

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

FAO No.2280 of 1997

Date of decision: 2nd February, 2015

Suraj Parkash and another

... Appellants

Versus

Rajbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Gopi Chand, Advocate
for the appellants.

Mr. Sandeep Sharma, Advocate
for respondent No.1.

Service of respondent No.2 – dispensed with.

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

FATEH DEEP SINGH, J.

Faced with the ignominy of dismissal of their claim petition through Award dated 14.06.1996 of the learned Motor Accident Claims Tribunal, Rohtak, the unsuccessful claimants have come up in this appeal.

Heard Mr. Gopi Chand, Advocate for the claimant/appellants, Mr. Sandeep Sharma, Advocate on behalf of the driver/respondent No.1 and Mr. Vijay Kumar Garg, Advocate representing the insurer/respondent No.3.

The short issue involved is over the identity of the vehicle, whether it is bearing registration No.HYM-8153 or HYM-8155, which was involved in the accident on 18.05.1994 as a consequence of which Chandgi Ram received injuries (who subsequently on account of his death is being represented through his heirs). As has been argued, it is the stand of the insurer that the accident was caused by vehicle No.HYM-8153 which was not insured and that the vehicle bearing No.HYM-8155 has been falsely roped in being an insured vehicle of the insurer. Thus from this all, the evidence needs to be explored.

The own stand, as has been pointed out on behalf of the appellants, taken by the driver though accepts the accident but claims it was caused by some other vehicle and which is the ditto stand taken by the owner in his written reply, regarding which the Tribunal too has framed issue No.1. In the light of the contentions of learned counsel for the appellants, by now it is well settled law that it is the evidence led before the Tribunal that has to be gone into, reference of which can be taken from '**Virat Sama v. Mohan Lal and others**' 1994(106) PLR 82 and other catena of case law. Though, the injured Chandgi Ram as PW1 has failed to give the registration number of the vehicle but has identified the driver to be Rajbir Singh respondent. What is evident from the deposition of PW2 HC Ranjit Lal is that the FIR in question pertaining to this accident was registered against the driver respondent Rajbir son of Bhim Singh and the vehicle number has been depicted as HYM-8153. However, the eye-witness of this

accident PW3 Ranbir Singh son of Tek Chand shows that the registration number of the four-wheeler in question was HYW-8155 and what is categorically stated that this vehicle was being driven by respondent Rajbir. A categoric suggestion has been put to this witness that in fact the accident has taken place with vehicle bearing No.HYW-8153 however, the testimony of the driver of the offending vehicle RW1 Rajbir Singh son of Bhim Singh shows that he was driving vehicle bearing No.HYW-8155 owned by respondent Sanjay Kumar and claims that he was driving the vehicle on his side at a slow speed and the injured claimant fell down from the boggy (horse-cart) and suffered injuries. Thus, as has been pointed out on behalf of the appellants, this witness categorically accepts his presence as well as the fact that he was driver of vehicle No.HYW-8155 and he has proved on record the insurance policy of the vehicle as Ex.R2 with respondent M/s Oriental Insurance Company Ltd.

Though it is rightly argued on behalf of the respondents that the question of identity of the vehicle has not been satisfactorily proved but it has to be kept in mind that the Act is a welfare Statute for the betterment of the claimants where stricter principles of law and evidence Act are not applied and being summary procedure needs to be loosely interpreted. From this overall evidence, it clearly bears out as per the own stand of the driver, the vehicle certainly is proved to be bearing registration No.HYW-8155 and not HYM-8153 or HYM-8155. Though with the destruction of the original records, insurance policy tendered by the respondent Ex.R2 could not be made available for

better appreciation of the evidence but in view of the defence and specific plea of the driver that his vehicle did not cause any accident, the onus shifts upon him in terms of Section 101 of the Indian Evidence Act, 1872 to establish it so and which he has failed to do by any means. Thus, the conclusions drawn by the learned Tribunal on issue No.1 need to be reversed.

It is the own argument of learned counsel for the appellants that the claimant Chandgi Ram has not suffered any disability and as per the evidence by way of remnants it is only a simple fracture and thus, the claimant's inability to establish the likely expenses incurred on his treatment as well as loss of earnings at this advanced stage when he is around 70 years and keeping in view the object of the Act on the meagerness of the evidence it would suffice the interest of justice if by virtue of rickety and incoherent evidence a sum of ₹15,000 is awarded in lump sum to advance the cause of justice. Besides this, the claimants are also entitled to interest @7.5% p.a. on the amount of compensation from the date of filing of the claim petition till realization. All the respondents shall be jointly and severally liable to pay the same.

In the light of these discussions, the impugned Award is thus set aside allowing the instant appeal holding that driver, owner and insurer shall be jointly liable to pay the amount of compensation.

(FATEH DEEP SINGH)
JUDGE

February 2, 2015
rps