

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

**FAO No.1921 of 2009 (O&M)
Date of decision: 09.12.2015**

Nirmal Singh and another

....Appellants

Versus

Smt. Babita and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Bhateja, Advocate
for the appellants.

Mr. Jitender Dhanda, Advocate
for the respondents.

RITU BAHRI J. (Oral)

The present appeal has been filed by the appellant-driver of the offending vehicle bearing No.HR-37-4139, against the award dated 21.12.2007, passed by Motor Accident Claims Tribunal, Fetehabad (hereinafter referred to as 'the Tribunal'), whereby the claimants-respondents have been awarded a compensation of Rs.8,01,880/- in case No.90-MACT of 2006 titled as Smt. Babita and others vs Nirmal Singh, etc., on account of the death of Ishwar Singh in a motor vehicular accident, which took place on 19.10.2005.

On 19.10.2005, Ishwar Singh (since deceased) was

coming to Tohana from village Dobi via village Kanhari side on a motorcycle bearing registration No.HR-23-B-9440, which was being driven by him at a moderate speed and when the motorcycle reached near Power House Tohana-Hisar Road, Tohana, District Fatehabad, an offending vehicle bearing registration No.HR-37-4139, was standing in the middle of the road without any back light, parking light and side indicators on having the from portion towards Tohana side and due to the lights off, vehicle was coming from the opposite direction, the deceased could not see the vehicle standing in the middle of the road and, therefore, the motorcyclist struck against the vehicle bearing registration No.HR-37-4139. As a result of which, the deceased along with his motorcycle fell down on the road and died at the spot due to grievous injuries sustained by him. The accident was witnessed by one Jeet Bahadur son of Kapur Singh, the brother of the deceased who was waiting for the deceased at a hotel near the place of occurrence.

In this regard, FIR No.271 dated 20.10.2005, under Sections 283 and 304-A IPC, in respect of the accident in question, was got registered at Police Station City Tohana.

Consequently, the claimants-respondents filed a claim petition before the Tribunal.

Before the Tribunal, Jeet Bahadur (eye-witness) appeared as PW-3 and tendered his affidavit Ex.P-3, in which he has stated that the offending vehicle was standing in the middle of

the road without any backlight, parking light and side indicators on having the front portion towards Tohana side and due to which, the vehicle coming from the opposite direction could not see the offending vehicle standing in the middle of the road and struck against it. As a result of which, the deceased fell down on the road and died at the spot. He further stated that he had seen the accident as he was waiting for the deceased in a nearby hotel.

ASI Ram Singh (retired) appeared as PW-5 and stated that he has investigated the case bearing FIR No.271 dated 20.10.2005, Police Station City Tohana and prepared the site plan Ex.PW-5/A.

Ultimately on the basis of the evidence led by the parties, the Tribunal has come to the conclusion that the accident in question was occurred due to the rash and negligent driving by respondent No.1 and the Tribunal has returned the finding on Issue No.1 in favour of the claimants-respondents.

The claim petition was accepted by the Tribunal and a sum of Rs.8,01,880/- was awarded as compensation on account of death of Ishwar Singh.

The monthly income of the deceased was taken as Rs.6,625/- per month. Out of which, 1/3rd amount was deducted towards personal expenses. The monthly dependency of the claimants, thus, came to Rs.4,416/- per month and the annual dependency comes to Rs.52,992/-. Ishwar Singh (deceased) was

38 years of age at the time of the accident/death and the multiplier of 15 was applied. Thus, the claimants were found entitled to compensation of Rs.7,94,880/-. In addition to it, further compensation of Rs.5,000/- was awarded on account of loss of consortium. Hence, the claimants-respondents were found entitled to total compensation of Rs.8,01,880/-.

Learned counsel for the appellants has argued that the finding on Issue No.1 has not rightly been recorded by the Tribunal. The offending vehicle was standing on the kacha path of the pucca road.

This argument of learned counsel for the appellants has to be examined as per the deposition of PW-5-ASI Ram Singh who had investigated the case bearing FIR No.271 dated 20.10.2005, Police Station City Tohana and prepared the site plan Ex.PW-5/A. A perusal of the site plan prepared by him shows that the vehicle was parked on the road and it was not on kacha path of the pucca road. In his cross-examination, he has stated that he had recorded the statement of the complainant-Jeet Bahadur at midnight. He specifically denied that the vehicle was parked on the kacha path of the pucca road. After registration of the FIR, presentation of the challan and the final report under Section 173 Cr.P.C., Ex.P-8, the driver of the offending vehicle was facing the trial. RW-1-Nirmal Singh in his cross-examination has admitted that he was facing the trial.

The Tribunal has rightly recorded the finding on Issue No.1 that respondent No.1 had parked his vehicle bearing No.HR-37-4139, in the middle of the road without any backlight, parking light and side indicators.

So, keeping in view the above facts and circumstances, no ground for interference is made out and thus, the appeal filed by the appellant i.e. driver of the offending vehicle bearing No.HR-37-4139, is hereby dismissed.

(RITU BAHRI)
JUDGE

09.12.2015

yakub