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Anita Rani v. State of Punjab, (Punjab and Haryana) : Law Finder Doc Id # 812566

2016(4) PLR 845

**PUNJAB AND HARYANA HIGH COURT**

Before:- Ajay Tewari, J.

FAO No. 94 of 2000 (O&M). D/d. 01.06.2016.

Anita Rani and others - Appellants

**Versus**

State of Punjab and others - Respondents

FAO No. 2407 of 2000 (O&M)

Dayavanti and others - Appellants

**Versus**

State of Punjab and others - Respondents

FAO No. 3561 of 1999 (O&M)

Jasbir Kaur wd/o Jaswant Singh and others - Appellants

**Versus**

Ranjit Singh and others - Respondents

FAO No. 3562 of 1999 (O&M)

Harjit Kaur wd/o Mohinder Singh and others - Appellants

**Versus**

Ranjit Singh and others - Respondents

FAO No. 3563 of 1999 (O&M)

Raj Kumar - Appellant

**Versus**

Ranjit Singh and others - Respondents

FAO No. 160 of 2001 (O&M)

Sneh Lata wd/o Mahesh Kumar and others - Appellants

Versus

C. Ranjit Singh and others - Respondents

For the Appellant in FAO No. 94 of 2000 :- Mr. Deepak Gupta, Advocate.

For the Appellants in FAO No. 2407 of 2000 :- Mr. H.S. Kathuria, Advocate.

For the Appellant in FAO Nos. 3561, 3562 and 3563 of 1999 :- Mr. Ashok Jindal, Advocate.

For the Appellants in FAO No. 160 of 2001 :- Mr. B.S. Dhillon, Advocate.

For the Respondent :- Mr. Rajesh Mehta, Additional A.G., Punjab.

For the Respondent-United India Insurance Company Limited :- Mr. Rohit Goswami for Mr. D.P. Gupta, Advocates.

For the Respondent Ranjit Singh :- Mr. M.S. Dhaliwal, Advocate.

**A. Motor Vehicles Act, 1988, Section 166 - Accident - Impleadment of party - Insurance Company State within meaning of Article 12 of Constitution - Already found liable to pay compensation to identically situated LR's of another victim of same accident - Not to be permitted to take plea that it cannot be impleaded in accident case - Insurance Company directed to be impleaded.**

[Para 5]

**B. Motor Vehicles Act, 1988, Section 166 - Accident - Contributory negligence - In accident five persons died - Claim filed before Tribunal S and Tribunal B - Tribunal S found driver of offending police vehicle guilty of contributory negligence - Finding not challenged by State - State not to turn around and claim driver not guilty of contributory negligence - Finding of Tribunal S upheld and that of Tribunal B set aside - Contributory negligence of both drivers made applicable in cases.**

[Para 9]

**C. Motor Vehicles Act, 1988, Section 166 - Accident - Interim compensation - No finding on compensation given by Tribunal - Matter remitted - Tribunal directed to grant one effective opportunity to each of parties to reconstruct record and thereafter compute compensation - In view of plight of claimants respondents directed to pay interim compensation liable to be set off against final compensation computed by Tribunal.**

[Paras 11 and 12]

JUDGMENT

**Ajay Tewari, J.** (Oral) - This order shall dispose of the above mentioned six appeals which have arisen out of the same accident. For ready reference facts are being taken from FAO No.94 of 2000.

2. The brief facts are that on 16th January, 1998 Surinder Pal, Mahesh Kumar, Jaswant Singh, Rajesh Kumar, Jarnail Singh and Mohinder Singh were travelling in Jeep bearing No.PB-03-D-9747 and met with an accident with a Punjab **Police bus** bearing No.PB-13-A-8590 and died. Five petitions were filed at Bathinda for claiming compensation from the State of Punjab and its employees for the death of Surinder Pal, Mahesh Kumar, Jaswant Singh, Rajesh Kumar and Mohinder Singh and one for damages which had been caused to the Jeep. The Tribunal held that negligence of the Punjab Police driver was not proved and dismissed the claim petitions. However, a sum of Rs.50,000/- was awarded to the claimants under no fault liability. The aforesaid appeals arise out of the dismissal of those claim petitions.

3. Petition for compensation for the death of Jarnail Singh was filed before the Tribunal at Sangrur. Before, the Tribunal at Sangrur, the award of Bathinda Tribunal was also placed on record. However, Tribunal at Sangrur held that there was contributory negligence of both the drivers. Against that award, the Insurance Company i.e. United India Insurance Company filed FAO No.5393 of 2002 and a Division Bench of this Court dismissed that appeal by order dated 20.02.2003. That order has become final. It is noteworthy that the State of Punjab or the Punjab police did not file any appeal against the finding of the Sangrur Tribunal holding the Punjab police driver guilty of contributory negligence. Against the compensation amount awarded, LRs of Jarnail Singh filed FAO No.4453 of 2003 (which is being decided by a separate order).

4. There is one more supervening factor which needs to be addressed here in the claim petitions out of which FAO No.3562 of 1999 and FAO No.3563 of 1999 have arisen. The claimants did not implead the driver and owner of the jeep (supra). Learned counsel for the appellants have argued that it would be appropriate for this Court to implead the Insurance Company of the Jeep i.e. United India Insurance Company Limited and the owner in view of the fact that the finding on negligence has already been returned. Mr. Rohit Goswami, Advocate for Mr. D.P.Gupta, Advocate for United India Insurance Company Limited has, however, argued that once the Insurance Company and the owner were not parties before the Tribunal it would not be legal to implead them. The owner of the jeep has himself filed FAO No.3563 of 1999 for seeking claim for damages caused to his jeep (which is being decided separately). Since that appeal has been filed through Shri Ashok Jindal, Advocate who also filed FAO No.3562 of 1999, he is in no position to either oppose or support this prayer.

5. In my opinion even though the argument of Mr. Rohit Goswami, Advocate can not be brushed aside lightly yet it would lead to a very anomalous situation. These appeals have arisen out of an accident where five people have died. In one case where the owner of the jeep and its insurer were parties there is already a final and binding judgment upholding the order that the driver of the jeep was also guilty of contributory negligence and the Insurance Company is bound to compensate the claimants who were passengers in that jeep as per its share. In these circumstances it would be extremely unfair to insist on formal rules of impleadment, especially while effectuating a beneficial legislation. The Insurance company in question i.e. United India Insurance Company Limited is 'State' within the meaning of Article 12 of the Constitution of India and it would not lie in its mouth to take a plea that it can not be impleaded in an accident case where it has been already found liable to pay compensation to the identically situated LRs of another victim of the same accident. Consequently the argument of Mr.Rohit Goswami, Advocate is rejected.

6. In these circumstances I deem it appropriate to implead the owner-Raj Kumar through counsel Shri Ashok Jindal, Advocate as respondent No.4 in all the appeals except FAO No.3562 of 1999 in which he is impleaded as respondent No.7 and United India Insurance Company Limited through counsel Mr.Rohit Goswami, Advocate as respondents No.5 in all the appeals except FAO No.3562 of 1999 in which it is impleaded as respondent No.8. Registry is directed to make necessary corrections in the memo of parties.

7. Learned counsel for the appellants have argued that the appeals against the finding of the Sangrur Tribunal were dismissed by the Division Bench and in view of the fact that the State of Punjab or Punjab police never challenged the finding of contributory negligence recorded against their driver, the finding of the Bathinda Tribunal has to be set aside and it has to be held that the accident was caused due to contributory negligence and the finding of the Sangrur Tribunal upheld by the Division Bench have to be held to be applicable in the present cases also.

8. Learned Additional Advocate General, however, argued that in the appeal filed by the Insurance Company no notice was issued to the State of Punjab.

9. In my opinion, this argument would not suffice; once it is shown that the finding of the Sangrur Tribunal holding that the driver of the Punjab police was guilty of contributory negligence was not challenged by the State, it can not now turn around and claim that there was no negligence on the part of their driver. Nothing stopped the State to file an appeal and thus it cannot now take a U-turn in the present cases and claim that the driver of the State was not guilty of any negligence. In the circumstances, the finding of the Tribunal at Bathinda is set aside and the finding of the Sangrur Tribunal as upheld by the Division Bench to the extent that both the drivers were guilty of contributory negligence would be made applicable to the present cases also.

10. I, however, find that the Tribunal at Bathinda did not give any finding on the issue of compensation. From the record, it also transpires that these are all burnt cases where the evidence has also been burnt. Learned counsel for the appellants state that they have copies of the entire evidence and pray that the matter be remitted back to the Tribunal at Motor Accident Claims Tribunal, Bathinda with permission to the claimants to reconstruct the record so that the Tribunal can compute the compensation in view of the finding of contributory negligence. I find it to be a fair submission and allow the appeals in the above terms. Parties through their counsel are directed to appear before Motor Accident Claims Tribunal at Bathinda on 18.07.2016. The Tribunal will grant one effective opportunity to each of the parties to reconstruct the record and thereafter compute the compensation which has to be awarded.

11. Before I part with this judgment there is one other issue which needs to be addressed. 18 long years (almost 2 decades) have passed since the death of the person/s for which the claimants have been clamoring for compensation. There are widows, minor children, old mothers and sisters. It is horrible to imagine how they must have passed this long time. Were they forced into beggary, or worse? Did the minors managed to get any education? Could the girls be married? Is what this Court now doing a travesty of justice?

12. In these stark circumstances I deem it appropriate to grant some interim compensation to the claimants. In FAO No.94 of 2000, the appellants-claimants are widow and two minor daughters of Rajesh Kumar. The respondents No.1 and 6 are directed to deposit Rs.3.00 lacs with the Motor Accident Claims Tribunal, Bathinda on or before the date fixed there for immediate disbursal in equal shares to the three appellants while in FAO No.2407 of 2000 the claimants are mother, father, and two sisters of the same Rajesh Kumar. In this case I deem it appropriate to direct the

respondents No.1 and 6 to deposit Rs.1 lakh as interim compensation on or before the date fixed there for immediate disbursal to the three appellants. Out of this amount of Rs.1 lakh, Rs.50,000/- be paid to appellant No.1-mother and Rs.25,000/- each to the appellants No.3 and 4 (unmarried sisters). In FAO No.3562 of 1999, I direct the respondents No.1 and 6 to deposit Rs.3 lakhs on or before the date fixed for immediate disbursal to the appellants No.1, 2 and 3 i.e. widow and children in equal shares on or before the date fixed for immediate disbursal to them. In FAO No.160 of 2001, I direct respondents No.3 and 5 to deposit a sum of Rs.3.5 lakhs on or before the date fixed for disbursal to the appellants No.1 to 5. Out of this amount Rs.1 lakh be given to appellant No.1, widow of the deceased Mahesh Kumar, Rs.50,000/- each to appellants No.2, 3 and 5 being the minor sons and mother of the deceased and Rs.1 lakh to appellant No.4, minor daughter of the deceased.

13. FAO No.3561 of 1999 has been filed by the widow, two minor sons, one minor daughter, mother and father of deceased-Jaswant Singh, driver of Jeep No. PB-03-D-9747 and FAO No.3563 of 1999 has been filed by the owner of the said jeep. Since the driver of the jeep has also been held guilty of contributory negligence to the extent of 50% the compensation amount payable to these legal representatives and the owner of the jeep for damages having been caused to it would have to be halved and that half amount would be payable by the respondents including the State of Punjab. Therefore, I direct respondent No.3-State of Punjab to deposit Rs.3.5 lakhs on or before the date fixed for immediate disbursal to appellants No.1 to 5 (Rs.1 lakh to appellants No.1 and 4 each, Rs.50,000/- to appellants No.2, 3 and 5, sons and mother).

14. It is made clear that these amounts will be liable to be set off against the compensation finally computed by the Tribunal. It is further made clear that these amounts are just a rough and ready reckoning of interim relief because of the stark circumstances of the present cases and the Tribunal would decide the issue of compensation and apportionment independently.

15. Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

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