(2006) 08 P&H CK 0394

In the Punjab And Haryana At Chandigarh

Case No : F.A.O. No. 534 of 1994 (O and M)

Mrs. Kanwal Kohli and Others — APPELLANT

Vs

Joginder Singh and Another — RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2006) 08 P&H CK 0394

Hon'ble Judges : S.D. Anand, J

Bench : Single Bench

Advocate : Anand Bishnoi, for the Appellant; None, for the Respondent

Judgement

S.D. Anand, J.—The present FAO has been filed by the legal representatives of Harinderjit Singh Kohli (husband of Mr.Kanwal Kohli and father of Jaggjoyt Singh and Pooja Kohli) against an award dated 29.9.1993, vide which Motor Accident Claims Tribunal, Patiala (hereinafter referred to as the Tribunal), recorded a finding that the appellants had not been able to prove the identity of driver who was driving the offending vehicle at the time of the impugned accident.

2. On 4.7.1989, the deceased was travelling by Maruti Car bearing registration No. CHK 9834 from Delhi to Chandigarh. The car was driven by Harjit Singh. At about 10.45 p.m., the car had just crossed Bhushan Factory on Ambala-Chandigarh road and was proceeding towards Dera Bassi town, when the offending truck bearing registration No. PAT 4831 came from the opposite direction, while it was being driven at a rash speed and in a negligent manner. The offending vehicle came over to wrong hand side of the road and hit the car with great force. On account of the impact, Harinderjit Singh Kohli and Harjit Singh sustained injuries and died at the spot. Harjit Singh was in employment of Harinderjit Singh Kohli as a driver. The car was totally smashed.

3. The claimants impleaded Joginder Singh son of Bhag Singh and New India Assurance Company Ltd. as respondents. The averment was that the former is

registered owner of the offending vehicle; while the latter was the insurer thereof.

4. Respondent No. 1 - Joginder Singh denied the allegations of the claimants. It was alleged that the offending vehicle had been stolen on 16.4.1989 from outside his house No. 2334, situated in Kot Bhagat Singh Thana, B. Division, Amritsar and an FIR to that effect had been lodged with the Police of P.S.B. Division, Amritsar on 16.4.1989 at 11.20 p.m.

5. Respondent No. 2 - Insurance Company averred that the petition is bad for non-joinder of necessary parties. Though it conceded that truck bearing registration No. PAT 4831 was under insurance cover with the Company for the period 9.2.1989 to 8.2.1990 it the name of Joginder Singh, it denied that any accident had occurred on account of rashness or negligence on the part of the driver of the alleged offending vehicle.

6. The Tribunal framed issues with regard to liability for the causing of the impugned accident and also on point of entitlement of the claimants to the amount of compensation and the liability therefor. An independent issue was framed with regard to the maintainability of the claim petition.

7. The plea raised by respondent No. 1 to the effect that the vehicle had already been stolen on 16.4.1989 and that an FIR had been lodged in that context was upheld by the Tribunal which also drew adverse inference against the claimants on account of non-impleadment of the driver of the offending vehicle. Adverse notice was also taken by the Tribunal of the fact that the claimants had not called upon respondent No. 1 to furnish the particulars of the driver who was driving it at the time of the impugned accident. It was also noticed that the registration number of the offending vehicle had not been indicated in the FIR. Also noticed by the Tribunal was the fact that the presence of AW 8 Manjit Singh and AW2 Kaka Ram (alleged eye witnesses) at the spot had not been proved. Under another issue, the Tribunal held that but for the finding under the preceding issue, the claimants would have been entitled to compensation of Rs. 1,92,000/-. It was noticed in the context that the monthly income of 44 years old deceased was taken to be Rs. 1500/- per month out of which 1/3rd had to be deducted as expenditure for the personal up-keep. It was noticed that the claimants had not produced any audited account of the deceased in spite of the fact that AW7 - Satinder Singh Kohli, Chartered Accountant, had testified on oath that he had audited the accounts of Harinderjit Singh Kohli as per the balance sheet as on 31.3.1989. No income tax return or income tax assessment order was produced. In view of the law laid down in 1982 P.L.R. 619, the Tribunal held that the notional income of the deceased was fixed at Rs. 6000/-. A multiplier of 16 was applied and entitlement of claimants to compensation of Rs. 1,92,000/- was held. The other left out issue was not pressed before the Tribunal.

8. I have heard Mr. Anand Bishnoi, learned Counsel for the appellants. None has been turned up on behalf of the respondents.

9. Mr. Anand Bishnoi, learned Counsel appearing on behalf of the appellants,

argued that the Tribunal had committed a grave error of law by holding that the petition was defective on account of non-joining of the driver of the offending vehicle. He also argued that the Tribunal had not recorded adequate reasoning to discard the testimony of AW2-Kaka Ram and AW8 - Manjit Singh.

10. There is no force in the plea. It is established law that the claimants must implead the driver of the offending vehicle in a claim petition u/s 166 of the Motor Vehicles Act. In the present case, the claimants also did not require respondent No. 1 to disclose the particulars of the person who was driving the offending vehicle at the time of the impugned accident. By the very nature of things, the fixture of liability would not be competent if the driver of the offending vehicle has not been impleaded as a party. Insofar as AW2 - Kaka Ram and AW8 - Manjit Singh are concerned, the Tribunal recorded adequate reasons to return the finding that their presence at the spot was doubtful. It was noticed in the context that AW8-Manjit Singh had no reasons to be around at the spot at that hour of night as, on his own showing, he is resident of a far away place. AW2- Kaka Ram had no idea about the description of the offending vehicle and he also did not know about whether the truck had been recovered by the police in connection with the impugned accident or not. The fact that this truck had been stolen and an FIR lodged in that respect, is proved on the file. The nonimpleadment of the driver is also a circumstance which runs contrary to the interest of the claimants who (claimants) did not take any steps to ascertain the identity of the driver of the offending vehicle. The witnesses aforesaid did not have an idea about the identity of the driver of the offending vehicle and there also is no averment in their testimony on oath that the truck driver of the offending vehicle was driving it rashly and negligently. I have, thus, no reservations in affirming the finding recorded by the Tribunal under issue No. 1. (Initially, two claim petitions bearing No. 95 of 22.12.1989 and No. 28 of 26.4.1990 had been filed before the Tribunal. The first indicated petition had been filed by the parents of Harjit Singh; while the latter petition had been filed by Kanwal Kohli and Jaggjoyt Singh and Pooja Kohli. The petitions were consolidated and evidence was jointly recorded in these two petitions. However, there is no indication that any appeal had been preferred by the respondents or the claimants in petition No. 95 of 22.12.1989).

11. Insofar as the finding recorded by the Tribunal under the other contested issue is concerned, it also deserves to be affirmed in view of the fact that the Tribunal had rightly noticed the non-production of any documented material like the income tax return or income tax assessment order in support of the plea that the deceased was earning lot of income and used to pay a sum of Rs. 10,000/- per month to appellant - Kanwal Kohli. The compensation awarded would appear to be just and reasonable, particularly when the Tribunal noticed the non-production of the relevant account books and the claimants also did not place the accounts (averred to have been audited by Satinder Singh Kohli - AW7)

12. In the light of foregoing discussion, the FAO is held to be devoid of merit and

is ordered to be dismissed.