

(2018) 09 P&H CK 0236

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 4724, 4725 Of 2010 (O&M)

Khuswant Singh

APPELLANT

Vs

Surjeet And Another

RESPONDENT

Date of Decision : 04-09-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Indian Penal Code, 1860 — Section 279, 304A, 337

Citation : (2018) 4 RCR(Civ) 757

Hon'ble Judges : Mahabir Singh Sindhu, J

Bench : Single Bench

Advocate : Ajit Kumar Sharma, Ram Darshan Yadav, Vinod Gupta

Judgement

(1) Both the present appeals have been filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') by the claimants arising out of the common impugned Award dated 16.04.2010, passed by learned Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal') and thus, the same are being disposed off by way of common order.

(2) FAO No.4724 of 2010 has been filed on account of the injuries suffered by the appellant/claimant-Khuswant Singh, whereas FAO No.4725 of 2010 has been filed by the husband, minor son, father-in-law and grand father-in-law of deceased-Upasna for her death.

(3) Brief facts are that on 16.05.2008, appellant/claimant-Khuswant Singh (injured) along with his wife-Upasna (since deceased) and minor son-Pulkit were returning to their Village from Gurgaon after attending a marriage in their Car bearing registration No.HR-35-C-2141, which was being driven by claimant-Khuswant Singh at a normal speed. At about 11:30/11:45 PM, when they reached in the area of Village Sidhrawali on the National Highway No.8, then a Canter bearing registration No.HR-55-E-1179 (for short 'offending vehicle'), being driven by respondent No.1-Surjeet (driver-cum-owner of the offending vehicle) in a very rash and negligent manner and at a very high speed, came

from the side of Village Gujjar Ghatal and hit their Car. Resultantly, all the occupants of the Car sustained injuries and which proved fatal for Upasna (deceased). The claimant and his minor son sustained multiple grievous injuries and FIR No.31 dated 17.05.2008, under Sections 279, 337 and 304-A, IPC was registered at Police Station Bilaspur, District Gurgaon against respondent No.1. Specifically averred that accident in question was caused on account of rash and negligent driving of the offending vehicle by respondent No.1-Surjeet.

(4) Upon notice, respondent No.1 filed reply and denied the claim, while raising preliminary objections, inter alia, that no accident had taken place. On merits, the age, occupation of the claimant(s) and income were also denied. Also submitted that the FIR has been registered on the basis of false allegations. Further submitted that neither injured was admitted in any hospital; nor spent Rs. 1 Lakh on his treatment etc. Involvement of the offending vehicle in the alleged accident was also denied, however, it is admitted that respondent No.1 is the driver and owner, whereas respondent No.2 is the insurer of the offending vehicle. Injuries suffered by the claimants were also denied.

Respondent No.2/Insurance Company filed separate reply and adopted the similar stand as that of respondent No.1 while raising preliminary objections, inter alia, maintainability, locus standi, concealment of facts and non-joinder of the parties. Also denied that driver/respondent No.1 of the offending vehicle was negligent in any manner and submitted that he was not having a valid and effective driving license at the time of alleged accident and even there was no valid permit for the offending vehicle and thus prayed for dismissal of the claim petition.

(5) On the basis of pleadings of both the parties, learned Tribunal framed the following issues:-

" 1.Whether the petitioners sustained injuries in a motor vehicle accident on 16.05.2008 due to rash and negligent driving of the offending vehicle bearing registration No.HR55E-1179 on the part of respondent no.1 resulting into the injury of Khuswant Singh and death of his wife Upasana? OPP

2. If issue No.1 is proved, to what amount of compensation, the claimants are entitled to claim and from whom? OPP

3. Whether the respondent No.1 was not holding a valid and effective driving licence on the date of alleged accident?

OPR

4. Relief. "

(6) In order to prove their claim, the appellants/claimants examined PW 1-Dr. C.K.Awasti, M.O., Raman Munjal Hospital, Sidrawali; PW 2-Dr. Sunita Sharma, SMO, G.H. Sohna; PW 3-Vishal Batra, Ahlmad to the Court of learned ACJM, Gurgaon; PW 4-Constable Yashpal; PW 5-Ravinder Yadav, Record Keeper of

Raman Munjal Hospital; PW 6-Khuswant Singh (claimant) and PW 7-Dr. Deepak Singhal, Singhal Medical Surgical and Maternity Centre, Narnaul. Learned Counsel for the claimants tendered copies of documents (Ex.P-15 to Ex.P-21) and Mark A to Mark D.

On the other hand, respondents examined RW 1-Vinay, Clerk, O/o RTA, Gurgaon and RW 2-Om Dutt, Clerk, Licensing Authority, Faridabad. Learned Counsel for the respondent(s) tendered copies of documents (Ex.R-1 to Ex.R-4).

(7) Learned Tribunal, while deciding Issue No.1 regarding both the claim petitions, came to the conclusion that accident in question took place on 16.05.2008 due to rash and negligent driving of the offending vehicle by respondent No.1, which resulted into the death of Upasna and caused injuries to Khuswant Singh. While deciding Issue No.2, in claim petition No.109 of 2008 (injury case), learned Tribunal came to the conclusion that claimant/injured-Khuswant Singh could not prove that he has spent any amount for his treatment, but at the same time found that he was hospitalized in Raman Munjal Hospital, Sidhrawali after the accident and as such, an amount of Rs. 10,000/- was awarded to him on account of pain and suffering.

(8) Regarding Claim Petition No.110 of 2008 (death case), learned Tribunal, while deciding Issue No.2, came to the conclusion that deceased-Upasna was a housewife and her income was assessed as Rs. 3000/- per month and keeping in view her age of 23 years, multiplier of 18 was applied and worked out the following compensation:-

Loss of dependency

$3000 \times 18 \times 12 \times 2/3\text{rd} =$

Rs. 4,32,000/-

Funeral Expenses

Rs. 5000/-

Loss to Estate

Rs. 5000/-

Loss of Consortium

Rs. 5000/-

Total Compensation

Rs. 4,47,000/-

Out of the total compensation, an amount of Rs. 3 Lakh along with interest was ordered to be paid to claimant No.2 (minor son) and remaining to claimant Nos.1, 3 and 4 in equal shares, which was to be deposited in the shape of Fixed Deposit in any nationalized bank for a period of two years.

While deciding Issue No.3, learned Tribunal came to the conclusion that respondent No.1 was not having a valid and effective driving license at the time of accident.

Learned Tribunal further observed that amount of compensation shall be paid by the Insurance Company at the first instance and same can be recovered from respondent No.1/driver-cum-owner by filing a separate suit. The appellants/claimants were also awarded interest @ 9% per annum from the date of filing of the petitions till its realization.

(9) It is argued by learned Counsel for the appellants/claimants that learned Tribunal has committed a grave error of law while awarding only amount of Rs. 10,000/- in Claim Petition No.109 of 2008 as it is duly proved by way of documentary evidence (Ex.P-12 and Ex.P-13) that claimant/injured-Khuswant Singh had spent an amount of Rs. 18,900/- for his treatment and the same is further corroborated by way of testimony of PW 7-Dr. Deepak Singhal as well. Further argued that appellants/claimants are also entitled for future prospects in view of the law laid by the Hon'ble Supreme Court in 'National Insurance Company Limited Versus Pranay Sethi and others', (2017) 16 SCC 680 as well as compensation under other conventional heads.

On the other hand, learned Counsel for the Insurance Company has opposed the arguments raised on behalf of the appellants and submitted that sufficient amount of compensation has already been awarded in both the claim petitions and the present appeals deserve to be dismissed.

(10) Heard arguments from both sides and perused the record.

(11) There is neither any substantive appeal; nor any cross-objections filed by the respondents against the impugned Award and even during the course of hearing also, no argument has been raised on behalf of respondent No.2/ Insurance Company regarding the findings recorded by learned Tribunal on Issue No.1, therefore, findings to that effect are affirmed. Again, there is no challenge to the findings on Issue No.3 as well and even no-one has appeared on behalf of respondent No.1, therefore, finding on that Issue also deserves to be affirmed.

(12) Now the only point for determination in the present appeals is:-" as to what should be the just compensation to be awarded in favour of the claimants/appellants in view of the facts and circumstances of the present cases ".

(13) So far as Claim Petition No.109 of 2008 (injury case) is concerned, it is proved by way of testimony of PW 7-Dr. Deepak Singhal that the appellant/claimant-Khuswant Singh remained admitted in Singhal Medical Surgical and Maternity Centre, Narnaul w.e.f. 17.05.2008 to 23.05.2008 and thereafter re-admitted on 30.05.2008 to 02.06.2008 and he spent Rs. 18,900/- on his treatment, which is clear from the Bills (Ex.P-12 and Ex.P-13). There is no contrary evidence produced by the respondents to that effect.

Although, an objection has been raised on behalf of the Insurance Company that

appellant/claimant-Khuswant Singh, being a Government employee, has already received the amount of bills from the Department, but that is not acceptable in view of the fact that there is no material available on record to substantiate that the injured has already received the amount reflected in the bills in question as well as charges for his treatment. Even nothing has been brought to the notice of this Court that any suggestion was put during the cross-examinations of PW 6 and PW 7 in this regard. Therefore, this Court deems it appropriate to grant the actual medical expenses incurred by the claimant/injured-Khuswant Singh in addition to the pain and sufferings.

(14) Keeping in view the above factual position, the 'just compensation' which should be awarded to the appellant/claimant-Khuswant Singh in Claim Petition No.109 of 2008 would be as under:-

Sr.

Heads

Calculation

No.

1

Compensation for Medical Bills and

Rs. 18,900

treatment

2

Compensation for pain and suffering

Rs. 20,000

3

Compensation towards attendant charges

Rs. 5,000

TOTAL

Rs. 43,900

(15) So far as Claim Petition No.110 of 2008 (for the death of Upasna) is concerned, it is duly proved that deceased was 23 years of age at the time of accident/death and her monthly income has been assessed as Rs. 3000/- by learned Tribunal. Therefore, the claimants/appellants are entitled for addition of 40% as well as compensation under the conventional heads in view of Pranay Sethi's case (supra) as well as the subsequent judgment, rendered by the Hon'ble Supreme Court in SLP (Civil) No.22134 of 2016 titled as 'Hem Raj Versus

The Oriental Insurance Company Limited and others', decided on 22.11.2017, in which, it was held that:-

" The matter was earlier deferred to await the judgment of the larger Bench which is now reported in 2017 (13) SCALE 12 -National Insurance Company Limited Vs. Pranay Sethi and Ors .

The contention raised on behalf of the appellants is that in the light of the said judgment 40% increase on estimated income towards future prospects is required to be taken into account as the deceased was 40 years of age.

Learned counsel for the Insurance Company submitted that in absence of actual evidence of income the principle of adding on account of future prospects cannot be applied where income is determined by guess work.

We are of the view that there cannot be distinction where there is positive evidence of income and where minimum income is determined on guess work in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made. The Tribunal made addition of 50% while the High Court has deleted the same. "

Consequently, the appellants/claimants are entitled for the benefit of addition of 40% as well as compensation under other conventional heads i.e. loss of estate, loss of consortium and funeral expenses.

(16) In view of the law laid down by Hon'ble Supreme Court in 'Sarla Verma (Smt.) and others Versus Delhi Transport Corporation and another, (2009) 6 SCC 121', learned Tribunal has correctly applied the multiplier of 18 in view of the age of deceased-Upasna as 23 years.

(17) Thus, in the opinion of this Court, the following amount of compensation would be the "just compensation" to be awarded to the claimants/appellant in Claim Petition No.110 of 2008 (FAO No.4725 of 2010) on account of death of Upasna:-

Sr.

Heads

Calculation

No.

(i)

Monthly income of the deceased

Rs. 3000

(ii)

Annual Income of the deceased

Rs. 3000 x 12 =

Rs. 36,000

(iii)

1/3rd deduction of (ii) deducted for

Rs. 36,000 - Rs. 12,000 =

personal expenses

Rs. 24000

(iv)

40% addition for future prospects

Rs. 24000 + Rs. 9600 =

Rs. 33,600

(v)

Multiplier

18

(vi)

Total Loss of dependency

Rs. 33,600 x 18 =

Rs. 6,04,800

(vii)

Compensation for loss of estate

Rs. 15,000

(viii)

Compensation for loss of consortium

Rs. 40,000

(ix)

Compensation for Funeral Expenses

Rs. 15,000

Total Compensation

Rs. 6,74,800

(18) In view of above, both the present appeals, filed by the claimants, are accepted and the impugned award dated 16.04.2010, passed by learned Tribunal, is modified accordingly. The amount of compensation for the injuries suffered by claimant-Khuswant Singh is enhanced from Rs. 10,000/-to Rs. 43,900/-, whereas in death case of Upasna, the amount of compensation is enhanced from Rs. 4,47,000/- to Rs. 6,74,800/-.

(19) Needless to say that amount of compensation, already paid to the claimants/ appellants, shall be adjusted and the remaining balance amount shall be paid to the claimants within a period of six weeks from the date of receipt of certified copy of this order. Rate of interest i.e. 9% per annum, as awarded by learned Tribunal, will remain the same.