

(2014) 01 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1318 of 1998

Jaspal Kaur and Others

APPELLANT

Vs

Sukhminder Singh and Others

RESPONDENT

Date of Decision : 15-01-2014

Acts Referred:

Citation : (2016) ACJ 692

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Advocate : Jaswant Jain, Advocates for the Appellant

Judgement

Ajay Kumar Mittal, J.—The present appeal has been filed by the claimants against the award dated 6.2.1998 passed by the Motor Accident Claims Tribunal, Sirsa (hereinafter referred to as "the Tribunal") whereby the claim petition filed by them on account of death of Jasbir Singh had been dismissed.

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. On 17.4.1994, Jasbir Singh along with his associates was driving the tractor along with trolley bearing registration No. HR-24A-9485. Some persons occupying a canter started following the said tractor-trolley and near village Shahidanwali, the canter crossed the tractor-trolley and suddenly came ahead of the tractor. Jasbir Singh gave a sudden turn as a result of which the tractor-trolley turned turtle and Jasbir Singh was crushed under the tractor. Accordingly, the claimants filed a petition for compensation on account of death of Jasbir Singh. The said claim petition was contested by the respondents by filing separate written statements. Respondent No. 1, i.e. owner of the tractor besides admitting the claim of the claimants submitted that the Insurance Company was liable to pay the compensation. The Insurance Company in its written statement besides raising various preliminary objections pleaded that the claimants were not liable for any compensation as the deceased was not a third party at the time of accident nor he was holding any driving licence. Further, it was pleaded that the deceased was not the paid driver rather he was

the owner of the vehicle being the son of the insured. The Tribunal, from the pleadings of the parties, framed the following issues:-

1. Whether the claimants are the only legal heirs of Jasbir Singh deceased? OPP
2. Whether the accident had taken place in the manner as alleged in para no. 24 of the petition? If so to what effect? OPP
3. What is the effect of non-impleading of driver, owner and the insurer of the Canter which had suddenly came ahead of the tractor being driven by Jasbir Singh deceased as a result of which Jasbir Singh suddenly turned his tractor and the tractor over turned and Jasbir Singh expired? OPP
4. To how much account of compensation are the legal heirs of Jasbir Singh deceased entitled to get for the death of Jasbir Singh and from whom? OPP
5. Whether the claim petition is vague and incomplete? If so to what effect? OPR2
6. Whether the claim petition discloses a cause of action against respondent No. 2? OPP
7. Whether Jasbir Singh deceased was not holding a valid driving licence? If so to what effect? OPR2
8. Whether Jasbir Singh deceased was a third party qua respondent no. 1 who was the owner of tractor No. HR-24A/9485? If so to what effect? OPP
9. Whether the claimants have not come to the court with clean hands? If so to what effect? OPR-2
10. Whether Jasbir Singh was a paid employee of respondent No. 1? OPP
11. Relief.

3. Issue No. 1 was decided in favour of the claimants whereas issues No. 2 to 6 and 8 were taken up together being interlinked and were decided in favour of respondent No. 2-Insurance Company and against the claimants. It was held that the deceased was neither an employee of his father nor he committed any tortious act against any third party and, therefore, the claimants were not entitled to any compensation for the death of said Jasbir Singh. Under issue No. 7, it was held that the deceased Jasbir Singh was not holding any valid driving licence. Issues No. 9 and 10 were also decided in favour of respondent No. 2. In view of the findings recorded by the Tribunal under the aforesaid issues, the claim petition was dismissed vide award dated 6.2.1998. Hence, the present appeal by the claimants.

4. Learned counsel for the appellants submitted that Jasbir Singh deceased was an employee of his father Sukhminder Singh who was owner of the tractor-trolley bearing registration No. HR-24A-9485 which met with an accident on 17.4.1994 on account of which Jasbir Singh had expired. It was argued that the Tribunal had misread the evidence of PW1 Jaspal Kaur and RW1 Sukhminder Singh to

erroneously conclude that Jasbir Singh was not an employee of Sukhminder Singh-respondent No. 1.

5. After hearing learned counsel for the appellant and perusing the record, I do not find any merit in the appeal.

6. A perusal of the statement of PW1 shows that Jaspal Kaur in her examination-in-chief has stated that her husband Jasbir Singh was getting a salary of Rs. 3000/- per month from his father whereas PW2 Harinder Pal Singh deposed that the deceased was getting Rs. 2000/- per month as salary from his father Sukhminder Singh whereas his father Sukhminder Singh while appearing as RW1 had stated that he was paying a sum of Rs. 1500/- per month to Jasbir Singh. In such circumstances, the Tribunal had come to the conclusion that the evidence produced by the claimants was not trustworthy and sufficient to hold that Jasbir Singh was employed by his father Sukhminder Singh. The relevant findings recorded by the Tribunal read thus:-

"9. It is an admitted fact that the deceased Jasbir Singh was driving his tractor which was in the name of his father Sukhminder Singh on the fateful day. He was returning to his village Baruwali along with his companions and his tractor trolley was turned turtle all of a sudden. The deceased was crushed under his tractor trolley. The claimants have alleged that the deceased was paid driver of the tractor and was employed by his father. This plea of the claimants is false and concocted as all the witnesses have made contradictory statements on this point. PW1 Jaspal Kaur has submitted that her husband was receiving an amount of Rs. 3000/- from his father as an employee for driving the tractor. PW2 Harinder Pal Singh has submitted that the deceased was getting Rs.2000/- per month as salary from his father. At the last when his father Sukhminder Singh appeared as RW1 has submitted that he used to pay Rs. 1500/- per month to his son Jasbir Singh, since deceased. PW1 Jaspal Kaur has also admitted in her cross-examination that Jasbir Singh was residing with his father in the village. From the evidence on record a man of ordinary prudent can reach at a conclusion that Jasbir Singh was not working as an employee under his father. In fact, this plea was not taken at initial stage by the claimants. The learned counsel for the respondent vehemently contended that this plea has been cooked up after the objection raised by the respondent no. 2 in the written statement. As per version in para no. 24 of the petition the tractor was taken away by Jasbir Singh from respondent no. 1 to do some agriculture work. In these circumstances, the claimants have miserably failed to give strength to their cooked up story.

10. PW2 Harinder Pal Singh has admitted in his cross-examination that the tractor of the deceased struck with a lady after crossing the Octroi post on Rangri Road, Sirsa and the same was being chased by some persons on a Canter. When Canter had over taken the tractor, Jasbir Singh at once turned the tractor which turned turtle. Certain receipts have also been produced on the record but the executant of the receipts namely Dhapa Ram has not been examined. In fact, the receipts speak of the fabrication itself because the same have been scribed with

one pen and one ink and by one person.

11. The deceased-Jasbir Singh was not a third party as he was driving the vehicle of his father. He was not a paid driver and rather he was the owner of the vehicle being the son of the insured for which the respondent no. 2 is not liable as the police indemnifies the insured against his legal liability in respect of the third party only. The accident took place because of the negligence on the part of Jasbir Singh himself. It was the act of the God only. The driver has committed a tortious act. In case the driver had committed any tortious act against the third party he would be under the law of Torts equally liable for damages caused to the third party. It is the case of the claimants themselves that the deceased was not guilty of rashness and negligence and did not commit any tortious act. It would, therefore follow that no foundation has been laid for the vicarious liability of the insured. The Ld. counsel for the respondent has referred a very relevant citation which is quite befitting in the circumstances of the present case *Thilagavathi and Others Vs. Sundaram and Another*, wherein it was held that when the tractor is owned by the father of the driver and the tractor turned turtle suddenly and the driver fell down and crushed to death. He was neither an employee of his father nor he committed any tortious act against any third party then none of the legal heirs are entitled to claim compensation from the insurer for the death of the driver i.e. the son in the accident."

7. In view of the aforesaid findings which have not been shown to be based on mis-appreciation of evidence, no fault could be found with the same. Accordingly, finding no merit in this appeal, the same is hereby dismissed. No costs.