

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

FAO No.245 of 2012 (O&M)

Date of decision: 10.07.2015

Phool Singh

..... Appellant

versus

Arjun Singh and others

..... Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Krishan Singh, Advocate for the appellants
Mr. S.K. Biriwal, Advocate for respondent No.1
None for respondent No.2
Mr. Rajneesh Malhotra, Advocate for respondent No.3
Mr. Sanjeev Kumar, Advocate for respondent Nos.4 to 7

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?*

Kuldip Singh, J. (Oral)

CM No.1062-CII of 2012

This application has been filed for condonation of 362 days delay in filing the appeal. The application is accompanied by an affidavit. For the reasons mentioned therein, it is allowed and 362 days delay in filing the appeal stands condoned.

FAO No.245 of 2012

Phool Singh appellant (respondent No.2 before the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal') has filed this appeal against the award dated 5.3.2010, passed by the Tribunal, awarding Rs.3,18,000/- to the claimants on account of death of Hans Raj.

Brief facts of the case are that on 28.11.2007, Hans Raj along with his family members, was going to village Kheri on a three wheeler bearing registration No.HR 58-6781 allegedly owned by the present appellant and being driven by Arjun Singh – respondent. It is alleged that the said three wheeler was being driven rashly and negligently at very high speed and that near village Bir Mangoli, district Ambala, three wheeler went out of control. As a result, three wheeler overturned, crushing Hans Raj underneath, who ultimately, succumbed to injuries. An FIR No.142 under Sections 279 and 304-A IPC was registered at Police Station Barara.

Before the Tribunal, the present appellant as well as driver filed a joint written statement, in which, it was denied that the driver was driving the vehicle and the present appellant denied that he is the owner, without taking any further plea. Respondent 2A (before the Tribunal), namely, Manjit Singh, who was registered owner of three wheeler was added as party later on. In a separate written statement, he claimed that on 10.8.2007, when he was going from Jagadhri to Bilaspur in the said three wheeler, he had suffered injuries in a motor vehicular accident with Bus bearing registration No.HR No.58-0026 and both legs were fractured and he became permanently disabled and FIR No.119 dated 13.8.2007 under Sections 279, 337 and 338 IPC was registered against Raj Kumar driver of the bus. He also filed a claim petition against Raj Kumar in the Court of Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri. He further claimed that he was unable to pay the installment of the financier, namely, Bansal Credits Limited

Automobile and General Financier, with whom the three wheeler was hypothecated. Therefore, on 1.11.2007, three wheeler along with all the documents was re-possessed by the financier due to non-payment of loan. The financier also took the signatures of respondent Manjit Singh on sale letter and relevant forms of transfer of three wheeler. He claimed that now he has come to know that after re-possessing, the three wheeler in question was soled by the financier to respondent No.2 (present appellant) before the accident.

The Tribunal framed the following issues:-

- 1. Whether the accident in question had taken place due to rash and negligent driving of three-wheeler No.HR-58-6781 by respondent No.1? OPP*
- 2. Whether Hans Raj has died as a result of injuries received in this accident, if so, to what amount of compensation the claimants are entitled to? OPP*
- 3. Who is liable for payment of compensation?OPR*
- 4. Whether three-wheeler in question was being driven in violation of the terms and conditions of the insurance policy. If so, to what effect?OPR*
- 5. Relief.”*

The Tribunal found that Manjit Singh is the registered owner, however, it also found that the present appellant was in the effective control of the three wheeler and therefore, liability was fixed on the present appellant as well as the registered owner and the driver.

I have heard learned counsel for the parties and have carefully gone through the case file.

Learned counsel for the appellant has argued that in this

case, as per registration certificate of the vehicle, it was registered in the name of Manjit Singh and that only Manjit Singh, being the registered owner, is liable to pay the compensation. It is further argued that there is no evidence that the hire purchaser agreement was terminated and that the vehicle was re-possessioned by Bansal Credits Limited and it was ever sold to the present appellant. Therefore, the present appellant is not liable to be jointly and severally liable to pay the compensation.

The perusal of the original file shows that Manjit Singh has produced on file form No.35 Ex.R8 showing that the Bansal Credits Limited had submitted form on 14.11.2008 i.e. before the accident, terminating the hire purchase agreement. Even RC shows that three wheeler was hypothecated with Bansal Credits Limited. Since Bansal Credits Limited was not party before the Tribunal, therefore, no evidence could be produced on their behalf as to the re-possession and further sale, if any, of the vehicle. However, I am of the view that the Tribunal did not commit any error while fixing liability on the present appellant. One may lie but not the facts. From the facts it is clear that the present appellant was in the effective control of the vehicle on the day of the accident and therefore, he was rightly made jointly and severally liable to pay the compensation.

First of all before the Tribunal, the driver as the present appellant filed a joint written statement indicating their close relationship. In the said written statement, a general statement was made denying the accident, ownership as well as driving. Further , registration and route permit were produced by counsel for

respondent Nos.1 and 2 before the Tribunal (present appellant), which indicates that they were in possession of the copies of the documents. Though same were also taken into possession by the police in criminal case Thirdly, neither the driver nor the present appellant appeared in the witness box to state their case. The driver did not appear to subject himself for cross-examination to state as to who was his master. Similarly, the present appellant did not appear in the witness box to state that he was not in effective possession and control of the vehicle. In this way, material evidence in the form of statement of the driver of the offending vehicle was kept away from the Tribunal and the present appellant also did not appear to deny the claim of the claimant that he was not in effective control of the vehicle. Though Manjit Singh respondent, the registered owner had dared to appear in the witness box to state the facts alleged in the written statement.

It being so, no fault can be found with the findings recorded by the Tribunal and the present appeal is dismissed.

10.07.2015
gk

(Kuldip Singh)
Judge