

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

**FAO No. 1396 of 2011 (O&M)
Decided on : 18.03.2015**

Sunita and Another

...Appellants

Versus

Narender and Others

...Respondents

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

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

Present : Mr. Ashwani Gaur, Advocate
for the appellants.

Mr. Shamsher Singh, Advocate for
Mr. Harkesh Manuja, Advocate
for respondent Nos. 1 and 2.

K. C. PURI, J.

Appellants namely Sunita widow of late Shri Ashok Kumar and Vansh (minor) son of late Shri Ashok Kumar, have directed the appeal against the award dated 09.11.2010, passed by Ms. Vivek Bharti, Motor Accident Claims Tribunal, Sonapat, vide which the claim petition preferred by the appellants and one Smt. Lichmi Devi, was dismissed.

Briefly stated, claimants including widow, minor son and mother of deceased-Ashok Kumar, filed petition under Section 166 of the Motor Vehicles Act (hereinafter mentioned 'the Act') with the averments that on 17.11.2005, Ashok Kumar, husband of claimant-Sunita, was going from village Nahri to village Jolly on motor-cycle bearing registration No. HR-11B-1181. Respondent

No. 1-Narender son of Harbans Lal, while driving truck bearing registration No. HR-46A-4424 struck the motor-cycle. Satbir son of Chhotan told the claimant No. 1-Sunita that on 17.11.2005, when he was coming from his fields, he saw one motor-cycle bearing registration No. HR-11B-1181 lying on the Kachcha portion of the road having been hit by a truck bearing registration No. HR-46A-4424 and the offending truck was lying parked in the middle of the road. He also disclosed that the driver on enquiry told his name as Narender son of Harbans Lal, resident of Sonepat. He further told Satbir that the accident had been caused by him and he was shifting the injured to the hospital. In the meantime, one jeep bearing registration No. HR-06-3709 also came there being driven by Dalbir Singh. Satbir Singh and Dalbir Singh put injured Ashok Kumar in side the truck and thereafter they left for their destination. When both the persons had left the spot, respondent No. 1-Narender threw the injured from his truck in serious condition and drove away the truck from the spot. Ashok Kumar succumbed to the injuries. After some time, some of the villagers of village Kanwali and village Nahri also narrated these facts to the claimant No. 1-Sunita. On the statement of Ranbir Singh son of Maman Singh, resident of village Jolly, a case was registered against an unknown person under Sections 279 and 304-A of the Indian Penal Code in Police Station Kharkhoda. Police did not make further investigation in the case even after submissions of affidavits by Satbir and Dalbir Singh on 09.12.2006 and 09.01.2007 respectively and complainant had filed a complaint case. The deceased was 23 years of age and was earning Rs. 6,000/- per month from salary and Rs. 15,000/- from milk dairy and agriculture products. The

claimants i.e. the widow, minor son and mother were dependant upon the income of the deceased. A sum of Rs. 25 lacs was claimed as compensation alongwith interest.

On put to notice, respondent No. 1 filed written statement disputing the claim of the petitioners. Factum and manner of the accident had been denied and further pleaded that on the day of the accident, he was not driver of the offending vehicle. A false case has been registered against him. At the time of accident, one Rajesh Kumar, resident of village Kishora, District Sonapat, was the registered owner of the vehicle, who later on transferred the said vehicle to Mohit Gandhi on 08.03.2006. Respondent No. 1 has no concern with the offending vehicle.

Respondent No. 1-A (Mohit Gandhi) filed written statement pleading that on 17.11.2005, neither he was owner of the offending vehicle nor the respondent No. 1 was his driver. He purchased the offending vehicle on 08.02.2006 from Rajesh Kumar son of Chandgi Ram, thus, he has no concern with the accident in question. The name of respondent No. 1 (Narender) does not mention in the F.I.R. and the proceedings of the F.I.R. was consigned as untraced by the Illaqa Magistrate on 28.03.2006.

Respondent No. 1-B (Rajesh Kumar) filed written statement raising a number of preliminary objections as to maintainability and special costs. It is alleged that he has sold the truck to Suraj Parkash son of Atam Parkash, resident of Sonapat, on 01.04.2002, who further sold the same to Mohit on 06.03.2006. On the date of accident, the possession of the truck was with Suraj Parkash and as such, he is not liable to pay any compensation.

Respondent No. 2 (New India Assurance Company, Sonapat) also filed written statement raising a number of preliminary objections. It is alleged that the provisions of the Motor Vehicle Act have not been complied with. Respondent No. 1 (Narender) was not holding a valid and effective driving licence at the time of the accident. The LRs of the deceased are not entitled to any compensation as they are already getting the amount of whole salary till the date of superannuation. No accident took place with truck bearing registration No. HR-46A-4424. The amount of compensation claimed by the petitioners is excessive, exorbitant and without any basis. Denying all other averments, prayer for dismissal of claim petition was made.

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

1. Whether the accident in question resulting into death of Ashok Kumar took place on account of rash and negligent driving of truck bearing No. HR-46-A-4424 by respondent No. 1, as alleged? OPP
2. Whether the petitioners are entitled to get compensation? If so, to what amount and from whom? OPP.
3. Whether the respondent No. 1 was not holding a valid and effective driving licence at the time of the accident and violated the terms and conditions of insurance policy as alleged? If so, to what effect? OPR-3
4. Relief.

The claimants, in order to prove their case, examined Kulwant Singh, Clerk, Office of Secretary RTA, Sonapat as PW-1, Naresh Kumar,

Head Constable as PW-2, Satbir as PW-3, Ranbir Singh as PW-4, Hari Prem Dahiya as PW-5, Sunita-claimant as PW-6 and Inderjeet, Additional Criminal Ahlmad as PW-7.

On the other hand, the respondents examined Narender-respondent No. 1 as RW-1, Rajesh-respondent No. 1-B as RW-2, Suraj Parkash as RW-3 and Kulwant Singh, Clerk as RW-4 and after tendering certain documents, closed their evidence.

The learned Tribunal decided the issue No. 1 partly in favour of the claimants and partly against them. It was held that deceased-Ashok Kumar died in a motor vehicular accident but the claimants have failed to prove that accident had taken place with the truck bearing registration No. HR-46A-4424. Issue No. 2 was decided against the claimants and issue No. 3 was observed by the Tribunal that the same has become redundant in view of the findings recorded on issue No. 1 against the petitioners. Consequently, the claim petition was dismissed vide judgment dated 09.11.2010, passed by Ms. Vivek Bharti, Motor Accident Claims Tribunal, Sonapat.

Feeling dissatisfied with the above said award, the claimants namely Sunita widow of late Shri Ashok Kumar and Vansh (minor) son of late Shri Ashok Kumar, have preferred the present appeal.

Learned counsel for appellants on 11.11.2014, had taken a stand that police had not made proper investigation and a private complaint was filed. Learned counsel for the appellants sought time to produce the order urged in the complaint. Today, during the course of arguments, learned counsel for the appellants has placed on record the statement

made by the complainant before the Criminal Court and on the basis of which, it is stated at the bar that a private complaint under Sections 279 and 304-A of the Indian Penal Code has been dismissed as withdrawn.

Learned counsel for the appellants has submitted that the learned Tribunal has returned finding on issue No. 1 against the appellants on flimsy grounds. The testimony of Satbir (PW-3) and Ranbir Singh (PW-4) has not been appreciated in the right perspective. PW-3-Satbir has categorically stated that when he reached at the spot, he found the injured alongwith motor-cycle. He has also stated that truck bearing registration No. HR-46A-4424 was also standing there and on enquiry, Narender son of Harbans Lal has told that he is the driver and accident had been caused by him while driving the vehicle rashly and negligently. PW-4-Ranbir Singh has also stated that Satbir Singh has disclosed him that accident had been caused by Narender while driving truck bearing registration No. HR-46A-4424. So, there was no reason for discarding the testimony of these witnesses.

On the other hand, learned counsel for respondent No. 4-New India Assurance Company, Sonapat, has submitted that present petition has been filed after three years of occurrence simply to get the compensation on false grounds. No accident had taken place with the offending vehicle.

I have carefully considered the submissions made by both the parties and have gone through the records of case.

The first and foremost question, which required to be proved by the claimants is that the accident had taken place with truck bearing

registration No. HR-46A-4424. The learned Tribunal after appreciating the evidence reached to the conclusion that claimants have failed to prove that accident had taken place due to use of truck bearing registration No. HR-46A-4424.

In this case, occurrence had taken place on 17.11.2005. The FIR was registered on the next day on the basis of statement of Ranbir Singh, who has stated that one unknown vehicle has caused the accident by rash and negligent driving and the name of offending vehicle has not been mentioned.

The police has investigated the case and proceedings of untraced report was resorted by the police. It is also not disputed during the course of arguments that private complaint was filed by the complainant and as per the statement made by the learned counsel for appellants today in the Court, the said complaint was dismissed as withdrawn as having been compromised. According to the allegations made in the claim petition, PW-3 (Satbir Singh) submitted the affidavit to the police on 09.12.2006 i.e. after one year of the occurrence. According to PW-3 (Satbir Singh), he has disclosed the factum of accident to the claimant after one and a half or two months after the occurrence but in spite of that the claimants have not reported that fact to the police complaining that offending vehicle is involved in the occurrence. No doubt, the investigation of the police regarding untraced report in respect of offending vehicle is not binding, but the fact remains that complainant has to prove the fact that accident has taken place due to use of offending vehicle, even according to the testimony of Satbir Singh (PW-3), he was at

a distance of one and a half kilometer at the time of accident. So, he is not an eye-witness. The allegations regarding extra judicial confession made by Narender regarding involvement cannot be accepted. In case, Narender has actually made confession, in that case, Satbir Singh must have disclosed that fact to the police.

Some time, the claimants even chose their known person to array them as accused in a criminal case so as to get compensation. In case, Narender has caused the accident, in that case private complaint under Sections 279 and 304-A of the Indian Penal Code would not have been withdrawn more so when the claim petition preferred by the claimants is still subjudice. So, the finding on issue No. 1, returned by the Tribunal to the effect that claimants have failed to prove that accident had taken place due to use of the offending vehicle does not call for any interference.

In view of the peculiar facts and circumstances of case, the present appeal is without any merit and the same stands dismissed.

March 18, 2015
dk kamra

(K.C. PURI)
JUDGE