

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

**FAO NO.748 OF 2003 (O&M)
DECIDED ON : 15.05.2015**

Sunita Devi and another

...Appellants

versus

Sunder and another

...Respondents

CORAM : HON'BLE MR. JUSTICE K.C . PURI.

Present : Mr. S. S. Mor, Advocate,
for the appellants.

Mr. Sachin Mittal, Advocate,
for respondent No.1.

K. C. PURI, J.

CM NO. 3242-CII OF 2003

There is delay of one day in filing the appeal. The same stands condoned for the reasons mentioned in the application.

MAIN CASE (O&M)

Sunita Devi (legal heirs of respondent No.2) and Ishar Singh-driver have directed this appeal against the Award dated 08.11.2002 passed by Shri G.S.Kotla, Motor Accident Claims Tribunal, Gurgaon, vide which, the claim petition was accepted

and a sum of ₹3,25,000/- was allowed as compensation and respondents No.1 to 4 were jointly and severally held liable to pay the amount of compensation.

Briefly stated, Sunder-claimant filed petition under Section 166 of the Motor Vehicle Act, claiming compensation to the tune of ₹5 lacs on account of injuries sustained by him in a motor vehicular accident. It was pleaded in the petition that on 29.11.2002, the claimant along with his sister Vijay Devi and father Siri Chand was coming on scooter bearing registration No. HR-26-0314 from village Deodi to his village Jori Kalan. When he reached near Kamalpur bridge, one tanker bearing registration No. HR-21-5657 came from Bawal side. The same was driven by respondent No.1 in a rash and negligent manner and at a high speed. The said tanker hit the scooter of the claimant due to which the claimant along with others fell down. The claimant sustained serious injuries and he was shifted to Civil Hospital, Rewari. Keeping in view his serious condition, he was referred to Safdarjung Hospital, New Delhi. The claimant remained admitted in said hospital for 13 days. Thereafter, he was shifted to Kalyani Hospital, where he remained admitted for about a month. His treatment is still going on. The claimant is aged about 21 years and was doing the business of agriculture and milk dairy. It was further pleaded that now he has become permanent disable and is unable to do the work of agriculture and milk dairy. It was further pleaded that he spent huge amount upon his treatment.

It was further pleaded that the accident had taken place due to rash and negligent driving of the tanker in question by respondent No.1.

The claim petition was contested by the respondents. Respondent No.1 filed written statement taking preliminary objection that the claimant himself was responsible for the accident as the accident had taken place due to his fault. It was further pleaded that the claimant was driving his scooter along with two pillion riders and as such, he had violated the terms of the Motor Vehicles Act. It was further pleaded that no person can be allowed to take benefit of his own wrong. It was further prayed that the claim petition deserves to be dismissed.

On merits, it was pleaded that the FIR was got lodged by the claimant in connivance with the police and in fact respondent No.1 was coming from Rewari side on his tanker bearing No. HR-21-5657. The claimant came on scooter from the back side having two pillion riders. He was driving the scooter at a high speed. One bus of SRTC came from the opposite side. There was no road divider and as such, the tanker driver applied brake to slow down the speed of the tanker but the claimant did not apply brake and it hit the tanker from the back side.

Respondent No.4 being legal heirs of respondent No.2, who has since died, filed separate written statement taking preliminary objection that the petition is bad for non-joinder and mis-joinder of necessary parties; that the claimant has no locus

standi and cause of action. It was further pleaded that the respondent was falsely implicated just to grab compensation in collusion with police and respondent No.1. It was further pleaded that no accident took place.

From the pleadings of parties, following issues were framed :-

- 1) Whether the petitioner suffered injuries due to rash and negligent driving of tanker No. HR-21-5657 by Ishar Singh respondent No.1 ? OPP
- 2) To what amount of compensation, the petitioner is entitled to and from whom ? OPP
- 3) Relief.

The claimant in order to prove his case, the claimant himself appeared in the witness box as PW-4 and examined Dr. Subhash as PW-1, HC Ram Chander as PW-2, Dr. Subhash Khanna as PW-3 and closed the evidence.

On the other hand, Ishar Singh respondent No.1 appeared as RW-1 and closed the evidence.

The learned Tribunal, after appraisal of the evidence, accepted the claim petition and awarded a sum of ₹3,25,000/- as compensation.

Learned counsel for the appellant has challenged the impugned Award on the ground that negligence against the driver of offending tanker No. HR-21-5657 has not been proved. In the

alternative, it is argued that it is a case of contributory negligence as the claimant was driving the scooter by having two pillion riders and he struck the scooter against the tanker from the back side.

I have heard learned counsel for the parties and have gone through the records of the case.

The main contention raised by learned counsel for the appellant is that the accident has not taken place in the manner as alleged by the claimant. However, the said contention is meritless. The claimant is an injured witness and he received serious injuries in the accident and his testimony has to be accepted. He has categorically stated that the tanker in question struck against the back side of his scooter. He further deposed that he was driving the scooter at a slow speed. On the other hand, the appellant has placed reliance upon statement of RW-1 Ishar Singh who has stated that the scooter has struck against the back side of the tanker in question. The bald statement made by Ishar Singh-RW-1 has rightly been discarded by the Tribunal. Mere fact that there were two pillion riders is not a ground to discard the case of the claimant. There is nothing on record to show that the claimant was driving the vehicle at a high speed. Otherwise also, the factum of accident has been admitted by respondent No.1 in his written statement. The findings of the Tribunal that the accident has taken place due to rash and negligent driving of tanker No. HR-21-5657 does not call for any

interference. There is nothing on file that scooter struck from the backside and as such, no case of contributory negligence is made out.

No other point has been urged before me.

In view of the above discussion, the appeal is without any merit and the same stands dismissed. However, while parting with the judgment, it is made clear that appeal has been preferred by the legal heirs of respondent No.2-owner of the offending vehicle. In view of Section 50 of the Code of Civil Procedure, the legal heirs shall be liable to the extent of property inherited by them from respondent No.2. So, the appeal stands dismissed. However, in view of the peculiar circumstances of the case, the parties are left to bear their own costs so far as the present appeal is concerned.

There is an application for stay of operation of the impugned judgment. Since, the main appeal has been dismissed, so the application has become infructuous.

The amount of ₹25,000/- deposited at the time of filing the appeal be sent to the Tribunal, for further payment to the claimant.

MAY 15, 2015
shalini

(K. C. PURI)
JUDGE