(2018) 11 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order 2852, 2957 of 2010

Kavita Aggarwal & Ors — APPELLANT

Vs

Sarabjit Singh & Ors — RESPONDENT

Date of Decision : 21-11-2018

Acts Referred:
Indian Penal Code, 1860 — Section 279, 304A, 427

Citation : (2018) 11 P&H CK 0114

Hon'ble Judges : Amol Rattan Singh, J

Bench : Single Bench

Advocate : Sunil Chadha, Swati Verma, Manjari Joshi, Binny Thomas, Vrinda Gupta

Final Decision : Dismissed

Judgement

These two appeals arise out of the Award of the learned Motor Accident Claims Tribunal, Amritsar, dated 09.12.2009.

By way of FAO no.2852 of 2010, the appellants, who were claimants before the Tribunal, seek enhancement of the compensation of Rs.8,35,000/-

awarded to them by the Tribunal, on account of the unfortunate death of Krishan Kant Aggarwal, in a motor vehicle accident on 15.07.2007. The

appellants are the wife and (then minor) children of Krishan Kant Aggarwal. By way of FAO no.2957 of 2010, the father of Krishan Kant Aggarwal,

who was a respondent in the claim petition, also challenged the Award, on account of the fact that though he had been awarded a compensation of

Rs.1,50,000/- (as a respondent in the claim petition), he too seeks enhancement thereof.

Thus, out of a total compensation of Rs.9,75,000/- awarded, Rs.1,50,000/- was to be paid to the appellant in FAO no.2957 of 2010, i.e. the father of the deceased, and Rs.8,25,000/- to the appellants in FAO no.2852 of 2010, who were also held entitled to another Rs.10,000/- towards funeral

expenses.

It is to be noticed at this stage itself that actually the total amount of compensation 'worked out' by the Tribunal was Rs.19,50,000/-, but with the

deceased having been held guilty of negligence in causing the accident, to the extent of 50%, the total compensation actually payable to his next of kin

was 50% of that amount, i.e. Rs.9,75,000/- plus Rs.10,000/- for funeral expenses.

In both the present appeals, the appellants have also challenged the finding on contributory negligence, contending that actually it was the driver of the

other vehicle, i.e. respondent no.1 in both the appeals (Sarabjit Singh), who was wholly negligent in causing the accident.

2. The facts as given in the claim petition, and reiterated by learned counsel appearing for the appellants, were that at about 3 a.m. on 15.07.2007,

Krishan Kant Aggarwal was proceeding towards Jalandhar in an Indigo car bearing registration no.PB-02-AU-0121, followed by one Sanjay Garish in

a different vehicle. When Krishan Kant Aggarwal reached the turning point of village Muchhal, a Sheesham tree was seen to be lying on the road,

due to which the deceased stopped his car, but a Tata 407 vehicle bearing registration no.PB-10F-9508, driven by respondent no.1, (allegedly) rashly

and negligently, at a very high speed, was stated to have come from the opposite side without dipping its lights or blowing its horn, and while crossing

the car of the deceased, struck it, due to which the deceased received multiple injuries and unfortunately died on the spot.

Respondent no.1 is stated to have fled away from the spot, with the accident being witnessed by the aforementioned Sanjay Garish, on whose

statement FIR no.162/2007 was registered on the same date, i.e. 15.07.2007, at P.S. Jandiala, alleging therein the commission of offences punishable

under Sections 304-A, 279 and 427 IPC.

As per the claimants, the deceased was an Advocate and was also the Managing Director of a company running under the name and style of M/s

K.K. Recovery Pvt. Ltd., with him earning Rs.1,00,000/- per month, he also being an income tax payee.

He was stated to be 44 years of age at that time, not suffering from any disease and also a very 'promising and efficient lawyer'.

He was also stated to be the only bread winner of the family and due to his unfortunate death, the claimants suffered not just mental pain and agony,

but also financial loss as also loss of love and affection.

They sought compensation to the tune of Rs.2 crores alongwith interest @ 24% per annum thereupon, with costs.

3. Upon notice having been issued by the Tribunal, respondent no.1 appeared and filed a reply denying that any accident ever took place with the

tanker and that actually an FIR had been wrongly registered against him by the alleged eye witness, in connivance with the police.

The claim for compensation was therefore wholly denied.

4. The Oriental Insurance Co. Ltd. with which the Tata Canter vehicle was insured (respondent no.3 in both the appeals before this Court), filed a

separate reply also denying the accident, other than taking preliminary objections with regard to mis-joinder of parties etc.

It was also denied that respondent no.1 was holding a valid driving licence, the further contention being that in any case the owner of the vehicle, i.e.

respondent no.2, had also not verified the driving licence of respondent no.1 from the concerned licensing authority.

It was further contended that even the deceased was not carrying a valid driving licence.

The income of the deceased and his age were also denied.

The other usual pleas taken by insurance companies in such claim petitions, of there being a violation of the insurance policy etc., were also taken,

which are not being gone into detail, neither the insurance company nor any of the other two respondents having challenged the impugned Award.

5. On the manner in which the accident took place, the insurance company took a plea that, even as per the case of the claimants, a Sheesham tree

was lying fallen on the road, upon seeing which the deceased stopped his car; and therefore, if he had stopped his car before the tree, then the vehicle

driven by respondent no.1 could not have struck against the car while crossing it. The inference therefore was that the deceased had stopped the car

actually on the wrong side of the road, with it also stated that he had also not put any 'mark' on the car to show that it had been parked on the main

road.

The factum of the vehicle insured by the company having been driven in a rash and negligent manner was also denied, with the presence of the

alleged eye witness, i.e. Sanjay Garish, also wholly denied, the insurance company stating that he was an interested person who had simply been

shown as a witness to create evidence, in connivance with the police.

6. The father of the deceased, i.e. respondent no.4 in the claim petition and the appellant in FAO no.2957 of 2010, in his reply had stated that he had

brought up his son and provided him a good education and had also arranged his marriage from his personal funds and had helped him â??for

procurement of panels of banksâ?? etc.

7. Upon a replication having been filed by the claimants, the following issues were framed by the Tribunal:-

â??1. Whether Kishan Kant Aggarwal son of Raj Kumar died on 15.07.2007 at 3:00 a.m., on account of rash and negligent driving of vehicle no.PB-

10-F-9508 make TATA 407 driven by respondent no.1 Sarabjit Singh at the turning of village Muchhal near Khalchian, G.T.Road, P.S. Jandiala?

OPP

2. Whether the petitioners are the legal heirs of deceased and are entitled to compensation if so, to what extent and from whom? OPP

2-A. Whether Raj Kumar respondent no.4 was dependent upon the deceased Krishan Kant Aggarwal and is entitled to compensation, if so to what

extent and from whom? OPR

3. Whether Sarabjit Singh respondent no.1 was not holding valid driving licence at the time of accident? OPR

4. Relief.â??

8. The claimants examined the following witnesses:-

Sanjay Garish Â AW1

ASI Lakhwinder Singh Â AW2

Kanwaljit Singh, Senior Tax Assistant Â Â Â Â Â Â Â Â Â Â Â AW3

Vijay Kumar Â AW4

Ashwani Angrish Â

Â Â Â Â Â Â Â Â Â Â Â Â AW5

Kavita Aggarwal Â AW6

Respondent no.1 herein, i.e. the driver of the 'offending vehicle', testified as RW2, with the father of the deceased having testified as RW1.

9. Upon appraising the evidence as also the pleadings and arguments raised before it, the Tribunal came to the conclusion that as per the statement of

Sanjay Garish, leading to the registration of the FIR (Ex.A1 before the Tribunal), the deceased had stopped his car due to the Sheesham tree lying on

the road and from the opposite side the Tata Canter vehicle driven by respondent no.1, at a high speed, came and struck it, with it not stated that the

vehicle was being driven rashly and negligently.

Even in his cross-examination, Sanjay Garish deposed that both the vehicles were at a speed of approximately 70/80 kmph, but with him again not

stating that the 'Canter' vehicle was being driven rashly and negligently.

Upon perusing the file of the criminal case registered, the Tribunal further found that 7 photographs depicting the occurrence were on record, showing

the Tata vehicle moving towards Amritsar on its correct side, with the Indigo car of the deceased having struck toward the 'drivers' side of the Canter,

â??by diverting the side as Sheesham (Tahli) tree was lying on the roadâ??.

Thus the conclusion drawn by the Tribunal was that the vehicle of the deceased 'was diverted' due to the Sheesham tree lying on the road, and even

while holding that driving at a high speed on the G.T.Road â??was not an offenceâ?, the drivers of both the vehicles were held equally negligent in

contributing to the accident taking place.

10. As regards the issue of compensation to be paid to the claimants, it was found from the testimony of the widow of the deceased, i.e. presently

appellant no.1 in FAO no.2852 of 2010, that she had admitted in her cross-examination that her mother-in-law had passed away when her husband

was only 2 years old and therefore he was looked after entirely by her father-in-law, (now the appellant in FAO no.2957 of 2010).

It was also found by the Tribunal that the father, Raj Kumar, had admitted that though he had a separate dining mess, he was living a retired life since

1995 and was drawing a pension to the tune of Rs.4250/- per month.

Litigation between the father and son was also however found to be existent.

Yet, the father having looked after his son single handedly upon the death of his wife, i.e. the mother of the deceased, he was also held entitled to

compensation.

11. As regards the income of the deceased, on the basis of the income tax returns furnished by the deceased for the assessment years 2006-

7 and 2007-08, it was found that he had filed a return of Rs.2,22,129/- in the former year and Rs.3,29,499/- in the latter year.

Thus, on the basis of the aforesaid returns, his income was assessed to be Rs.2,50,000/- per annum, of which he was held to be spending Rs.1,00,000/-

on himself.

To that annual income, a multiplier of 13 was applied, thereby coming to a total loss of income of Rs.19,50,000/-, to which Rs.3000/- was added on

account of funeral expenses, Rs.2000/- on account of transportation and Rs.5000/- as special damages for loss of consortium (Rs.10,000/- in all under

those three heads). It is to be noticed at this stage itself that though in paragraph 26 of the Award the aforesaid breakup has been given by the

Tribunal under different heads of compensation (other than the loss of income), in the final paragraphs, the total amount of Rs.10,000/- has been

shown simply as compensation towards funeral expenses.

However, since the deceased was held to be equally negligent in causing the accident, the loss of income was halved, thereby bringing the 'payable

amount' under that head to Rs.9,75,000/- as already noticed at the beginning of this judgment; (plus Rs.10,000/- towards funeral expenses).

12. Respondents no.1 to 3 before the Tribunal were held jointly and severally liable to pay the compensation, (with nothing proved by the insurer of the

vehicle driven by respondent no.1 that there was any breach in policy or that respondent no.1 was not carrying a valid driving licence).

On the total compensation of Rs.9,85,000/- awarded, 6% interest per annum was also awarded, to run from the date of filing of the claim petition till

the actual realization of the amount.

13. Before this Court, Mr. Sunil Chadha, learned Senior Counsel appearing for the appellants, submitted that the learned Tribunal has erred, both, in

holding the deceased to be equally negligent in causing the accident, as also in not appreciating his income properly and thereby granting inadequate compensation.

As regards the issue of negligence in causing the accident (issue no.1 before the Tribunal), Mr. Chadha submitted that, firstly, the Tribunal wholly

erred in holding that despite respondent no.1 driving his vehicle at a high speed, it â??was not an offence on the main roadâ??.

Hence, he submitted that as, obviously, driving even on the main road at a high speed is an offence, consequently, negligence is to be taken to be

wholly of respondent no.1, with the deceased having in fact stopped his car on the main road due to the presence of the Sheesham tree fallen on it.

Mr. Chadha further pointed to the testimony of Sanjay Garish, AW1, (stated to be an eye witness), wherein in his affidavit, by way of examination-in-

chief, he did state that respondent no.1 was driving in a very rash and negligent manner.

Next Mr. Chadha submitted that the Tata Canter vehicle being a heavier vehicle, greater negligence in any case has to be attributed to the driver

thereof, i.e. respondent no.1, as such heavier vehicle is to be driven more carefully on the road.

In support of the aforesaid argument, Mr. Chadha relied upon a judgment of the Supreme Court in Amar Singh v. State of Bihar, (1971) 3 SCC 273.

14. On the issue of inadequate compensation, learned Senior Counsel pointed to the income tax returns of the late Sh. Krishan Kant Aggarwal for the

assessment years 2006-07 (FY 2005-06) (Ex.A2 and A3), to submit that though it was Rs.222129/-, but for the next assessment year 2007-08 (FY

2006-07) (Ex.A4 & A5), it was shown to be Rs.3,29,499/- after deduction of expenditures.

He further pointed to previous income tax returns of the deceased, for the assessment year 2004-05 (which though not exhibited before the Tribunal,

is shown to be part of the record of evidence). The taxable income for that year, is shown to be Rs.1,24,425/-.

Thus, the argument is that the provisional income of the deceased was increasing from year to year and the Tribunal erred in holding it to be only

Rs.2,50,000/- per annum, further deducting a sum of Rs.1 lac towards the personal expenses of the deceased.

In fact, as per Mr. Chadha, loss of prospects of an increased future income should have been assessed by commensurately increasing (notionally) the jump in income for each year.

15. In reply to the aforesaid contention, Mr. Binny Thomas, learned counsel for respondent no.3, i.e. M/s Oriental Insurance Co. Ltd., referred to

paragraph 14 of the impugned Award, to submit that as was duly found by the Tribunal, what was stated in the FIR by the aforesaid Sanjay Garish,

was not in consonance with what he stated as an after-thought in his testimony, to the effect that respondent no.1 was driving in a rash and negligent

manner.

He relied upon a judgment of the Supreme Court in Pramodkumar Raskbhai Jhaveri v. Karmasey Kunvargi Tak, 2002 (3) RCR (Civil) 688, to submit

that the finding of contributory negligence depends on factual investigation of whether the plaintiff contributed to his or her own loss, by failing to take

reasonable care of his person or property.

Thus, learned counsel submitted that with the Tribunal having specifically come to a finding of fact even on the basis of the photographs annexed with

the file of the criminal case summoned by that Court (registered against respondent no.1), that with a Sheesham tree lying on the road, and the vehicle

driven by respondent no.1 admittedly being on its correct side on the road, obviously it was the deceased who came on to the wrong side to avoid the

Sheesham tree leading to the accident.

However, upon query, Mr. Thomas did not deny that the entire negligence obviously could not be foisted onto the deceased by this Court, in the

absence of any challenge to the impugned Award by any of the respondents.

On the issue of compensation, learned counsel for respondent no.3 submitted that the income tax return for AY 2007-08 could not be taken into

account, with it having been submitted after the death of the deceased.

He therefore submitted that the compensation awarded by the Tribunal was fully just and no enhancement was called for.

16. Having considered the arguments on both sides, as also the evidence led before the Tribunal, in my opinion, as regards issue no.1, i.e. the accident

being caused due to contributory negligence, as regards Mr. Chadhas' contention that the deceased could not be held to be negligent at all, I cannot

find myself agreeing to that argument.

That is for the reason that though undoubtedly the Tribunal has observed wholly erroneously that driving a vehicle fast on the main road cannot be

considered to be an offence, yet, firstly, it has nowhere been shown that the vehicle driven by respondent no.1 was at a speed above the maximum

speed limit permissible on a National Highway.

Though the time being 3.00 a.m. in the morning (at night actually), vehicles would be expected to go slower than the maximum speed limit, which is

normally 90 kmph on National Highway no.1 (now National Highway no.44), however, even as per the testimony of Sanjay Garish (AW1) for the

claimants, both the vehicles were at a speed of approximately 70-80 kmph.

Seen with that, what this Court cannot ignore is that this witness is not shown to have stated anywhere that respondent no.1 was driving on the wrong

side of the road. All that he has stated is that the deceased, when he reached the turning point of Village Muchhal, on the GT road, a Tahli tree was

lying fallen on the road, due to which he stopped his car and the vehicle of respondent no.1 came and hit the car of the deceased, with the tree also

having struck that vehicle.

Hence, the finding of the Tribunal, also based on the photographs seen by it from the case file of the criminal case registered against respondent no.1,

being to the effect that the 'Tata Canter' vehicle was on the correct side of the road, no other inference can be taken by this Court in appeal, nothing

to the contrary having been led by way of even additional evidence, to show that it was a perverse finding.

Consequently, as regards the issue of contributory negligence, I see no ground to interfere with what has been held by the Tribunal.

17. Coming then to the compensation awarded to the appellants- claimants.

I agree with Mr. Chadha, learned Senior Counsel appearing for them, to the extent that at least loss of prospects of an increase future income, on the

basis of the existent income of the deceased, as shown in his returns filed prior to his death, should have been awarded by the Tribunal, i.e. on the

basis of the return for AY 2006-07 (Ex.A2). That return is seen to be filed on 06.02.2007, with the date of the accident being 15.07.2007.

In fact, with the Tribunal having accepted his income to be Rs.2,50,000/- per annum, with no challenge thereto by the respondents, loss of future

prospects of income, to the claimants, are to be calculated accordingly.

However, I agree with Mr. Thomas that the return for the Assessment Year 2007-08, having been filed on 06.02.2008, i.e. about 7 months after the

death of K.K. Aggarwal, showing an income of Rs.3,29,500/- (obviously for the period from 01.04.2007 to 17.07.2007, since that is the day he

unfortunately died), i.e. a 3Â½ month period, cannot be accepted to be the basis for calculation of loss of future prospects of an increased income to

the claimants.

Hence, if one were to accept the income of Rs.2,50,000/- (as assessed by the Tribunal) to be the correct income of the deceased, then, he being 45

years of age at time of his death, self-employed (as an Advocate), loss of prospects of an increase in income in the future, to the extent of 25% is to

be added, in terms of the ratio of the judgment of the Supreme Court in National Insurance Company Limited v. Pranay Sethi and others, (2017) 16

SCC 680 (reference paragraph 59.4 thereof).

The deceased being found to be 45 years of age, actually a multiplier of 14 should have been applied to his income and not 13 as applied by the

Tribunal, in terms of the ratio of the judgment of the Supreme Court in Sarla Verma and others v. Delhi Transport Corporation and another, 2009 (3)

RCR (Civil) 77.

Thus, to the income of Rs.2,50,000/-, 25% of that amount is to be added, thereby bringing the total to Rs.3,12,500/-, to which a multiplier of '14' is to be

added.

Hence, before deduction of personal expenses of the deceased (had he continued to remain alive), the total income that should have been assessed,

including future prospects of an increased income, is Rs.43,75,000/-.

Again in terms of the ratio of the judgment in Sarla Vermas' case (supra), the deceased having a wife and two children, would be deemed to be

spending 1/3rd of that income upon himself, his father (Raj Kumar Gupta appellant in FAO no.2957 of 2010) admittedly having a pensional income of

his own and therefore not being economically dependent on his son, who is also stated to have been living separately.

Therefore, once 1/3rd of the total income of the deceased (including an increased future income) is deducted, the loss of income to his dependants

works out to be Rs.29,16,667/-.

In view of the finding that negligence to the extent of 50% was that of the deceased, the total amount payable to the appellants under the head of loss

of income, would therefore be Rs.14,58,333.50 P.

To that income, is to be added Rs.40,000/- by way of loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses,

as per the ratio of the judgment in Pranay Sethi (supra).

Hence, the total compensation awardable to the appellants, in the opinion of this Court, comes to Rs.15,28,333.50 Paise.

18. Though the appellants in FAO no.2852 of 2010, i.e. the wife and two children (then minors) of the deceased, have stated in their grounds of appeal

that the appellant in the accompanying appeal, i.e. the father of the deceased, not being a Class 1 heir, is not entitled to any compensation, on principle

I do not agree with that contention (and in fact no argument on that issue was addressed before this Court), because firstly, any father would, in my

opinion, be entitled to compensation for the loss of love and affection of his son and in the case of the deceased especially so, when the Tribunal came

to a specific finding, even on the admission of appellant no.1, i.e. Kavita Aggarwal appellant in FAO no.2852 of 2010, that the mother of the deceased

had died when he was about 2 years old, with him having been brought up by the father.

Hence, the sum of Rs.1,50,000/- as awarded to the father would not be found to be excessive in any manner by the Court, even if it is taken to be a

part of the loss of estate as also for loss of love and affection.

However, as per the ratio of the judgment in Pranay Sethis' case, no amount being specifically awardable towards loss of love and affection and the

father of the deceased, Raj Kumar Gupta (appellant in FAO no.2957 of 2010) admittedly having already died, and the bringing up of his child as also

loss of love and affection obviously being personal to him, I do not find any ground to entertain the appeal of his other son even as his legal

representative, he being one LR alongwith the appellants in FAO no.2852 of 2010.

19. Consequently, in view of the aforesaid findings, FAO no.2957 of 2010, filed by the late father of the deceased, i.e. by Raj Kumar Gupta, is

dismissed, with FAO no.2852 of 2010, filed by the widow and children of the deceased, partly allowed, to the extent that compensation of

Rs.15,28,333/-(instead of Rs.9,85,000/- awarded by the Tribunal), would be paid to them by the respondents no.1 to 3 (in FAO no.2852 of 2010),

jointly and severally, along with interest @ 6% per annum, running from the date of the filing of the claim petition before the Tribunal, till the date of

realization of the amount.

Of the enhanced amount of compensation, Rs.3,00,000/-, alongwith the interest thereupon, would be paid to appellant no.1 in FAO no.2852 of 2010,

i.e. the widow of the deceased, with the remaining amount to be paid to appellants no.2 and 3 in the said appeal, i.e. the children of the deceased, in

equal shares.

The appellants in FAO no.2852 of 2010 would also be entitled to costs throughout.

