

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

FAO No.3887 of 2010

Date of Decision: January 5, 2015

Mrs. Manju Khurana and others

...Appellants

Versus

Nagic Ahmad @ Nafis Ahmad and others

...Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Ekta Thakur, Advocate
for the appellants.

Respondents No.1,2,4 and 5-ex-parte.

Mr. Harsh Aggarwal, Advocate
for respondent No.3.

Mr. Suvir Dewan, Advocate
for respondent No.6.

FATEH DEEP SINGH, J.

The learned Motor Accident Claims Tribunal, Kurukshetra through a common award dated 29.1.2005 disposed off three conjoint matters all preferred under Section 166 read with Section 163-A of the Motor Vehicle Act, 1988 (in short, 'the Act'). The present appeal pertains to MACT Case No.36 of 2004 titled as Manju Khurana and others vs. Nagic Ahmad alias Nafis Ahmad and others, whereby, claim of the legal representatives of the deceased Narinder Khurana along with others stood dismissed with costs.

The brief recapitulation of the factual aspects is very much essential for better understanding. It was on 21.5.1999 deceased Narinder Khurana along with Jitender Kumar and Sanjeev Chug were coming from Delhi in a jeep bearing registration No.HR-51-2234 make ARMDA. It was at about 2 a.m. early morning of 22.5.1999, when they reached near Shahabad on the main G.T. Road, it is alleged that a truck bearing registration No.USP-4208 came from the side of the Ambala while going on the wrong side of the road in a zigzag manner hit against the jeep, as a result of which, the jeep turned turtle. It is alleged that at this juncture a Canter vehicle bearing registration No.HR-31-D-2407 (mentioned as HR-38-D-2407) came and hit the jeep from behind leading to a collision between truck and the canter. As a consequence of this accident, Narinder Khurana and Sanjeev Chug died, whereas Jatinder Kumar suffered injuries. It is claimed that the truck at the time of accident was being driven by respondent Ayug @ Ayub, whereas, the canter vehicle was being driven by Tilak Raj and the ill-fated jeep was being driven by deceased Narinder Khurana. An FIR pertaining to this accident was also registered.

The stand of the present appellants-claimants is that Narinder Khurana deceased was aged around 36 years and was running his own business of arranging marriages, parties and other related activities, earning more than ₹10,000/- per month upon which Manju Khurana, wife, Divya, Gaurav, Kailash, children and Kailash Wanti mother were dependent. Thus, sought compensation from the drivers, owners and Insurer of these vehicles.

Drivers as well as owners of both the vehicles i.e. canter and the truck did not appear and were proceeded ex-parte by the Tribunal. The Insurer of the truck M/s United India Insurance Company Limited denied any such accident having ever taken place as alleged and termed the claim petition to be a collusion *inter se* between respondents and termed the claim to be false, besides, taking up the plea that the driver of the truck was not bestowed with legal, valid and effective driving licence. Similar is the stand of the Insurer of the canter, whereby, it has though admitted the accident but termed it to be due to negligent act of the driver of the truck.

The learned counsel representing the contesting parties have argued at length and the moot point involved is the factum of the accident and genuineness of the claim. The eye-witness account given by one of the alleged injured Jatinder Kumar as PW3 shows that he is brother of Narinder Khurana and is also related to the other occupant Sanjeev Chug. The version spelled out by him illustrates in no uncertain terms that while the jeep was going from Delhi side, a truck came from the opposite side of Ambala and hit their jeep followed by the canter which was coming behind the jeep struck against the jeep and, thereafter, the canter and the truck struck against each other.

The claimants have relied heavily on the report under Section 173 Cr.P.C. Ex.P1 and it is well reflected therein that the presence of the canter vehicle is totally missing in this report. It has been, thus, rightly argued on behalf of the respondents that this creates a suspicious circumstance over the manner of the accident and that it is at a belated stage the canter

vehicle has been introduced for obvious reasons. More so, the very admission on behalf of the Insurer of the canter vehicle is certainly laying out a fertile ground for suspicion. The learned Tribunal has rightly suspected the testimony of PW3 Jitender Kumar. Even in his cross-examination this witness accepts that the number of the vehicle and names of the drivers were told by the police while he was admitted in hospital at Shahabad and the material admission by him as has been pointed out shows that the witness accepts that he cannot tell how the accident took place as it happened in a fraction of second. Therefore, establishes beyond any doubt that there is no reliable and cogent evidence as to the manner of the accident and the vehicle involved. More so, it is a matter of common knowledge that in such an accident it is but obvious the police and so the Insurance Company must have clicked photographs of the accidental site which are not forthcoming. Even the version of the eye-witness in his statement under Section 161 by way of Ex.PF and subsequent version before the Tribunal as has been held by the Tribunal is contrary to each other and, thus, a material improvement made for obvious motivated reasons. The testimony of the eye-witness, who is related to the claimants has not been materially corroborated by any means. Even the site plan Ex.PK does not supports the case of the claimants and in the absence of any evidence that the driver of the truck was at fault, the Tribunal has rightly been unable to accept this shaky evidence of the claimants, who failed to establish the accident between canter and the jeep and what is reflected from the only photograph on the records that the jeep had hit the right side of the truck. As if it was not enough, the insurance

cover note of the truck tendered by the claimants pertaining to M/s United India Insurance Company was verified by the company and as per the testimony in the light of the arguments of the counsel for the respondents by way of evidence of RW1 Satish Sharma, ADM/Legal officer, shows that this vehicle was not insured with the company and it was a fake document. It is not disputed that proceedings under Section 340 Cr.P.C. have already been initiated before the Tribunal in this regard. Thus, from this even the conduct of the claimants shows that they are not bonafide and truthful and have sought to rely upon false evidence. Thus, in view of this intentional impregnated falsehood, the claimants certainly lose the sympathy of the Court and the learned Tribunal has rightly held it so.

Thus, in view of the foregoing discussions, the Tribunal had rightly appreciated the fact that there has been machination by introducing falsehood in the case of the claimants with an eye on compensation against which the Courts need to be vigilant enough as public money is involved.

The learned Tribunal has rightly come to a totally justifiable conclusion by correctly appreciating the evidence which does not calls for interference. Thus, the appeal being wholly without any merit stands dismissed with costs.

(FATEH DEEP SINGH)
JUDGE

January 5, 2015
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