



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
221 **FAO-1638-2013 (O&M)**
Date of decision: 21.01.2025

Jaila & Another

...Appellant(s)

Vs.

Raj Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Hitesh Kumar Sammi, Advocate
for the appellants.

Mr. Amardeep Singh Gill, Advocate
for the respondents.

NIDHI GUPTA, J.

The appellants before this Court are the owner and driver of the tractor bearing registration No.PB-33-4743 (hereinafter referred to as "the offending vehicle") laying challenge to the Award dated 15.01.2013 passed by Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as "the learned Tribunal") in claim petition bearing No.MACP/10400019/2010 filed by the claimants/respondents hereinunder Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") whereby the claimants have been awarded compensation of Rs.19,18,905/- on account of death of Gurdev Singh. The 6 claimants are the wife, 3 minor children, and parents of the deceased - Gurdev Singh.

2. Brief facts of the case are that the learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the deceased-Gurdev Singh had died due to the injuries suffered by him in a



motor vehicular accident that took place on 22.04.2009 due to the rash and negligent driving of the offending vehicle by appellant No.1. Vide the impugned Award, the liability to pay the aforesaid compensation was fixed upon the appellants on account of the fact that the offending vehicle was not insured.

3.1 Learned counsel for the appellants argues that the liability has been wrongly affixed upon the appellants as the deceased was on a motorcycle at the time of accident. It is contended that the accident had taken place because the deceased was driving under the influence of liquor. However, the learned Tribunal has framed no issue with regard to this. As such, the liability could not have been affixed upon the appellants.

3.2 It is further argued that the FIR in respect of the accident in question has been registered at the same Police Station where the deceased was working. Moreover, the learned Tribunal has failed to appreciate that the appellant No.1 was not arrested at the spot. Even the driving licence of the deceased was not proved. Even no issue was framed by the learned Tribunal with regard to this.

3.3 It is further submitted that there are numerous discrepancies in the evidence of the claimants inasmuch as, it was the claimants' case that the son of the deceased had taken him to the hospital; whereas as per the hospital record, it was the police officials who had brought the deceased to the hospital. It is accordingly prayed that the impugned Award be set aside.



4. Per contra, learned counsel for the claimants submits that the accident has been duly proven on record. The only defence taken by the appellants in the written statement filed by them before the learned Tribunal is that no accident had taken place. Moreover, the appellant No.1 stands convicted under Section 304 IPC. Learned counsel accordingly prays for dismissal of the present appeal.

5. No other argument is raised on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. Perusal of record of the case shows that on the basis of oral and documentary evidence brought on record by the parties, the learned Tribunal returned the finding that the deceased had died to the injuries suffered by him in the motor vehicular accident that took place on 22.04.2009 due to the rash and negligent driving of the offending vehicle by appellant No.1 and the same was owned by appellant No.2. It is the admitted case of the appellants that the offending vehicle was not insured. Accordingly, the liability for payment of compensation was fixed upon the appellants.

8.1. At the time of accident the deceased was working as a Head Constable in the Punjab Police and getting salary of Rs.17,206 per month which was duly proven on record as per Salary Certificate (Ex.P3). After making deductions of HRA, MA and CA, the learned Tribunal took the salary of the deceased to be Rs.14,103/- per month.



8.2 Claimant No.2 was the married son; claimant No.5 was the father of the deceased; who were held to be not dependent on the deceased. As such, the learned Tribunal correctly made a deduction of $1/4^{\text{th}}$ of the income of the deceased towards his personal expenses. Thus, his monthly income comes to Rs.10,577.25/- and annual income of the deceased towards his family comes to Rs.1,26,972/-.

8.3 The age of the deceased was determined to be 38 years on the basis of Post-Mortem Report. Thus, multiplier of 15 was correctly applied. Thus, amount for loss of dependency came to Rs.19,03,905/-.

8.4 Respondent No.1/widow was further held entitled to Rs.5,000/- towards loss of estate and another sum of Rs.5,000/- towards loss of consortium. Rs.5,000/- was granted towards funeral expenses.

8.5 Thus, total compensation comes to Rs.19,18,905/-.

9. It has been argued on behalf of the appellants that the deceased was drunk at the time of accident and therefore, liability could not be foisted upon the appellants. However, a perusal of the record of the case reveals that the plea taken by appellant No.1/driver in the written statement filed before the learned Tribunal was that he was not driving the offending vehicle at the time of accident. It was nowhere pleaded by the appellants before the learned Tribunal that the deceased was drunk at the time of accident. From the above facts, it is clear that the argument of learned counsel for the appellants that no issue was framed



in this respect by the learned Tribunal is misplaced, as admittedly, no such pleading was raised by the appellant No.1 in the written statement filed by him.

10. It is only in his evidence as RW2, that the appellant No.1 has tendered his affidavit (Ex.RA) wherein he deposed that his house is adjoining the Police Post where the deceased was posted; and that he had seen the deceased consuming excessive liquor even while he was on duty. It was further deposed by appellant No.1/RW2 that on the night of accident, the deceased was driving the motorcycle in a zigzag manner after consuming liquor and that his motorcycle struck against the offending vehicle leading to his death. However, the testimony of the appellant No.1/RW2 to the effect that the deceased was under the influence of liquor at the time of accident, is liable to be discarded in view of the fact that the same is clearly an after-thought and an attempt to improve upon the version previously put forth by him.

11. It is the second contention of the appellants that at the time of accident, the deceased did not possess a valid driving licence. However, admittedly no such plea was raised by the appellants before the learned Tribunal and therefore, no such issue in regard to this could be framed by the learned Tribunal and therefore, this argument of the appellants is also to be rejected.

12. As regards the allegation that it was a case of the claimants that the deceased was taken to the hospital by his son; whereas



as per the hospital record, the deceased was brought to the hospital by police officials, nothing whatsoever has been shown by the appellants to substantiate the said assertion from the record/hospital record. It has also not been denied by the learned counsel for the appellants that appellant No.1 stands convicted in the FIR No.50 dated 22.04.2009 registered under Sections 279, 427 and 304-A IPC at Police Station Mehatpur, District Jalandhar.

13. In view of the above, the present appeal is **dismissed**.
14. Pending application(s) if any also stand(s) disposed of.

21.01.2025
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No