

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.649 of 1997 (O&M)
Date of Decision:29.09.2015

Smt. Karamjit and another

....Appellants

Versus

Boota Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Deepak Sabharwal, Advocate for the appellants.

Mr. Rajiv Sharma, Advocate for
Mr. K.D.S. Sodhi, Advocate for respondent No.1.

Mr. R.K. Bashamboo, Advocate for respondent No.3-
Oriental Insurance Company.

NAVITA SINGH, J.

1. The appellants had preferred a claim before Motor Accident Claims Tribunal, Jalandhar (Tribunal for short) for the death of Gulraj Masih son of the appellants but the petition was dismissed. Hence this appeal.
2. The appellants had pleaded that on 1.4.1994 at 9.30 pm, Gulraj Masih was going on a scooter towards Kartarpur when he was hit by truck No.PB-08E-8930, which was being reversed by respondent No.1 in a rash and negligent manner. The son of the appellants died on account of the injuries received in the accident on the way to the hospital. His age at that time was 19 years and he was a student and was also running a dairy from which his income was Rs.3000/- per month.
3. Counsel for the appellants argued that the Tribunal perversely held that the accident was not proved and that the averment in the petition was not true. It was submitted that the contradiction in the contents of the FIR and the statement of the eye witness was given undue importance by the Tribunal and also the presence of Sarwan Singh (AW2) was wrongly doubted.

4. Counsel for the appellants went on to argue that the accident had occurred on account of negligence of respondent No.1, who reversed the truck without trying to see whether there was any vehicle behind him or not and merely because this fact was not mentioned in the FIR, the Tribunal should not have come to a conclusion that the accident had not taken place as alleged.

5. Counsel for respondent No.1 contended that the Tribunal discussed the evidence and rightly held that the FIR was the first version which came soon after the accident and according to that the truck stood parked on the road without backlights and the deceased had hit the truck from behind. The author of the FIR was, however, not an eye witness as he admitted in his cross examination that the accident had not taken place in his presence. The eye witness was Sarwan Singh who came up with a different story that he had seen respondent No.1 reversing the truck and he hit the scooter which the deceased was driving. Why the name of Sarwan Singh and his version did not figure in the FIR, was not explained. The name of the other person Kulwant Singh named by Sarwan Singh nowhere figured in the FIR as eye witnesses. There was nothing to show that the statement of any of the said witnesses was recorded by the Investigating Officer.

6. Respondent No.1 stepped in the witness box and so did one Jai Kishan who appeared from the trust which owned the truck. Both the witnesses said that no accident as alleged had taken place. It is generally seen that in all cases the version of the claimant is believed and that of the respondents is not. In most of the cases, no evidence is led by the private respondents but here the driver and owner did come forward to make a statement and it would be seen that no effective cross examination was conducted on the driver i.e. respondent No.1. The suggestion put to him was that while driving the truck rashly and

negligently, he hit the scooter, which was denied. In all cases, it cannot be construed that the evidence of the respondents was not believable.

7. The Tribunal rightly rejected the claim of the appellants. The appeal is dismissed.

**(NAVITA SINGH)
JUDGE**

29.09.2015

Ishwar

Whether to be referred to reporter: Yes