the present case, the Tribunal had framed the following issues :

1. Whether Balwant Singh son of Darshan Singh resident of village Sihariwal, Tehsil Nakodar, District Jalandhar died in road side accident on 12.03.2011 which was caused by rash and negligent driving of motorcycle bearing No.PB-67-8337 by respondent no.3 in the area of Mallian Khurd on Mallian Kalan, Kapurthala Road ?
OPA

2. Whether the claimants are legal heirs of deceased Balwant Singh and are entitled to compensation on account of death of Balwant Singh, if so to how much

and from which of the respondent ? OPP

3. Whether the accident in question was caused due to negligence of the driver of motorcycle bearing No.PB-67-8337 ? OPR(4)

4. Whether Rajesh Kumar, respondent no.3 was holding a valid and effective driving licence at the time of the accident, if so its effect ? OPR(4)

5. Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties ? OPR

6. Relief.

7. A perusal of the impugned award reveals that the Tribunal took up issues No.1 and 2 together and decided the same against the claimant-appellants on the ground that the claim petition under Section 163-A of the Act is not maintainable, whereas no specific finding on merits has been recorded on other issues. Though an application for amendment of the petition was admittedly allowed during the pendency of the claim petition so as to amend the income of the deceased from Rs.10,000/- to Rs.3,300/- per month thereby virtually converting the petition under Section 166 of the Act to Section 163-A of the Act, however, the Tribunal erred in not recasting issue No.1. For a petition under Section 163-A of the Act, the claimant-appellants are not required to prove the rash and negligence of the driver, rather the petition under Section 163-A of the Act is maintainable only against the use of a motor vehicle in causing the death.

7. Further, the Tribunal did not render finding on merits on issue No.4 and rather observed that no finding was required to be given under this issue as the same became obsolete in view of the findings on issue Nos.1 and 2. The Tribunal was required to render finding on each issue on the basis of evidence led on the record.

8. Still further, vide the Motor Vehicles (Amendment) Act, 32 of 2019 Chapter X stands omitted and substituted by Chapter XI. Section 163-A falls in Chapter X of the unamended Motor Vehicles Act, 1988 and the same has now been replaced by Section 164 and its retrospective effect has been impliedly followed by the Hon'ble Supreme in the case of **Ram Murti & Ors. Vs. Punjab State Electricity Board [2023 ACJ 631]**.

9. In view of the above, the impugned award passed by the Tribunal is set aside and the matter stands remanded to the successor Presiding Officer of the Tribunal concerned for a decision on the claim petition afresh, in accordance with law. The parties shall appear before the Tribunal concerned on **19.12.2024** at 10:00 am.

10. Disposed off accordingly. Pending applications, if any, also stand disposed off.

12.12.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO