

FAO No.41 of 2018 (O&M)
-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.206

Case No. : FAO No.41 of 2018 (O&M)

Date of Decision : February 05, 2024

Jaswinder Singh and others Appellants
vs.
Pawandeep Kaur and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Aashish Bhagat, Advocate
 for the appellants.

 Mr. Sandeep Sharma, Advocate
 for Mr. Rajesh Bhateja, Advocate
 for the caveators/respondents.

* * *

GURBIR SINGH, J. :

1. Challenge in this appeal by owner and driver of offending trolley is to the Award dated 28.09.2017, passed by learned Motor Accident Claims Tribunal, Moga (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 3 (hereinafter called – the claimants), against the appellants herein, for grant of compensation on account of death of Kulwinder Kaur in the motor vehicular accident, which took place on 22.06.2016, has been allowed and compensation to the tune of Rs.14,10,472/- has been awarded.
2. The parties herein are being addressed as per their status before the learned Tribunal.

FAO No.41 of 2018 (O&M)

-2-

3. The brief facts, necessary for proper adjudication of the case, are that respondents/claimants no.1 and 2 are the daughter and son respectively of deceased Kulwinder Kaur and respondent/claimant no.3 – Jagsir Singh is husband of the deceased. They filed claim petition under Section 166 of the Act submitting therein that on 22.06.2016, at about 04:15 PM, Jagsir Singh was going home driving his motorcycle and Kulwinder Kaur was sitting on the pillion of the said motorcycle. When they reached near main gate of Akal Bharat Gas Agency, a tractor trolley loaded with gas cylinders was found parked on the road. Respondent no.1-Jaswinder Singh was holding the *dala* of the trolley. While they were crossing the tractor trolley, Jaswinder Singh unwittingly left the rear shutter (*dala*), which hit Kulwinder Kaur – pillion rider of motorcycle, on her knees. Consequently, motorcycle being driven by Jagsir Singh went out of control and both of them fell on the road. Kulwinder Kaur sustained head injury and became unconscious. She was taken to Medical College and Hospital, Faridkot, from where she was referred to PGI, Chandigarh but she succumbed to her injuries on 29.06.2016. The accident occurred while unloading gas cylinders from the tractor trolley carelessly and in negligent manner. It was further averred that at the time of accident, Kulwinder Kaur was of 37 years of age. She was self-employed as she was running business of tailoring and boutique and was earning Rs.30,000/- per month. FIR with regard to the aforesaid accident was registered.

4. Respondents contested the petition submitting therein that the gas cylinders were being unloaded in the godown of respondents and a tractor

FAO No.41 of 2018 (O&M)

-3-

bearing registration No.PB-29-M-8456, along with trolley, was parked outside the godown on *katcha* ground on the left side of the road. In the meantime, a loud sound was heard. It was found that one motorcycle alongwith motorcyclist namely Jagsir Singh had fallen down on the road at a distance of about 30 feet. Kulwinder Kaur was also lying on the road. The employees of the respondents, on humanitarian grounds, rushed them to GGS Medical College, Faridkot for treatment. At that time, respondent no.1 was not present at the spot and no such accident was caused.

5. From the pleadings of the parties, following issues were framed in the petition :-

- “1. *Whether Kulwinder Kaur died in a motor vehicular accident on 22.06.2016 at about 4:15 p.m. in the area of Village Saho Ke caused by respondent no.1 by un-holding the back gate of trolley in a negligent manner?OPP*
2. *Whether the claimants are entitled to compensation, if so, to what amount and from whom?OPP*
3. *Whether claim petition is not maintainable?OPR*
4. *Relief.”*

6. In order to prove these issues, claimant Jaswinder Singh deposed as his own witness as PW-1. He also examined Jaskaran Singh as PW-2, Kawaljit Singh as PW-3 and Mandeep Kaur as PW-4. The claimants also tendered some documents in evidence and closed their evidence.

7. On the other hand, respondents examined Jaswinder Singh-Nodal Officer of BSNL, Moga as RW-1. Amar Singh-Steno of GGS Medical

FAO No.41 of 2018 (O&M)
-4-

College, Faridkot as RW-3. Respondent no.1 Jaswinder Singh also stepped into the witness-box to depose as his own witness as RW-2. Thereafter, respondents closed their evidence.

8. Learned Tribunal, after appreciating the evidence on record, decided issue no.1 in favour of the claimants, observing that Kulwinder Kaur died in a motor vehicular accident, due to striking of rear shutter of offending tractor trolley on being released negligently by respondent no.1 Jaswinder Singh, which struck Kulwinder Kaur, due to which she suffered head injuries and succumbed to the injuries. The age of Kulwinder Kaur was found to be 37 years at the time of death. Multiplier of 15 was adopted. Keeping in view the services, which were being provided by Kulwinder Kaur, her notional income was assessed as Rs.6,000/- per month. An amount of Rs.14,10,472/- was awarded as compensation, detail of which is as under :-

<u>Sr.No.</u>	<u>Heads of claim Amount</u>
1. Income	6000x12=72,000/-
2. Multiplier	72000x15=10,80,000/-
3. Funeral Expenses	25,000/-
4. Medical expenses/transportation charges	101372+4100=105472/-
5. Love and affection	1,00,000/-
6. Consortium 1,00,000/-	1,00,000/-
<u>Total</u>	<u>14,10,472/-</u>

All the respondents were held liable to pay the compensation amount jointly and severally.

9. Learned counsel for the respondents has challenged the aforesaid

FAO No.41 of 2018 (O&M)

-5-

Award *inter alia* on the ground that delay of seven days in lodging the FIR remained unexplained and the FIR was registered under Section 304 IPC and not Section 304-A IPC. Thus, rash and negligent action on the part of the respondent no.1 is not established. It has been further contended that respondent no.1 Jaswinder Singh is an employee of BSNL Moga. The Nodal Officer of BSNL, examined as RW-1, has specifically deposed that respondent no.1 was on duty at the time of accident, which fact has been proved from the fact that location of mobile phone, possessed by respondent no.1, was not at the place of occurrence. Amar Singh-Steno of GGS Medical College, Faridkot, who was examined as RW-3, has also proved that respondent no.3-Jagsir Singh gave it in writing to the hospital authorities that they did not want any police action. Had there been any involvement of tractor trolley of Jaswinder Singh, then Jagsir Singh would have not made such a writing in the hospital. In the FIR also, it is written that FIR was not got registered earlier because there were talks of compromise. So, it is proved that entire focus of the claimants was to extract compensation. It has been further submitted that respondent no.1 has already been acquitted by the learned Additional Sessions Judge, Moga, vide judgment dated 23.08.2018 (Annexure A-1). It is further argued that amount of compensation awarded is on the higher side as in the year 2016, even the minimum wages of unskilled labourer was around Rs.4,000/- but the Tribunal has considered Rs.6,000/- as notional income of the deceased. A sum of Rs.1,00,000/- was awarded for love and affection. Rs.1,00,000/- was awarded as consortium. So, it has been prayed that the impugned Award

FAO No.41 of 2018 (O&M)

-6-

needs to be set aside.

10. On the contrary, it has been contended on behalf of the claimants that after taking into consideration all the peculiar facts and circumstances of the case, a well-reasoned Award has been passed by the learned Tribunal, which needs no interference at the hands of this Court.

11. I have heard the arguments of learned counsel for the parties and have gone through the record.

12. There is no dispute with regard to the fact that tractor trolley was parked on the side of the road and gas cylinders were being unloaded at the godown of Akal Bharat Gas Agency. As stated by respondent no.1, the said road is hardly 11 feet wide. The defence on behalf of the respondents is that on hearing loud noise, employees of the Gas Agency rushed towards the road and found motorcyclist Jagsir Singh and Kulwinder Kaur lying on the road in injured condition. The employees of the Agency shifted them to the Medical College and Hospital, Faridkot. The specific case of the claimants is that Jaswinder Singh released the *dala* of the tractor trolley in a negligent manner which hit the knees of Kulwinder Kaur, who was sitting on the pillion of the motorcycle. Although respondent no.1 Jaswinder Singh himself stepped into the witness box but he took the plea that he was not present at the spot. He examined Nodal Officer of BSNL, Moga as RW-1, who proved the call details and location (Ex.R-3 to Ex.R-5) of mobile phone No.94176-21945, possessed by respondent no.1 Jaswinder Singh. It is matter of common knowledge that mobile number got issued in one name, can be used by others as well. There is no evidence on the file that this

FAO No.41 of 2018 (O&M)

-7-

mobile number was being used exclusively by respondent no.1 Jaswinder Singh. The said mobile phone can be with his wife or any other family member. He has also admitted in his cross-examination that his wife also runs similar gas agency at Smalsar. The police, after investigation, filed challan against Jaswinder Singh. Although he has been acquitted by the Court of learned Additional Sessions Judge, Moga, vide judgment dated 23.08.2018 (Annexure A-1), but acquittal in the criminal case is hardly any circumstance to be taken into consideration while deciding the claim petition as the learned Tribunal is required to decide the petition on the basis of evidence brought before it by the parties concerned.

13. 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

FAO No.41 of 2018 (O&M)

-8-

witness, in the absence of any evidence in rebuttal, the lodging of DDR and averments thereof are not liable to be ignored.

14. In view of the aforesaid discussion, this Court is of the view that it has been rightly held by the learned Tribunal that the accident was result of negligently releasing the rear shutter (*dala*) of the tractor-trolley, hitting Kulwinder Kaur, who succumbed to the injuries. Learned Tribunal has held that Kulwinder Kaur was a house-hold lady. A house-hold lady is actually a home-maker. She takes care of her husband and children. She does all the household chores. In other words, she manages the entire family by putting her hard labour and her services cannot be evaluated in terms of money. The learned Tribunal has only considered a sum of Rs.6,000/- per month as notional income, for the purpose of awarding compensation. The same has been rightly held by learned Tribunal, keeping in view the services rendered by a lady for her family. There cannot be any deduction regarding her personal expenses. The learned Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses, a sum of Rs.1,00,000/- for love and affection and also a sum of Rs.1,00,000/- on account of consortium, but the claimants were entitled for a sum of Rs.70,000/- under the conventional heads i.e. Rs.40,000/- on account of consortium, Rs.15,000/- as funeral expenses and Rs.15,000/- as loss of estate. Thus, a sum of Rs.1,55,000/- has been awarded in excess, which is ordered to be deducted from the total awarded amount of Rs.14,10,472/-.

15. Accordingly, the claimants are held entitled for grant of compensation to the tune of Rs.12,55,472/- (Rs.14,10,472/- - Rs.1,55,000/-),

FAO No.41 of 2018 (O&M)
-9-

along with interest @ 9% per annum, as awarded by the learned Tribunal from the date of filing the claim petition till realization of the compensation amount.

17. The present appeal stands disposed of in the aforesaid terms.
18. Pending applications, if any, shall stand disposed of along with this judgment.

February 05, 2024
monika/renu

(GURBIR SINGH)
JUDGE

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