
(2016) 05 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 3720 of 2012

Manju Sharma

APPELLANT

Vs

Sunder Singh

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2016) 4 RCRCivil 431

Hon'ble Judges : Darshan Singh, J.

Bench : Single Bench

Advocate : Rajender Singh Rana, Advocate, for the Appellant; Sandeep Kotla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Darshan Singh, J.—This judgment shall dispose of both the appeals mentioned above, which have arisen out of the same award dated 13.03.2012 passed by learned Motor Accident Claims Tribunal, Palwal (hereinafter called as 'the Tribunal') vide which claimants/appellants of FAO No.3720 of 2012 have been awarded compensation to the tune of Rs. 8,50,000/- on account of death of their son Ankit Sharma in the motor vehicular accident, which took place on 13.03.2010.

2. FAO No.3720 of 2012 has been preferred by the appellants/claimants for enhancement of the amount of the compensation.

3. FAO No.344 of 2013 has been preferred by Uttar Pradesh State Roadways Transport Corporation (respondent No.2 in the claim petition) the owner of the vehicle, to assail the award.

4. The status of the parties shall be described as per the claim petition.

5. I have heard Mr. Rajinder Singh Rana, Advocate counsel for the appellants-claimants in FAO No.3720 of 2012, Sh. Sandep Kotla, Advocate counsel for the

appellant in FAO No.344 of 2013 and have carefully gone through the paper book.

6. Learned counsel for the claimants contended that the deceased was 22 years of age. He was student of B. Tech 3rd year. He was offered handsome package of Rs. 1,75,000/- per annum by Stanch Infosystems Pvt. Ltd. so the notional income of the deceased taken by the learned Tribunal is less. He further contended that nothing has been awarded to the claimants on account of loss of love and affection. Less amount has been awarded towards funeral expenses. The multiplier has also been wrongly applied as per the age of the claimants. It should have been applied as per the age of the deceased. Thus he contended that learned Tribunal has not awarded the just compensation.

7. On the other hand, Mr. Sandeep Kotla, Advocate learned counsel for the respondent No.2/owner of the vehicle contended that the involvement of the vehicle and negligence of its driver is not established as there was one day's delay in lodging the FIR, which is not explained. He further contended that the income of the deceased taken by the learned tribunal @ Rs. 10,000/- per month was on the higher side. He was only a student of B.Tech and was non-earning person. His notional income should have been taken by the tribunal @ Rs. 1500 per month. Thus he contended that the compensation awarded by the Tribunal is exorbitant.

8. I have duly considered the aforesaid contentions. As per the case of the claimants, on 13.03.2010 at about 8 p.m. their son Ankit Sharma was on his way to Mathura in order to perform the religious journey with his friend Saket Maheshwari. They were travelling on the motorcycle which was being driven by Saket Maheshwari on the correct side of the road at a moderate speed. When they reach near village Bamnikhera the offending bus bearing registration No.UP-80AK-9101 being driven by respondent No.1 rashly and negligently came from behind and hit the motorcycle. As a result of which Saket Maheshwari and Ankit Sharma fell down. Respondent No.1 managed to escape from the spot leaving behind the bus. Ankit Sharma had died at the spot.

9. In order to establish the negligence of respondent No.1 and involvement of the vehicle, the claimants have examined Saket Maheshwari the injured witness as PW-1. Claimants have also placed on file copy of the FIR Exhibit P-1, copy of the post mortem report Exhibit P-15. In rebuttal thereof, respondent No.1-Sunder Singh, driver of the bus stepped into the witness box as RW-1. 10. PW-1 Saket Maheshwari has fully supported the version mentioned in the claim petition and categorically deposed that the bus bearing registration No.UP-80AK-9101 was being driven by respondent No.1 rashly and negligently and came from Delhi side which hit the motorcycle from behind. As a result of the accident they both fell down from the motorcycle and suffered injuries. Ankit Sharma succumbed to the injuries at the spot. He also suffered injuries on his person. They were brought to the hospital by the Highway ambulance and the FIR Exhibit P-1 was registered on 14.03.2010 at his instance.

11. Respondent No.1-Sunder Singh who stepped in to witness box as RW-1 has admitted in the cross-examination that he was driver of the bus bearing registration No.UP-80AK-9101 and on that day he was going from Delhi to Agra.

12. The offending bus was left at the spot when respondent No.1-Sunder Singh escaped from the spot. As the bus in question was left at the place of occurrence there could be no doubt about the involvement of the bus in question in the present accident. The identity of the driver is even established from the admission of RW-1 Sunder Singh (respondent No.1). In the cross-examination he has categorically admitted that he was driving bus bearing registration No.UP-80AK-9101 on the date of accident and was going from Delhi to Agra. The criminal case for causing this accident has also been registered against respondent No.1 vide FIR Exhibit P-1. Mere one day's delay in lodging the FIR is no ground to decline the claim. The reference can be made to cases National Insurance Company Limited v. Gurbachan Singh and others, 2007(5) RCR (Civil) 660 (DB); Ravi v. Badrinarayan and others, 2011(2) RCR (Civil) 190 (SC) and Sudesh and others v. Naresh and others, 2011(3) Law Herald 2010. Moreover, it is also a fact of common knowledge that some delay in lodging the FIR in such case is natural. Ankit Sharma the young son of the claimants had expired. They must be under shock. RW-1 Saket Maheshwari was injured witness and was taken to hospital for the purpose of treatment. Thus the delay in lodging the FIR is well explained.

13. The claimants have examined Saket Maheshwari, who himself is injured witness in the accident and his presence at the spot cannot be doubted. There could also be no doubt about the involvement of the vehicle as the offending bus was left at the spot by respondent No.1 while escaping from the spot. Respondent No.1- Sunder Singh has also admitted that he was deputed on that bus on the date of accident and the bus in question was going from Delhi to Agra. Thus no fault can be found with the findings of the learned Tribunal that the present accident has taken place due to rash and negligent driving of bus bearing registration No.UP-80AK-9101 by respondent No.1.

14. I find considerable substance in the contention raised by learned counsel for the claimants that the learned Tribunal has not awarded the just compensation. Deceased Ankit Sharma was student of B.Tech Information Technology and was studying in Baldev Ram Mirdha institute of Tehcnology, Jaipur. He was 22 years of age and was in 3rd year. The claimants had great hope on their son they have brought on file the documents Exhibit P-9 to P-14 with respect to academic career of the deceased. He used to participate in extra curriculum activities and had also attended trainings which show that he was brilliant student and dynamic personality. He was offered annual package of Rs. 1,75,000/- by Stanch Infosystems Pvt. Ltd. Thus deceased has a bright and promising career. The learned Tribunal has taken the notional/future income of the deceased @ Rs. 10,000/- per month. Which is perfectly justified. It does not require any enhancement or reduction.

15. The learned Tribunal has applied the multiplier of 14 as per the age of the claimants which is not legal. In view of the law laid down by Hon"ble Apex Court in case Munna Lal Jain and Ors. v. Vipin Kumar Sharma, (2015) 6 SCC 347, the multiplier as per the age of the deceased should have been applied. The deceased was about 22 years of age so multiplier of 18 shall be applicable. As the deceased was unmarried and the claimants are his parents so 50% of income shall be deducted towards his living and personal expenses. Remainder comes to Rs. 5,000/- per month i.e. Rs. 60,000/- per annum. Thus the compensation for loss of dependency comes to Rs. 10,80,000/- (60000 X18).

16. Learned Tribunal has not awarded any amount towards loss of love and affection to the claimants. The claimants shall be entitled to Rs. 1,00,000/- towards loss of love and affection of their son. The Tribunal has also awarded only Rs. 10,000/- towards funeral expenses and transportation which is on the lower side. The same is enhanced to Rs. 25,000/-. In this way the amount of compensation comes to Rs. 12,05,000/- which is payable to the claimants on account of the death of their son in the present motor vehicular accident.

17. Thus keeping in view my aforesaid discussion FAO No.3720 of 2012 filed by the claimants is hereby partly allowed. The amount of compensation is enhanced to Rs. 12,05,000/- from Rs. 8,50,000/- awarded by the learned Tribunal. The claimants shall also be entitled to interest at the rate determined by the learned Tribunal on the enhanced amount from the date of institution of the petition till realization. The liability to pay the enhanced amount along with interest shall be as per the award passed by the learned Tribunal. The apportionment and disbursement of the amount of compensation shall also be as per the award of learned Tribunal.

18. However, FAO No. 344 of 2011 filed by Uttar Pradesh State Roadways Transport Corporation being without any merits is hereby dismissed.