

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.3175 of 2011 (O & M)
Date of Decision: February 05, 2015

Balwinder Kaur

..... APPELLANT

VERSUS

Gurdev Singh & another

..... RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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1. Whether Reporters of local papers 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?

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PRESENT: - Mr. Avtar S. Khinda, Advocate, for the appellant.

None for respondent No.1.

Ms. Vandanaa Malhotra, Advocate, with
Ms. Monica Jhangra, Advocate, for respondent
No.2.

. . .

Jaspal Singh, J

1. Unsuccessful claimant – appellant has preferred the instant appeal feeling aggrieved against Award dated May 06, 2010 passed by the Motor Accident Claims Tribunal,

Kapurthala (for brevity, 'Tribunal') whereby the claim petition preferred by her was dismissed solely on the ground that she has failed to prove that Joginder Singh, her husband, died in a motor vehicular accident, alleged to have occurred on April 14, 2008 involving tractor No.PB-41-B-9619 being driven by Gurdev Singh, respondent No.1, in a rash and negligent manner.

2. Briefly stated, the facts of the case are that Joginder Singh met with an accident with the tractor in question being driven by its driver in a rash and negligent manner while he (Joginder Singh) was standing on the left side of the road. Joginder Singh sustained multiple injuries as a result of which he breathed his last at the spot. The accident was witnessed by Darshan Singh and Amrik Singh who were present at the spot.

3. While challenging the impugned award, it has been argued with vehemence by learned counsel for the appellant that Gurdev Singh, respondent No.1, is the owner of above said tractor who was driving the tractor at the time of accident. However, FIR under Section 279, 304-A IPC was registered against one Sarban Lal who was an employee of respondent No.1, Gurdev Singh.

4. The appellants have placed and proved on record various documents including report under Section 173(2)

Cr.P.C., as well as chargesheet against Sarban Lal but the learned Tribunal has wrongly observed that the alleged accident did not take place due to rash and negligent driving of respondent No.1. Moreover, respondent No.1 has also admitted before the learned Tribunal that the tractor is owned by him, however, he further stated that the tractor was being driven by Sarban Lal on April 14, 2008 who has been employed by him as driver. The observation made by the Tribunal that tractor was not being driven by Gurdev Singh is absolutely wrong. Infact, the appellant – claimant has examined Amrik Singh as AW-2 who is one of the eye-witnesses and he has specifically attributed the rashness and negligence on the part of respondent No.1, Gurdev Singh and further, that Joginder Singh died due to injuries sustained by him involving the offending tractor. But, learned Tribunal has ignored his testimony without any cogent and plausible reason. So, the impugned award is not sustainable in the eyes of law and deserves to be set aside by way of acceptance of the instant appeal, and consequently, the claimant is entitled to just and adequate compensation.

5. On the other hand, learned counsel for respondent No.2 – Insurance Company has supported the impugned award and submitted that the same is absolutely in consonance with

the evidence available on file and settled canons of law. Accordingly, she prayed for dismissal of the appeal with special costs.

6. The entire evidence led by the appellant – claimant is that her husband Joginder Singh died, in a vehicular accident, due to rash and negligent driving of the tractor in question by Gurdev Singh, respondent No.1, but the evidence is absolutely contradictory. The claimant has placed on record copy of FIR Ex.A1 which has been registered against some unknown person. The name of Gurdev Singh did not figure in the FIR nor was he driving the offending tractor. Even the name of Amrik Singh and Darshan Singh also do not appear in the FIR showing the fact that they witnessed the accident. Infact, the said FIR was got registered by one Hari Singh. FIR only depicts that dead body of Joginder Singh was lying on the road in some accident, occurred with some heavy vehicle. Not only this, investigation in the above referred FIR was carried out by the appellant and challan under Section 173(2) Cr.P.C., copy of which is Ex.AW-3/A, was presented in the court of learned Magistrate against one Sarban Lal. The chargesheet Ex.AW-3/B also shows that criminal case under Section 304-A IPC is pending against one Sarban Lal and he is facing trial. There is

nothing on record to suggest that tractor in question was being driven by Gurdev Singh, respondent No.1 or that Joginder Singh sustained injuries due to rash and negligent driving of tractor by respondent No.1.

7. The presence of witnesses examined by the claimant is also highly doubtful and suspicious. Thus, it can be safely concluded that findings recorded by the Tribunal as well as dismissal of the claim vide the impugned award are fully justified and absolutely in accordance with the evidence available on file, and calls for no interference by this Court.

8. In the light of what has been discussed above, there is no merit in the instant appeal and the same is dismissed whereby the impugned award is upheld.

9. No order as to costs.

February 05, 2015

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(Jaspal Singh)
Judge