

FAO No. 438 of 1998

-:1:-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 438 of 1998

Date of decision : 27th Feb. 2015

Major Singh

..... Petitioner

Versus

Angrej Singh and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present:- Mr. P.S.Brar, Advocate
for the appellant.

Mr. N.K.Verma, Sr. DAG, Punjab,
for respondents No. 2 and 3.

AMOL RATTAN SINGH, J.

This appeal has been filed by the claimant against the Award dated 24.07.1997, passed by the Id. Motor Accident Claims Tribunal, Faridkot, whereby the Tribunal dismissed the claim petition filed by the appellant, on the ground that it was the claimant-appellant himself, who was negligent in driving his jeep, which resulted in the accident and as such, no compensation could be awarded to him at the hands of the respondents, of whom respondents no. 2 and 3 were the

owners of the vehicle, driven by respondent No. 1.

2. The facts of the case as given in the Award of the learned Tribunal, are that on 17.08.1990, the appellant, accompanied by Meja Singh, Malook Singh, Sampuran Kaur @ Paro and Mohinder Kaur, were coming from Faridkot to their village Kaler, after admitting a lady of their village in hospital at Faridkot, for delivery of her child. When they were ½ a kilometer from their village, a company of three police vehicles, came from the side of “Talwandi Bhai” with the lights of the vehicles on full beam and with none of the three vehicles using a “dipper”. As per the claim set up by the appellant, the first two vehicles crossed the jeep safely, but all of a sudden, the third vehicle, which was a police mini truck, bearing registration No. PB-04-3044, driven by Angrej Singh (respondent No. 1), hit with the jeep of the appellant, on the drivers' side.

The impact turned the jeep turtle in the opposite direction and it hit a tree on the left side of the road. As a result of the accident, the right arm of the appellant, Major Singh, got amputated and the other occupants also received serious injuries. Thus, the appellant has become permanently handicapped and, as per the claim, there is no other bread earner in his family.

In view of the above claim, set up by the appellant, the petition before the MACT sought a total compensation of Rs. 9 lacs to the appellant, i.e. Rs. 8 lacs for the injury suffered by him and Rs. 1 lac

on account of damage to his jeep.

3. In the reply filed by the respondent No. 1 to the claim petition, before the MACT, he stated that a criminal case is pending against the appellant (claimant) Major Singh, for causing the accident and as such, he prayed that proceeding before the Tribunal be stayed “as nobody can take benefit of his own wrong”.

The reply further stated that the accident also resulted in injuries on the persons of police officials. As per the version given by the 1st respondent, i.e. Constable Angrej Singh, on that date, i.e. 17.08.1990, Nek Singh son of Parsa Singh, an Assistant Sub Inspector on the CIA Staff, Faridkot, along with other police officials, was coming back after making a search for terrorists in the area, traveling in Government Canter Vehicle bearing registration No. PB-04-3044, driven by the 1st respondent (herein), along with a Government car bearing registration No. PB-04-3056, driven by ASI Ajit Singh. ASI Nek Singh and HC Tarlochan Singh were sitting on the front seats of the Canter. When the police party reached about ½ a kilometer after crossing village Kaler, a jeep of white colour bearing registration No. DED-7037, driven very rashly and negligently came from the opposite site. The driver of the car who is stated to have been driving the car with “great caution and care”, saved the car. He (respondent No. 1) also tried to save the situation but the claimant struck his jeep on the rear tyre as a result whereof, the Canter

overturned and the occupants thereof sustained injuries.

As such, as per the stand of the respondents, the appellant-claimant did not receive injuries on account of “having struck with the canter, but his jeep being very fast, was not under his control and it struck with a tree”.

As per the reply of the respondents, it was subsequently also learnt that the appellant did not possess valid documents, i.e. registration certificate, driving licence and insurance certificate, to bring the jeep on the road.

4. The reply of respondents No. 2 and 3 herein, before the learned MACT, was also to the effect that the accident had taken place on account of the appellant's negligence and that ASI Nek Singh, HC Tarlochan Singh, Constables Charanjit Singh, Harbans Singh and the driver, Constable Angrej Singh (respondent No. 1), also received injuries, because of the accident.

5. The issues having been framed with regard to negligence and the amount of compensation to be awarded, if any, the appellant produced 13 witnesses including himself and also tendered into evidence his medico legal reports, before the Tribunal.

6. On the other hand, the respondents examined four witnesses, including the present respondent No. 1, and also tendered into evidence a copy of the judgment of the learned JMFC Faridkot, in the criminal case (FIR No. 74 dated 17.08.1990) registered against the

appellant in respect of offences committed under sections 279/337/338 IPC.

7. As per the said judgment, the appellant was convicted for the commission of the above said offences and was sentenced to one years' imprisonment but was ordered to be released on probation for the entire period.

A copy of the said judgment of the learned JMIC is available on the record of the learned Tribunal as Ex.'RX'.

8. Further, the respondents also relied upon the judgment of another (bench) of the Motor Accidents Claims Tribunal, by which the appellant, who was a respondent in that case, was held liable to pay Rs. 50,000/- to H.C. Tarlochan Singh, on account of injuries received by the latter.

8-A. The version given by the appellant and one of the witnesses produced by him, Malook Singh (PW-13 before the Tribunal), was disbelieved by the learned Tribunal on the following grounds:-

(i) That whereas the appellant as PW-12 stated that the accident took place at about 08:30 P.M. Malook Singh, PW-13, stated that it took place at about 09:30 P.M.

(ii) That Malook Singh deposed that he, along with other occupants of the Jeep, had also suffered injuries in the accident and the jeep had struck against a tree and though he had stated that he was medically examined, he did not bring

any proof in support thereof;

(iii)PW-13 also admitted that on the fateful day his wife had delivered a male child, though denying the suggestion that he and the other occupants of the jeep were in a drunken condition.

(iv)On the other hand, HC Tarlochan Singh (RW-1) testified that he was awarded Rs. 50,000/- as compensation from Major Singh and neither he, nor other witnesses on behalf of the respondents, were cross-examined on material points with regard to the manner of accident.

(v)That an FIR was got recorded by Nek Singh (RW) and the appellant was convicted by the trial Court vide its judgment Ex.'RX'.

(vi)That the appellant was brought to the hospital by the respondents and since he had already lost his arm at the spot itself, had he not been so brought, he would have died at the spot.

9. Having been held the guilty of negligence, the issue of any compensation to be paid to him was not gone into by the Tribunal and the claim petition was dismissed, as already noted hereinabove.

10. Learned counsel appearing for the appellant, apart from reiterating the version of the accident, as given by the appellant, relied upon a judgment of the hon'ble Supreme Court in **Syed Askari Hadi**

Ali Augustine Imam & Anr. Vs. State (Delhi Administration) & another 2009 (5) SCC 5 528, to submit that if the judgment of a Civil Court is not binding on a criminal Court, a judgment of a criminal Court would certainly not be binding on a civil Court. Learned counsel specifically referred to para 11 of the said judgment, in this regard, though, eventually, in that case the Supreme Court had refused to exercise jurisdiction to interfere with the judgment of the Delhi High Court, (in a criminal revision which had been challenged before the Apex Court).

Mr. P.S.Brar, learned counsel for the appellant, also relied upon a Division Bench judgment of the Kerala High Court in **Francis and others Vs. Jessy and another, 2005 (2) RCR (Civil) 134**, wherein, citing the judgment in **Premshankar Vs. I.G. of Police, 2002 (3) KLT 389 (SC)**, it was held that so far as the civil court is concerned, the judgment of the criminal court, convicting a person of the crime, is not proof of the fact as such.

11. Mr. N.K.Verma, learned Senior DAG appearing for the State, on the other hand, referred to, while defending the appeal, the reasoning given by the learned Tribunal and specifically pointed out to submit that even before the Tribunal, it was admitted by the counsel for the appellant-claimant that the case was one of contributory negligence on the part of the appellant, as also the driver of the Canter, as both vehicles came from the opposite side and as such, it does not lie in the

mouth of the appellant to state that respondent No. 1 was the one who was actually negligent in driving.

He further submitted that as noticed by the learned Tribunal, no plea of contributory negligence has been taken in the claim petition and there were material contradictions in the testimonies of the appellant and Malook Singh, inasmuch as the appellant stated that the accident took place at about 08:30 P.M. whereas Malook Singh stated that it took place at 09:30 P.M. and the latter had also admitted that the jeep had struck against a tree.

He further pointed to the fact that Malook Singh had admitted that his wife had delivered a male child, though denied that occupants of the jeep were in a drunken condition were of the same.

Mr. Verma next pointed to the fact that once the appellant had been found liable in a claim petition filed by one of the injured police officials, i.e. Tarlok Singh and, in fact, he (appellant), had been ordered to pay Rs. 50,000/- as compensation to the said Tarlochan Singh, the question of respondent No. 1 being held guilty of negligence, does not arise.

12. Having heard learned counsel for the parties and having gone through the pleadings and the record in detail, one thing which does emerge is that on one count at least, i.e. the factum of Malook Singhs' wife having delivered a child on the date of the accident, does not appear to be a correct finding by the Tribunal, as a perusal of the

record shows that, in his deposition, PW-13 specifically stated that though they had gone to Faridkot to take his wife, who was likely to deliver a child, they had returned to the village because the “lady doctor had told us that delivery was not expected immediately”. Though, in cross-examination, this witness stated, obviously in reply to a query, that his wife delivered a male child, it does not flow therefrom that the child had been born on the date of the accident. Even ignoring both the statements with regard to child's delivery, in view of the possible contradiction therein, (even in the face of his categorical assertion in examination-in-chief that his wife and his brother's wife were left at Faridkot, and all the others returned back to the village), however, certainly no inference can be taken that the appellant and these witnesses were under the influence of liquor.

Therefore, any inference, though not specifically taken by the learned Tribunal, that the appellant and the occupants of the vehicle were in a drunken condition, does not flow from the statement of PW-13, especially as it is further seen that, in fact, even in the testimony of Dr. Hakumat Rai Tejpal, Associate Professor of Forensic Medicines, Government Medical College, Amritsar (at the time of his deposition), who appeared as PW-10 before the Tribunal and stated that he had examined the appellant on 17.08.1990 at 11:45 P.M., not a word is stated with regard to the appellant being in any inebriated condition, nor is such finding recorded in the 'MLR' of the appellant, which is on

record of the Tribunal as Ex.'PL'.

In fact, no such suggestion was even put to this witness (Doctor) that the appellant was under the influence of liquor.

13. As regards the findings of the learned JMIC, holding the appellant guilty of negligent driving and thereby convicting him of the offences punishable under Sections 279, 337 and 338 of the Indian Penal Code, a perusal of the said judgment (Ex.'R6' before the Tribunal), shows that the learned JMIC went wholly with the testimony of HC Tarlochan Singh and PW6 Major Singh (a different Major Singh to the present appellant), who stated that they were traveling in the police vehicles and it was the accused who was negligent in causing the accident.

Though the parameters of conviction in a criminal case and holding a person negligent in a summary trial before the Motor Accident Claims Tribunal are wholly different, however, since the judgment of the learned trial Court in the criminal case against the appellant was relied upon by the present defendants, and has also been relied upon by the Tribunal as one of the factors pointing to the negligence of the appellant, it is necessary to refer to the judgment of the trial Court, in the criminal case.

Strangely, the trial Court has referred to a complaint made by “one Amar Singh” on 28.08.1990, to the Illaqa Magistrate, shown to be Ex.'DA/5' in the criminal case, to state that the said application was

made 11 days after the accident and was not pursued, and further does not give the name of the driver of the Canter nor the registration of the police vehicle, and that the said complaint was dismissed for want of prosecution.

It is necessary to notice that the said application, which is also on the record of the Tribunal, was actually moved by the father of the appellant, alleging that the police had acted in an inhuman manner, in not allowing photographs to be taken of the place of occurrence and in moving the vehicles from their original positions overnight, while all the relatives of the appellant were busy looking after the injured. Allegations of a bribe demanded were also made in the application addressed by the appellant's father, to the Director General of Police, Punjab, the D.C. Faridkot, the S.S.P. Faridkot and the learned Illaqa Magistrate.

Further, a photostat copy of a telegram dated 20.08.1990, attested to by the Assistant Post Master, Faridkot, on 21.08.1990, sent by the appellant's father to the Governor of Punjab, giving the same particulars, as given in the complaint/representation made to the aforesaid officers, is also present in the record of the Tribunal.

14. Coming to the reliance placed by the Tribunal on the order passed in a claim petition filed by H.C.Tarlochan Singh, one of the injured police personnel traveling in the police vehicle with which the appellants' jeep met with an accident, by which the said claimant, i.e.

H.C. Tarlochan Singh, had been awarded a compensation of Rs. 50,000/- payable by the present appellant; it is very strange that the Tribunal even placed any reliance on the the order passed on 24.04.1993, in the claim petition filed by HC Tarlochan Singh, because a perusal of the said order, which has been placed on record in the present appeal and has not been refuted by the respondents, shows that the Award in favour of HC Tarlochan Singh was passed in Lok Adalat, by way of a settlement arrived at between the claimant (Tarlochan Singh) and the Insurance Company that had insured the jeep of the present appellant, Major Singh. The said order specifically states that the settlement was by way of a compromise signed between the claimant and the insurance company. Obviously, therefore, no adjudication on the merits of either any negligence proved against either party, nor even with regard to the compensation claimed by Tarlochan Singh, was made by the Lok Adalat, which it in any case could not have done. In short, there was no adjudication on negligence against the present appellant, in that claim petition. Hence, the Tribunal, in the Award under challenge, wholly and completely erred in placing reliance on an order/award, where there was no adjudication on merits, against the present appellant.

15. Next, it is seen that, though the said documents are not on the record of the trial Court as numbered exhibits, however, along with the MLR (Ex.'PL') of the appellant, the MLRs in respect of the injuries

received by Sampuran Kaur, Malook Singh and Meja Singh are on record, shown as Marks 'A', 'B' and 'C', all dated 17.08.1990. The said medico-legal reports are of approximately the same time as is the MLR of the appellant, showing therein injuries received by these persons who, as per the statement of the appellant before the Tribunal, and as stated even in the claim petition itself, were accompanying him in the jeep, at the time of the accident. Though the injuries do not appear to be of any serious nature, however, the factum of the injuries having been received by these persons, who were also traveling in the jeep, obviously shows that they were present with him, and as such, Malook Singhs' testimony obviously cannot be disregarded.

16. Coming next to the evidence led by the respondents; HC Tarlochan Singh, Angrej Singh, Sub-Inspector Nek Singh and DSP Jhilmal Singh (Sub Inspector/SHO of P.S.Sadar Faridkot, at the time of the accident), all appeared as witnesses and all of them, with the exception of Jhilmal Singh, deposed in consonance with the stand of the respondents, that the jeep driven by the appellant was coming at an extremely high speed in a zig-zag manner, which struck against the Canter vehicle of the police. Respondent No. 1, in cross-examination, stated that the jeep driven by the appellant had crossed the Canter vehicle immediately ahead and was going to strike that vehicle also, but eventually struck the rear side of the vehicle driven by respondent no. 1.

Jhilmal Singh (RW-4) deposed that he had reached the spot after the accident and the police officials traveling in the police vehicle had made their statements before him. However, he also held the appellant responsible for the accident, on the basis of the said statements, and had registered the criminal case against him.

17. After having considered all that has been discussed above, I find it rather strange that though one police vehicle was directly involved in the accident and two other police vehicles were traveling in front and obviously a serious accident took place, no photographs of the site were taken, as nothing with regard to such photographs has been discussed even in the judgment of the learned trial Court trying the criminal case against the appellant. A perusal of the said judgment (Ex. 'RX' before the MACT), shows that a rough site plan was prepared, but no reference to any photographs as evidence has been made.

On the other hand, RW3 (SI Nek Singh) denied knowledge of whether any photographs had been taken or not and stated that the Investigating Officer may be aware of the fact; whereas the DSP (then SI) Jhilmal Singh made no reference to photographs, though no question seems to have been put to him with regard to the same, in the cross-examination.

On the other hand, the appellant's father, Amar Singh, made a complaint not just to various officers, but also to the hon'ble

Governor of Punjab, as also to the learned Illaqa Magistrate, Faridkot and subsequently also filed a complaint, though he did not follow it up and the same was dismissed for want of prosecution. Of course, an inference in that regard would have to be taken against the appellant.

18. However, it cannot also be lost sight of, that no evidence, whatsoever, came on record, even as per a perusal of the judgment of the trial Court in the criminal case registered against the appellant, as to what damage was caused to the police vehicle, or even as to what part of the police vehicle had been damaged, as no such discussion is discernable from the judgment of the learned JMIC, Ex.'RX', and nor were any mechanic etc. examined by the respondents before the learned MACT, in the case out of which this appeal arises.

On the other hand, the appellant produced Pws 5 to 9, who stated that they had either repaired the jeep in question or had supplied repair material etcetra; and one of them identified the jeep standing outside the Court. As per the said statements of all these witnesses, repairs had been conducted on the seats and chassis and mud guards of the jeep, though two witnesses (PW5 and PW9) did not specify the parts repaired.

19. In view of all the above facts, this Court would draw inference against the respondents, that the version given by the appellant, to the extent that the police vehicles coming from the opposite direction had not dipped their lights, which was a factor

leading to the accident, to which a cover up was given by ensuring that no photographs were taken. In fact, it needs to be noticed that though nothing further was said, the learned MACT also referred to a contention, that the flood lights of the police vehicles were on. However, even though such statements would only be claims and counter claims, the fact that no repair work was relied upon, done on the police vehicles, to show the point and extent of impact, and still further, since complaints were made by the appellants' father with regard to the alleged high handedness of the police in twisting the case around, by allegedly even changing the directions of the vehicles overnight, when his family was obviously more concerned about getting treatment to the appellant, who had lost his arm at the site of the accident itself, would be an inference to be drawn, in the opinion of this Court, against the respondents. Also, the fact that the FIR was registered at the instance of the police officials, and protection of members of the force is a real possibility which cannot be discounted in any manner, hence, in my view, benefit needs to be given to the appellant.

Though otherwise, in fact, this Court actually may have been inclined to hold that it was not the appellant but respondent No. 1 who was guilty of negligence in driving, however, in the view of the entire circumstances as enumerated hereinabove, I am of the opinion that the finding of the Tribunal, on issue No. 1, i.e. negligence of the

appellant, in proceedings which are summary in nature, deserves to be set aside and accordingly the impugned Award is so set aside.

It is held that respondent No. 1 is also partly negligent in causing the accident and that it was a case of contributory negligence.

However, though the prayer in the present appeal is also for grant of a compensation of Rs. 9 lacs to the appellant, since no finding whatsoever was recorded by the Tribunal on issue No. 2, i.e. the amount of compensation that the appellant is entitled to, the matter is remitted to the Tribunal, which would, as per the evidence led before it, adjudicate upon issue No. 2 and determine the amount of compensation to be awarded to the appellant, keeping in view the fact that this Court has held both him and respondent No. 1 guilty of contributory negligence, in causing the accident.

The appeal is partly allowed as above, with no orders as to costs.

27th Feb.2015

amit rana

(AMOL RATTAN SINGH)
JUDGE