

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2164 of 1997 (O&M)
Date of Decision:09.01.2015

Shakur and another

....Appellants

Versus

Shyambir and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Chetan Salathia, Advocate for
Mr. Amit Jain, Advocate for the appellants.

Mr. Ashish Gupta, Advocate for
Mr. R.K. Gupta, Advocate for respondents No.1 & 2.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate for respondent No.3-
Oriental Insurance Company Ltd.

NAVITA SINGH, J.

1. The appeal was filed against award dated 29.8.1997 passed by Motor Accident Claims Tribunal, Faridabad (Tribunal for short) as the claim petition filed by the appellants was dismissed.

2. The case of the appellants was that on 10.5.1994 deceased Tahir Hussain was sweeping the ground in front of his shop near the edge of the road and was hit by a tractor which was being driven by respondent No.1 in a rash and negligent manner. The vehicle hit the deceased and also the diesel drum was set on fire due to which Tahir Hussain died of burns. His post mortem report gave the cause of death as shock and trauma due to 100% burns.

3. Learned counsel for the appellants in the above said facts of the case argued that the death resulted on account of the burn injuries received by the deceased but those burns were related to the negligence of respondent No.1 in driving the tractor because he had hit the deceased and the diesel drum had

caught fire. If respondent No.1 had been driving the vehicle carefully, he would not have hit the deceased.

4. Counsel for the appellants also referred to the statement of Dholu, PW3. He was the eye witness, who categorically stated that the tractor had hit Tahir Hussain who was sweeping in front of his shop and the diesel drum caught fire and burst resulting in extensive burn injuries to the deceased. It seems that while reading the statement of Dholu, PW3, counsel for the appellants was oblivious to the fact that the witness did not state that the drum containing diesel had 'caught' fire due to any kind of impact or friction but that the driver of the tractor had ignited the diesel in the drum with a match stick. Also if the tractor had hit the deceased on the edge of the road, there was no apparent reason for the diesel drum to have caught fire. Since it was stated by the eye witness that respondent No.1 had set fire to the diesel drum and if it actually so happened, there was intention on the part of respondent No.1 to kill Tahir Hussain and in such case it was murder and not accident. Rash and negligent driving of the tractor, if at all, was thus not the cause of death.

5. It was observed by the Tribunal that statement of Dholu as an eye witness was not recorded by the police and he also could not explain his presence at the spot. Even if it be taken that he was present, his evidence that the diesel in the drum was set on fire purposely, demolished the case of the appellants that their son died in a motor vehicle accident.

6. The Tribunal rightly dismissed the claim which calls for dismissal of the appeal as well and the same is dismissed accordingly.

(NAVITA SINGH)
JUDGE

09.01.2015

Ishwar

Whether to be referred to reporter: No