
(2015) 05 P&H CK 0216
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 3330 of 2015 (O&M)

United India Insurance Co. Ltd.

APPELLANT

Vs

Jasvir Kaur and Others

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Motor Vehicles Act, 1988 — Section 173(1)
Penal Code, 1860 (IPC) — Section 279, 304-A, 427

Citation : (2015) 05 P&H CK 0216

Hon'ble Judges : Naresh Kumar Sanghi, J

Bench : Single Bench

Advocate : Harsh Aggarwal, for the Appellant

Final Decision : Dismissed

Judgement

Naresh Kumar Sanghi, J.—The present appeal has been filed by the United India Insurance Company Limited challenging the award dated 20.01.2015 passed by learned Motor Accidents Claims Tribunal, S.A.S. Nagar (Mohali), (for brevity "learned Tribunal") whereby an award of Rs. 19,61,000/- (Rupees Nineteen Lacs and Sixty one thousand) along with interest at the rate of 6% per annum from the date of filing of the petition till realization was passed in favour of the parents of Jatinder Singh (since deceased) aged about 27 years who was working with the Punjab State Power Corporation and was also running dairy and assisting his father in agricultural pursuits.

2. Learned counsel for the appellant submits that without there being any cogent evidence that Jatinder Singh (since deceased) was running a dairy and assisting his father in agricultural pursuits, the learned Tribunal has wrongly added approximately Rs. 7,000/- in the monthly income of Jatinder Singh (since deceased). He also argued that addition of 50% of the monthly income as future prospects was contrary to the decision of Hon'ble the Supreme Court in the matter of National Insurance Company Ltd. vs. Pushpa and Others, Special Leave to Appeal No. 8058 of 2014 Decided on 02.07.2014. He further pointed out that

as per claimants case, Jatinder Singh (since deceased) was sitting on the mudguard of the tractor, therefore, he himself had contributed to the negligence.

3. I have heard learned counsel for the appellant and with his able assistance gone through the material available on record.

4. Though the issue with regard to factum of accident and negligence on the part of the driver of the offence vehicle are not in dispute but still to give a clear picture the facts of the case are as under:-

On 29.05.2015 Balwinder Singh was carrying his potato crop in a tractor-trolley bearing registration No.PB-11-D-3710 for selling it in the vegetable market at Chandigarh. The tractor was being driven by Mohan Singh while Jatinder Singh (since deceased) son of Balwinder Singh was sitting on the right side of the mudguard of the above said tractor. Balwinder Singh was sitting in the trolley to look after the potatoes lying in the trolley. At about 3:30 a.m., the said tractor-trolley reached at Patiala-Zirakpur road then a Tata Tipper bearing registration No.PB-23-K-9232 (for brevity "offending vehicle") being driven by Ajmer Singh (respondent No. 3) in a rash or negligent manner at a very high speed without observing the traffic rules arrived there and hit the tractor-trolley occupied by Jatinder Singh and Balwinder Singh. The tractor-trolley were dragged to a sufficient distance. Balwinder Singh and Jatinder Singh fell down on the road. Jatinder Singh was run over by the front wheel of the offending vehicle. Due to accident, Balwinder Singh also sustained serious injuries. Jatinder Singh (since deceased) as well as Balwinder Singh were carried to the Post Graduate Institute of Medical Sciences and Research Centre, Chandigarh, where Jatinder Singh was declared dead while Balwinder Singh was admitted for treatment. The matter was reported to the police on the basis of which FIR No. 132, dated 01.05.2012 for the offences punishable under Sections 279, 304-A and 427, IPC, was registered at Police Station, Zirakpur, District S.A.S. Nagar. Jasvir Kaur (mother) and Balwinder Singh (father) of Jatinder Singh (since deceased) filed a claim petition before learned Motor Accidents Claims Tribunal, S.A.S. Nagar, alleging that Jatinder Singh aged about 27 years, was working with the Punjab State Power Corporation Limited and in addition thereto, he was selling milk and was also helping his father in the agricultural fields. His total income was Rs. 20,000/- per month. The claimants claimed Rs. 32,00,000/- (Rupees Thirty Two lacs) as compensation. The driver and the owner of the offending vehicle bearing registration No.PB-23-K-9232 did not appear before learned tribunal and as such, they were proceeded against ex parte.

5. The appellant-Insurance Company contested the claim petition on various grounds.

6. On the basis of the pleadings of the parties, the following issues were framed:-

1. Whether deceased Jatinder Singh has died due to the injuries sustained by him in a road side accident caused due to the rash and negligent driving by respondent No. 1 while driving Tipper bearing registration No.PB-23K-9232? OPP.

2. Whether the claimants are entitled to receive compensation? If so, to what extent and from whom? OPP.

3. Whether the driver of the offending vehicle was not holding a valid and effective driving licence, at the time of accident, if so, its effect? OPR.

4. Relief.

7. In order to prove its case, claimant No. 1, Jasvir Kaur, appeared as PW-1, claimant No. 2 Balwinder Singh appeared as PW-2, Mohan Singh was examined as PW-3; Sadhu Singh appeared as PW-4, Jagtar Singh as PW-5 while Gurvinder Singh, S.D.O. as PW-6.

8. The appellant-Insurance Company did not lead oral evidence however, insurance policy of the offending vehicle Ex. R-1 was tendered into evidence.

9. While dealing with Issue No. 1, the learned Tribunal took into consideration the deposition of Mohan Singh (PW3), an eye-witness/injured in the same accident as well as Balwinder Singh (PW-2) an eye-witness as well as injured in the same accident and held that the accident had occurred due to rash or negligent driving of the offending vehicle by Ajmer Singh (respondent).

10. Though learned counsel for the appellant has argued that Jatinder Singh (since deceased) was sitting on the right side mudguard of the tractor and as such, he himself was negligent but the said submission has no legs to stand. It has come on record that tractor on which Jatinder Singh (since deceased) was sitting was hit by the offending vehicle. The tractor and trolley were dragged to sufficient distance and the accident had occurred due to sole negligence of the driver of the offending vehicle, therefore, it cannot be said by any stretch of imagination that Jatinder Singh (since deceased) had contributed to the negligence. It is a different question that if the accident would not have been caused by the offending vehicle and Jatinder Singh would have fallen on the ground due to his own negligence. But facts of the case in hand are entirely different. Once the Court holds that the accident had occurred due to the sole negligence on the part of Ajmer Singh (driver of the offending vehicle), in that eventuality, submission of Mr. Harsh Aggarwal learned counsel for the appellant-Insurance Company cannot be sustained.

11. During trial/inquiry Jasvir Kaur, mother of Jatinder Singh, had appeared as PW-1 and she specifically deposed that her son was working with the Punjab State Power Corporation and was getting Rs. 9,000/- (Rupees Nine thousand) per month. It was also deposed by her that in addition to the above job, he was also selling about 20 kg of milk per day. It was also deposed that Jatinder Singh was helping his father in the agricultural pursuits. Sadhu Singh (PW4) had also deposed that Jatinder Singh (since deceased), in addition to his service with the Punjab State Power Corporation, was selling the milk and assisting his father in agricultural pursuits. His total income was Rs. 20,000/- (Rupees Twenty thousand) per month. The learned Tribunal while discussing issue No. 2 with

regard to dependency of the claimants held that Jatinder Singh who had studied upto M.A. (Part-I) was earning Rs. 12,000/- (Rupees Twelve thousand) per month. This Court after going through the statements of PW1 and PW4 (photocopies supplied by learned counsel for the appellant which are taken on record) also finds that Jatinder Singh was not only getting salary Rs. 5,800/- (Rupees Five thousand and eight hundred) per month from the Punjab State Power Corporation and in addition thereto, he was also selling 20 kg of milk per day and was earning Rs. 7,000/- (Rupees Seven thousand) per month. In addition thereto he was also assisting his family in the agricultural pursuits, therefore, the monthly income assessed at the rate of Rs. 12,000/- (Rupees Twelve thousand) was quite reasonable.

12. The submission of learned counsel for the appellant is that 50% of the future income added in the monthly income of the deceased to assess the dependency of the claimants was against the spirit of the judgment passed by Hon"ble the Supreme Court in the matter of National Insurance Company Limited vs. Pushpa's case (supra) Special Leave to Appeal No. 8058 of 2014. In the matters of Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, (2009) ACJ 1298 : AIR 2009 SC 3104 : (2009) CLT 1055 : (2009) 6 JT 495 : (2009) 6 SCALE 129 : (2009) 6 SCC 121 : (2009) 5 SCR 1098 : (2009) 5 UJ 2280 : (2009) AIRSCW 4992 : (2009) 3 Supreme 487 , and Rajesh and Others Vs. Rajbir Singh and Others, (2013) 2 ACC 841 : (2013) ACJ 1403 : (2013) 3 CTC 883 : (2013) 8 JT 288 : (2014) 173 PLR 779 : (2013) 3 RCR(Civil) 170 : (2013) 6 SCALE 563 : (2013) 9 SCC 54 : (2014) 1 SCC(L&S) 149 , Hon"ble the Supreme Court had ruled that 50% monthly income can be added as future prospects for awarding adequate compensation to the dependents of the deceased.

13. The learned Tribunal while discussing this aspect held as under:-

"It is a matter of common knowledge that the youngsters of agriculturist families, who do not earn much from their contractual job, supplement their earnings by way of working in their fields and by maintaining buffaloes (dairy farming). In these circumstances, the monthly income of the deceased Jatinder Singh, who had studied upto MA-1 is hereby assessed as Rs. 12,000/-. As the deceased was below 27 years of age, so 50% of the actual income i.e. Rs. 12,000/- is to be added into his monthly contribution towards family so as to assess his future prospects and future contribution towards claimants/family members which comes to Rs. 12,000 + 6000 = Rs. 18,000/- as per the spirit of the judgment delivered by the Hon"ble Apex court Govind Yadav Vs. The New India Insurance Company Limited, (2011) 4 CPJ 111 : (2012) 1 CTC 437 : (2011) 13 JT 40 : (2011) 4 RCR(Civil) 817 : (2011) 2 SCALE 336 : (2011) 10 SCC 683 : (2012) 1 TAC 1 : (2012) 1 UJ 33 . While following the dicta of Sarla Verma's judgment, the deceased was bachelor, the deduction should be 50%. While deducting 50% amount, the monthly contribution to the claimants from Jatinder Singh comes to Rs. 9,000/- (Rs. 18,000-9000/-) and as such, the

annual dependency of the claimants comes to Rs. 1,08,000/- (Rs. 9,000 x 12 = Rs. 1,08,000/-)."

14. It was specifically put to the learned counsel for the appellant to show any judgment of Hon'ble the Supreme Court whereby the judgments of Sarla Verma's and Rajesh's cases (supra) granting the future prospects to the claimants have been stayed, then learned counsel fairly conceded that the findings with regard to future prospects have not been stayed by Hon'ble the Supreme Court.

15. In view of the findings in Sarla Verma's (supra) and Rajesh's cases (supra) there is no force in the submission of learned counsel for the appellant that future prospects should not have been granted.

16. As a sequel to the above discussion, there is no force in the present appeal and the same is hereby dismissed.

17. Learned counsel has pointed out that Rs. 25,000/- (Rupees Twenty thousand), the statutory amount as per Section 173(1) of the Motor Vehicles Act deposited with the office of this Court at the time of filing of the present appeal may be remitted to learned Motor Accidents Claims Tribunal, S.A.S. Nagar, for disbursement to the claimants.

18. Ordered accordingly.