

XOBJ-173-C-II-2018 in/and FAO-3801-2017 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.  
Sr. No.102

Case No. : XOBJ-173-C-II-2018 in/  
& FAO-3801-2017(O&M)

Date of Decision : January 23, 2024

The New India Assurance Company  
Limited, Bathinda .... Appellant  
vs.  
Paramjit Kaur and others .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. R. K. Bashamboo, Advocate  
for the appellant – Assurance Co.  
  
Mr. Amandeep Chhabra, Advocate  
for respondents no.1 to 4 – claimants/cross-objectors.  
  
Mr. Kashish Garg, Advocate  
for respondent no.6 – owner of offending truck.

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GURBIR SINGH, J. :

1. The New India Assurance Company Limited, Bathinda (for short - Assurance Company) has filed the present appeal and the claimants have filed the cross-objections against the Award dated 03.03.2017 passed by learned Motor Accident Claims Tribunal, Bathinda (for brevity – the Tribunal), whereby petition under Section 166 of the Motor Vehicles Act, 1988 (in short – the Act), filed by respondents no.1 to 4 (hereinafter called – the claimants), for grant of compensation on account of death of Krishan Singh @ Resham Singh in the motor vehicular accident, has been allowed and compensation has been awarded.
2. In brief, the case of the claimants is that on 10.11.2015, Krishan

Singh @ Resham Singh was returning to his house on his motorcycle and was driving the motorcycle on correct side of the road at a slow speed. At about 03:00 PM, when he reached near Gurdwara Baba Ladha in the jurisdiction of Police Station Phul, a truck bearing No.RJ-14-GB-0098 (hereinafter referred to as – the offending truck), being driven by respondent no.5 (hereinafter called – the driver), at a high speed, rashly and negligently, without blowing horn, came from the opposite direction and hit against the motorcycle of Krishan Singh @ Resham Singh, who sustained multiple injuries on various parts of his body and his motorcycle was also damaged. The injured was taken to Civil Hospital but on the way, he succumbed to the injuries. The accident took place due to rash and negligent driving by the driver of the offending truck. On the statement of Balvir Singh – father of the deceased, DDR was recorded by distorting facts. Claimants no.1 and 2 are the parents and claimants no.3 and 4 are sisters of the deceased. The deceased was only 19 years of age at the time of accident and was working in a bakery. He was getting salary of Rs.10,000/- per month. The claimants were dependent upon the deceased.

3. The driver and owner of the offending truck i.e. respondents no.5 and 6 contested the claim petition. They denied the accident. They pleaded that Krishan Singh @ Resham Singh was coming on his motorcycle rashly and negligently at a very high speed and by chance, all of a sudden, stray animal came on the road. Krishan Singh @ Resham Singh lost control over the motorcycle and struck against the stray animal and in an unbalanced circumstance, came ahead of the truck and struck against it. The accident was the result of striking against the stray animal. The matter was reported

to the concerned Police Station and Panchayat. A Panchayatnama was entered in the presence of respectables and the parties concerned, wherein it was admitted that death of Krishan Singh @ Resham Singh was not on account of accident with the truck in question. The Insurance Company denied the accident, as alleged. It was pleaded that the DDR was recorded and compromise was got effected at the instance of complainant Balvir Singh – father of the deceased in the presence and with the consent of other respectables. The driver of the offending truck was not holding a valid driving license. On the basis of pleadings of the parties, following issues were framed in the petition :-

“1. *Whether Krishan Singh alias Resham Singh died due to accident caused by Buta Singh respondent on 11.11.2015, while driving truck bearing RC No. RJ-14GB-0098 ?OPP*

2. *Whether the claimants are entitled to claim any compensation. If so, to what extent and from whom ?OPP*

3. *Whether the alleged driver of offending truck was not holding valid driving license to drive the vehicle at the time of alleged accident ?OPR-3*

4. *Whether deceased Krishan Singh alleged driver of motorcycle was minor and was not holding valid driving license to drive the said motorcycle at the time of alleged accident ?OPR-3*

5. *Whether respondent no.2 alleged owner of offending truck was not holding valid registration certificate, fitness certificate, permit & insurance of the said vehicle at the time of alleged accident ?OPR-3*

6. *Whether the claim petition is bad for non joinder of necessary parties ?OPR-3*

7. *Whether respondent no. 1 & 2 have violated the terms & conditions of the alleged policy ? OPR-3*

8. *Relief.”*

4. The claimants examined Satnam Singh, Sarpanch as CW-1, complainant Balvir Singh himself stepped into the witness box as CW-2 and Bhalwinder Singh as CW-3. The claimants also tendered some documents in evidence and closed their evidence. On the other hand, Gurdev Singh, owner of truck (respondent no.6) stepped into witness-box as his own witness as RW-1 and after tendering some documents, respondents also closed their evidence.

5. Learned Tribunal held that Krishan Singh @ Resham Singh had died due to accident caused by driver of offending truck by driving the same in a rash and negligent manner. It was also held that the offending truck was validly insured with the appellant Insurance Company, so, first liability to pay the compensation shall be of the Insurance Company. Compensation of Rs.10,40,000/- was granted in favour of the claimants and against the appellant and respondents no.5 and 6 i.e. Insurance Company, driver and owner of the offending truck respectively.

6. Learned counsel for the appellant – Insurance Company has argued that no FIR was registered in this case. Balvir Singh – one of the claimants, who is father of the deceased, alleged in the DDR that the accident took place by chance and driver was not negligent. Thereafter Panchayatnama (Ex.R-2) was executed. Rather, DDR was recorded after recording of Panchayatnama. Satnam Singh (CW-1) also signed the said Panchayatnama. The driving license of the driver was issued from the State of Nagaland in violation of Section 9 of the Act. He is a resident of District

Bathinda. So, he was required to get driving license from Bathinda. The same was also not got converted into a smart card, as per the State Government notification dated 01.08.2014. It has further been submitted that the compensation awarded is on higher side. The interest awarded is @ 12% per annum, which is also on higher side and would be payable only if the amount of Award is not paid within two months.

7. On the other hand, learned counsel for the claimants has argued that the proceedings before the learned Tribunal are civil in nature. These are to be decided independently on the basis of evidence led before the Tribunal. The non-registration of FIR is no ground to hold that driver of the offending truck was not negligent. The DDR or Panchayatnama, written at the instance of complainant Balvir Singh or some so-called respectables, has no force in the eyes of law since the same are result of pressure and undue influence. The driver of the offending truck did not step into the witness-box. He was the person, who could explain the circumstances under which the accident took place. It is further argued that amount of compensation awarded is quite less and claimants are entitled for enhancement of compensation so awarded.

8. Learned counsel for respondent no.6 – owner of offending vehicle has argued that the driver was having valid driving license at the time of alleged accident. While appointing him as a driver, the same was verified by owner of the offending truck in order to check that he knew how to drive the heavy vehicle i.e. truck. He knew the driving perfectly.

9. I have heard the arguments of learned counsel for the parties and perused the record.

10. Balvir Singh, who is one of the claimants, stepped into the witness-box as CW-2. He tendered his affidavit in examination-in-chief.

The relevant para nos.2, 3 and 4 of the said affidavit are as under :-

*“2. That on 10.11.2015 Krishan Singh @ Resham Singh (since deceased) along with Resham Singh and Sukh Singh went to village Himmatpura on motor cycle for giving sweets etc., to his married cousin sister Simar Kaur on the occasion of Diwali. Sukh Singh cousin brother of Krishan Singh @ Resham Singh stayed in the house of his sister Simar Kaur and Krishan Singh @ Resham Singh started for his village Bhai Rupa on his motor cycle.*

*3. That in the area of PS Phul near Gurdwara Baba Ladha, truck bearing No. RJ-14GJ-0098 driven by the respondent No. 1 at a high speed, rashly and negligently, without blowing horn caused accident involving above said motor cycle driven by Krishan Singh @ Resham Singh as a result of which Krishan Singh @ Resham Singh sustained multiple injuries on various parts of his body and motor cycle was badly damaged. After the accident Krishan Singh @ Resham Singh was rushed to Civil Hospital, Rampura Phul but on the way to hospital he succumbed to his injuries and died.*

*4. That the police of PS Phul, District Bathinda obtained thumb impression of deponent on blank and printed papers and got recorded his statement for registration of FIR against the respondent No. 1, which was not read over and explained to him by the official but later on he learnt that police official recorded DDR No.13 dated 11.11.2015 in favour of respondent No. 1 and 2 by twisting the facts. It is apposite to mention*

*here that deponent did not suffer alleged statement before police regarding the accident. Balvir Singh approached the concerned police and higher officials in the matter and also moved application for registration of case against the respondent No. 1 but to no effect.”*

11. In his cross-examination, Balvir Singh stated that he himself had lodged report with the police. There were about 14-15 persons in the Police Station on that day. He also named few of them. He further stated that he did not know whether Panchayatnama dated 11.11.2015 (Mark-A) was executed in Police Station or not. It was further stated by him that they had themselves mentioned in the record that stray animal had come in front of the motorcycle of the deceased. The deceased Krishan Singh @ Resham Singh lost control over the vehicle and caused accident. He further stated that the same was not recorded at his instance as the police got his thumb impressions forcibly. He further stated that he moved an application to SSP regarding act of ASI Amrik Singh but no action was taken on his application.

12. The claimants also examined Satnam Singh (CW-1), who fully corroborated the version of the claimants. Balvir Singh (CW-2), in his cross-examination, admitted that Panchayatnama (Ex.R-2) was recorded. He denied that no accident took place due to rash and negligent driving of the driver of the offending truck. He went on to add that DDR was lodged but they asked for registration of FIR. Driver of the offending truck did not step into the witness-box. He was the appropriate person, who could explain the circumstances, under which the accident took place.

13. A civil case is decided on the basis of preponderance of probabilities. The evidence recorded by the learned Tribunal is to be seen for disposal of the claim petition. The non-lodging of FIR is one of the circumstances to be seen. In case **Sunita and others vs. Rajasthan State Road Transport Corporation and another** reported as **(2019) 2 ACJ 801**, it is held by Hon'ble Supreme Court that the opposite party failed to establish that the deceased was himself negligent. Driver of bus was held to be rash and negligent in causing the accident. In case **National Insurance Co. Ltd. vs. Chamundeswari and others** reported as **2021 ACJ 2558**, it has been held by Hon'ble Supreme Court that if any evidence before the Tribunal runs contrary to the contents of FIR, then the evidence recorded before the Tribunal has to be given weightage over FIR. In case **Kusum Lata and others vs. Satbir and others** reported as **2011(3) SCC 646**, Hon'ble Supreme Court held that in a case relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. In case **Ranjit Kaur vs. Chinder Pal Singh and others** reported as **2006(4) RCR (Civil) (Pb.) 702**, it is held that negligence has to be determined on the basis of evidence on the file and not merely on the basis of DDR or FIR. In the case in hand, lodger of the DDR proved before the learned Tribunal that the accident in question was caused by rash and negligent driving of the offending truck by the driver and the same is also supported by another witness, in the absence of any evidence in rebuttal, the lodging of DDR and averments thereof are not liable to be ignored. Learned Tribunal has rightly held that the accident was caused by the driver of the offending truck while driving the vehicle in a rash and negligent manner, as

a result of which Krishan Singh @ Resham Singh died.

14. It is not in dispute that driver Buta Singh was holding a driving license (Ex.R-1) issued by the Government of Nagaland. The same was got renewed after 07.11.2016, whereas the accident had taken place on 11.11.2015. In case Iffco Tokio General Insurance Company vs. Neetu Gupta and others – FAO No.3223 of 2016 (O&M), decided on 17.08.2017, wherein this Court observed that the Insurance Company could not be absolved from the liability of paying amount of compensation merely on the ground that the driving license was required to be issued on Smart Card. It is not the case of the Assurance Company in the case in hand that the driving license of the driver was fake. So, it is proved that driver of the offending truck was having valid driving license for driving the vehicle.

15. Learned Tribunal has considered the deceased as a casual labourer and has taken his earning to be Rs.6,000/-, as per the minimum wages of a labourer prevalent at that time but as per notification, minimum wages of labourer was Rs.6,935/- per month. So, the learned Tribunal was required to take the said amount as income of the deceased before his death. Learned Tribunal has considered age of parents of the deceased for determining the compensation whereas it was required to take the age of the deceased for adopting a multiplier and for assessing the amount of compensation. The amount of compensation can be assessed in view of the law laid down by Hon'ble Supreme Court in the case of Sarla Verma and others vs. Delhi Transport Corporation and another reported as 2009(3) The Punjab Law Reporter 22 and National Insurance Company Limited vs. Pranay Sethi and others reported as 2017 SCC Online SC 1270, in the following

terms :-

| <u>No.</u> | <u>Head</u>                               | <u>Compensation Awarded</u>     |
|------------|-------------------------------------------|---------------------------------|
| 01.        | Monthly Income                            | Rs.6935/-                       |
| 02.        | Annual Income                             | Rs.83,220/- (Rs.6935/-x12)      |
| 03.        | Deduction @ 50% (A)                       | Rs.41,610/-                     |
| 04.        | Future Prospects @ 40% (B)                | Rs.16,644/-                     |
| 05.        | Total Income for computation (A+B)        | Rs.58,254/-                     |
| 06.        | Multiplier (age of deceased = 19 yrs.) 18 |                                 |
| 06.        | Compensation                              | Rs.10,48,572/- (Rs.58,254/-x18) |
| 07.        | Loss of Estate                            | Rs.15,000/-                     |
| 08.        | Funeral Expenses                          | Rs.15,000/-                     |
| 09.        | Parental Consortium                       | Rs.40,000/-                     |
| 10.        | Filial Consortium                         | Rs.40,000/-                     |
| 11.        | <u>TOTAL</u>                              | <u>Rs.11,58,572/-</u>           |

16. Thus, the total compensation payable to the claimants would be Rs.11,58,572/-, with interest @ 9% per annum from the date of filing of claim petition till actual payment. Liability of appellant Insurance Company and respondents no.5 and 6 shall be jointly and severally to make the payment of compensation. Since the offending truck was validly insured with the Insurance Company, first liability to pay the compensation shall be of the appellant Insurance Company.

17. In view of the above, XOBJ-173-C-II-2018 and FAO-3801-2017 are being disposed of, with the modifications as detailed above. Pending applications, if any, shall stand disposed of along with this judgment.

January 23, 2024  
monika

(GURBIR SINGH)  
JUDGE

|                             |         |
|-----------------------------|---------|
| Whether speaking/reasoned ? | Yes/No. |
| Whether reportable ?        | Yes/No. |

