(2006) 12 P&H CK 0123

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 101 of 1989

Kiran Rani and other		APPELLANT
	Vs	
Pepsu Road Transport Corporation and others		RESPONDENT

Date of Decision: Dec. 6, 2006

Citation: (2007) 1 PLR 507 : (2007) 2 RCR(Civil) 486

Hon'ble Judges: Arvind Kumar, J

Advocate: Mr. G.S. Jaswal, Advocate, Mr. Onkar Rai and Mr. A.S. Cheema, Advocates., Advocates for appearing Parties

Judgement

Arvind Kumar, J.

This shall dispose of F.A.O. Nos. 101 and 100 of 1989 as the same arise out of a common award relating to one accident.

2. F.A.O. No. 101 of 1989 has been preferred by the widow, two daughters and mother of deceased Pargas Ram @ Parkash Ram, while F.A.O. No. 100 of 1989 has been filed by Amar Singh, injured, who at the time of accident was travelling alongwith the deceased. Both the appeals have been preferred against award dated 3.11.1988 whereby the claim petitions of the claimants have been dismissed by the Motor Accident Claims Tribunal, Patiala.

3. In brief, the facts of the case are that on 12.11.1986 Pargas Ram @ Parkash Ram working as driver alongwith Amar Singh, working as conductor under Punjab Scooters Limited, Nabha, was driving Swaraj Mazda bearing registration No. PAP6542 belonging to Punjab Scooters Limited from village Asron. When they reached between village Tarkheri and Jindalpur, a bus bearing registration No. PUC3275 driven by respondent Raghbir Singh in a rash and negligent manner, struck against Swaraj Mazda. Due to the impact, both Pargas Ram @ Parkash Ram and Amar Singh sustained injuries. However, later Pargas Ram @ Parkash Ram succumbed to his injuries. The legal heirs of the deceaseddriver, namely, widow, two

daughters and mother, then filed petition before the Motor Accident Claims Tribunal claiming compensation. Amar Singh whose left hand got fractured in the accident, also filed a claim petition.

4. Upon notice of claim petitions, respondents 1 and 2 in their written statement submitted that the bus in question was not involved in the accident. They pleaded that the Swaraj Mazda was being driven rashly and negligently by the deceaseddriver and struck against the bus. It was further pleaded that Amar Singh injured too was not entitled to any compensation. Respondent No. 3, namely, the employer of the deceased and also Amar Singh, in its written statement took up the stand that their factory is covered under the Employees Insurance Act and both the deceased and the injured were insured under the said scheme and hence, they are debarred from claiming or receiving any compensation from the employer. Respondent No. 4, namely, the insurance company in its written statement pleaded that though Swaraj Mazda was insured with it but it has a limited liability to the extent of Rs. 1,50,000/. It was further pleaded that since no relief has been claimed by the claimants qua it, therefore, they are not liable to pay any compensation.

5. On framing of the necessary issues, the parties led evidence in support of their respective case.

6. On appreciation of evidence adduced by the parties, the learned Tribunal vide award dated 3.11.1988, dismissed the claim petitions on the grounds : that the negligence of the driver of the bus in question is not proved that the claimants in their claim petitions have not claimed compensation from the respondentinsurance company and that as the deceased and the injured were insured under the E.S.I. Scheme, in view of Section 53 of the Employees'' State Insurance Act, 1948, they were debarred from claiming or receiving any compensation.

7. Feeling dissatisfied with the award, the claimantsappellants have come to this Court by way of instant appeals.

8. I have heard learned counsel for the parties.

9. The present case mainly rests on the solitary statement of Amar Singh. He in his statement has stated that on the date of accident, he was coming from Roper in Matador belonging to Punjab Scooters Limited so driven by Pargas Ram. When the vehicle reached in the area of village Tarkheri and Jindalpur, bus belong to P.R.T.C. bearing registration No. PUC3275 came from the side of Bhadson. The speed of the bus was 80 kms. per hour. The driver of the bus did not blow any horn nor gave any dipper. He and Pargas Ram were in the vehicle and he was sitting by the side seat of driver Pargas Ram. It was about 4.30 p.m. Raghbir Singh, driver of the bus, who was driving the same in a rash and negligent manner, struck the bus in front of the Matador, on account of which he and Pargas Ram both sustained injuries. Pargas Ram died in the hospital. Raghbir Singh, driver of the bus, when appeared as RW1, admitted the accident; however. his version is that on account of smoke, he stopped

the bus and alighted therefrom and in the meantime, a tempo came from the opposite side driven at a fast speed and could not be controlled by its driver and resultantly, it struck against the bus. The tempo belonged to Punjab Scooters Limited. It was a fourwheeler tempo. The learned Tribunal has disbelieved the statement of PW2 Amar Singh firstly on the ground that he was an interested witness and he in the FIR Exhibit R2 had given a version that as paddy stock was set on fire and due to smoke, nothing was visible, the vehicle driven by Pargas Ram struck against the bus. The learned Tribunal has fallen into error in disbelieving the statement of PW2 Amar Singh mainly due to his said version recorded in the F.I.R. Exhibit R2. The Tribunal cannot draw any inference upon the contents of the F.I.R. to foist liability upon the driver of the vehicle involved in the accident. The Tribunal has to decide the matter on the strength of the evidence led in the case. An F.I.R. is not lodged on solemn affirmations and the same cannot be a substitute for the evidence giving exhaustive version of the accident on solemn affirmation before the Tribunal. PW2 Amar Singh was himself injured in the accident. He is very categoric in his statement that the police recorded the statement at the instance of the driver of the bus and the statement was not read over to him and that he was not in proper senses when he was asked to sign the same. He also uttered in so many words that the content of the complaint are not at his instance. He, thus, disowns the contents of the F.I.R. In the light of this, Tribunal should not have preferred his version recorded in the F.I.R. and to ignore his statement made in Court on solemn affirmation. PW2 Amar Singh was also having multiple injuries on his person and in that situation, there was every possibility that he would not have been in proper senses when his statement was recorded by the police. No doubt, Amar Singh was a conductor in the said Matador and as such, his testimony cannot be brushed aside merely on this score as he himself was injured and thus, a stamped witness. A close look at his crossexamination would also suggest that a clear cut suggestion had been put to him that the deceased was driving the vehicle on the correct side with slow speed and was observing the traffic rules and obviously to the said suggestion, he stated that "it is correct". Respondents cannot derive any benefit from the photographs, Mark1 to Mark7 as they do not depict an exact position of the vehicles at the time when the accident had taken place. It has also been admitted by RW1 Raghbir Singh that the position of the vehicles had changed after the accident. In the light of this evidence, the statement of stamped witness, namely, PW2 Amar Singh rather suggests that the bus was being driven at a speed of 80 kms. per hour, which has not been rebutted in his crossexamination by the respondents. His statement further reveals that with the said speed it was the bus which was driven in a rash and negligent manner and hit the Matador. Therefore, conclusion can easily be drawn that the accident had taken place due to negligence of Raghbir Singh, driver of bus No. PUC3275. Accordingly, the finding of the Tribunal under this issue is hereby reversed.

10. The claimants are the widow, two minor daughters and mother of deceased Pargas Ram @ Parkash Ram. The deceased was employed with Punjab Scooters Limited, Nabha. PW1 Kiran Rani, widow of the deceased, though has stated that he was getting Rs. 1150/ per month and used to contribute Rs. 900/ for domestic expenses; however, there is no evidence to authenticate the same. Onus lay on the claimants to prove the salary of the deceased. For proving the same, they could well summon requisite record from the concerned department; however, they have failed to discharge the said onus. A suggestion had been put to her that the monthly salary of the deceased was only Rs. 737/ which she denied. However, giving allowance to the exaggeration and in the light of no documentary evidence, the monthly salary of the deceased is assessed at Rs. 900/. If a sum of Rs. 300/ is deducted on account of personal maintenance and upkeep, the monthly dependency comes to Rs. 600/. The deceased at the time of accident, was 2930 years. Accordingly, a multiplier of 16 deserves to be applied in this case and it is so ordered. The compensation is worked out and it comes to Rs. 1,15,200/ (600 x 12 x 16). Out of the compensation amount, a sum of Rs. 40,000/ shall be paid to the widow Kiran Rani (appellant No.1); Rs. 30,000/ each to minor daughters, namely, Bir Pal and Soma Rani (appellants 2 and 3 respectively) and the remaining amount of Rs. 15,200/ shall be paid to mother of the deceased, namely, Laxmi (appellant No. 4).

11. PW2 Amar Singh stated that he had received injuries/fracture in the right leg head and forehead. He also stated that he was initially admitted in PHC Bhadson and then removed to Civil Hospital, Nabha, where he remained for three months. The statement of PW3 Dr. N.K. Jindal, who treated Amar Singh, is of importance to assess the injuries suffered by Amar Singh. His statement suggests that Amar Singh was having multiple injuries, i.e. on the right leg, skull and left hand. Fracture was only of phalanyx of left hand. He remained admitted from 13.11.1986 to 13.12.1986. His statement further reveals that even after discharge, POP cast was given for one month during which he was required to take rich diet. PW2 Amar Singh although has stated that he felt pain in the leg and could not walk fast and due to the forehead injury, his eye sight has become weak and he has also lost memory but there is absolutely no medical evidence to support the same; rather the examination of PW3 Dr. N.K. Jindal (when recalled) suggests that except impairment in the functioning of the left middle finger of the left hand to the extent of 78 per cent, he was having normal health. The precise and mathematical calculations of the amount of compensation in such cases is hardly obtainable. However, the Tribunal has to make an endeavour in the light of the evidence on the record to see that the tortfeasors are saddled with the award of an amount of compensation which ought to be just and reasonable. The award should neither be luxurious or pernicious.

12. In the light of the evidence discussed above and keeping in view of the value of the money in the year 1986, to my mind a sum of Rs. 25,000/ would be adequate to be paid to appellant Amar Singh under general damages. PW2 Amar Singh though has stated the expenses of Rs. 7000/, however, no documentary evidence to support

the same has been produced. Thus, giving allowance to the exaggeration, a sum of Rs. 2000/ is allowed under this heading, thus, making the total compensation payable to claimant Amar Singh at Rs. 27,000/. The compensation of Rs. 1,15,200/ and Rs. 27,000/ awarded in both the cases shall be paid by respondents 1 and 2 jointly and severally.

13. Section 53 of the Employees'' State Insurance Act, 1948 relates to a claim which is relatable to the employment of the insured person with his employer. Section 53 of the Act ibid does not come in the way of the claimants to raise a claim against third party. Thus, the objection raised by the counsel for respondent No. 1 stands overruled.

14. Coming to the rate of interest, in view of the judgment of the Supreme Court in Tamil Nadu State Transport Corporation Limited v. S. Rajapriya and others, 2005(4) R.C.R.(Civil) 628 : 2006(1) RCR(Crl.) 598 (SC) : (20052)140 P.L.R. 650, the compensation in this case shall carry interest at the rate of 71/2 per cent per annum from the date of filing of the claim petition till its payment.

15. Resultantly, both the appeals, F.A.O. Nos. 100 and 101 of 1989, are allowed and the award of the Motor Accident Claims Tribunal, Patiala stands set aside. No costs.

Appeals allowed.