

**IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH**

-:-

F.A.O No. 1579 of 2002

Decided on : January 27, 2015

Kulwinder Kaur & Ors.

... Appellants

Versus

Mahma Singh & Ors.

... Respondents

CORAM : HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN

Present : Mr. R.S.Mamli, Advocate, for the appellants.

Mr. V.K.Garg, Advocate, for respondent No. 3.

Mahavir S. Chauhan, J. (Oral)

Learned counsel for the appellants states that the presence of respondents No.1 and 2 is not relevant for disposal of the appeal. Their service be dispensed with. Accordingly, presence of both respondents is dispensed with.

Respondent No.3 is represented by Mr. V.K.Garg, Advocate.

Heard.

This is claimants' appeal against award dated 15.12.2001, whereby their application for seeking compensation on account of death of Jai Singh has been dismissed on the ground that no evidence is there in proof of involvement and rash and negligent driving by Mahma Singh, respondent No-1 herein, of truck bearing registration No. HNS-1112 in the occurrence that claimed life of Jai Singh.

I have heard learned counsel for the parties.

It is argued by learned counsel for the applicants-appellants that though registration number of the offending vehicle and name of the driver are not mentioned in the First Information Report, Exhibit – PA, but the factum and manner of occurrence have been deposed to by PW-4 Dharambir, and respondent No.1, while appearing as RW-1 before the learned Tribunal has admitted the factum of the occurrence, but the learned Tribunal has dismissed the claim application on imaginary grounds that the applicants-appellants have colluded with the owner and driver of the offending vehicle.

On the other hand, it is argued by learned counsel for respondent No.3 that admission of Mahma Singh, respondent No.1 (RW1) in his cross-examination with regard to factum of occurrence is sufficient to reach a conclusion that he has been colluding with the applicants-appellants.

As per case pleaded in the claim application, on 08.10.1996 deceased Jai Singh along with Phul Singh and Gurnam Singh, was riding a scooter bearing registration No. HNA-6956 while coming from Yamunanagar to Kurukshetra. He (Jai Singh) was driving the scooter at a slow speed on the correct left hand side of the road. When the scooter reached in the area of village Dholra, a truck bearing registration No. HNS-1112, driven rashly and negligently by respondent No.1 Mahma Singh came from Ladwa side and after coming on to the wrong side of the road, hit the scooter, which resulted into death of Jai Singh, the deceased. Application was contested by the respondents. Necessary issues were framed. Parties adduced evidence and were heard. Learned Tribunal, on assessment of evidence available on record and after hearing the parties, concluded that it

was a case of collusion between the claimants and owner and driver of the offending vehicle, otherwise there was no evidence to prove the factum and manner of occurrence. However, learned Tribunal assessed compensation at Rs.4,30,000/-. Learned counsel for the appearing parties do not dispute the correctness of the findings recorded by the learned Tribunal as regards amount of compensation, i.e., Rs.4,30,000/-.

Learned Tribunal while assessing the evidence in respect of factum and manner of occurrence, has referred to the evidence of PW-4-Dharambir Singh and FIR, Exhibit PA, to say that registration number of the offending vehicle and name of its driver have not come on record in the FIR, but while doing so, it has overlooked the evidence of respondent No.1 Mahma Singh. He has admitted in his cross-examination that the accident took place on 08.10.1996, wherein a scooterist was killed. He also refers to place of occurrence as near village Dholra. Learned Tribunal only on the basis of this admission, has reached the conclusion that this witness has colluded with the applicants. This, in my view, is not sustainable because there is no evidence whatsoever to show that respondents No. 1 and 2 are either related to the claimants/applicants or have any nexus with them.

It may be added that admission of a party is best evidence and non-mentioning of number of the offending vehicle in the First Information Report is hardly of any relevance to dismiss the claim application because proceedings before the Tribunal under the Motor Vehicles Act, 1988 are summary in nature and strict rules of evidence are not applicable and circumstances are not required to be proved beyond reasonable doubt as in criminal proceedings. Learned Tribunal has to reach a conclusion on the

basis of the evidence brought before it, by preponderance of probabilities, and as aforesaid admission of the opposite party is the best evidence in support of claim of the applicants as regards the factum and manner of occurrence. Resultantly, the findings of learned Tribunal on issue No.1 are reversed and this issue is decided in favour of the applicants-appellants.

Reversal of findings of learned Tribunal on issue No.1, also rules out the possibility of any collusion between the parties and as such findings on issue No.6 are also reversed and this issue is also decided in favour of the applicants-appellants and against respondent No.3.

As the findings on issue No.2 are not disputed, the same are hereby affirmed.

By way of impugned award, the learned Tribunal has awarded compensation amounting to Rs.4,31,000/- in favour of the applicants-appellants. There is no reason to deny this compensation to the applicants-appellants.

In view of the above, I accept the appeal and award compensation amounting to Rs.4,31,000/- in favour of the applicants-appellants with interest @6% per annum from the date of filing of the claim application, till the date of payment/realisation of the awarded amount. The applicants-appellants are also entitled to costs through out, which are assessed at Rs.1100/-.

January 27, 2015
tripti.

[Mahavir S. Chauhan]
Judge