

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 6809 of 2015

Date of decision : November 19, 2015

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Krishan Lal @ Krishan Chand

.....Appellant

Versus

Ram and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Jaideep Verma, Advocate for the appellant.

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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?*

RITU BAHRI, J

C.M No. 21256-CII of 2015

C.M is allowed.

For the reasons mentioned in the application, delay of 56 days in filing the appeal is condoned.

C.M No. 21257-CII of 2015

C.M is allowed subject to all just exceptions.

FAO No. 6809 of 2015

The appellant has come up in appeal against the award of the Motor Accident Claim Tribunal, Ludhiana (hereinafter referred to as 'the Tribunal'), whereby a claim petition has been allowed by granting compensation of Rs. 4,53,000/- to the claimant on account

of injuries suffered by him in a road accident which took place on 7.8.2011.

Brief facts of the case are that on 7.8.2011 at 8:30 a.m, claimant was playing near Shingar Cinema Road outside street No. 10, Shivaji Nagar, Ludhiana and while playing, his ball had gone onside the road. The claimant was crossing the road to bring back the ball, when one pick up vehicle Tata Ace bearing registration No. PB-06L-2859 being driven by respondent no.1 at a very fast speed and in a negligent manner without blowing any horn struck it against the claimant, as a result of which, claimant suffered serious injuries. Father of the claimant was present at that time. Driver of the vehicle also stopped the vehicle and disclosed his name to be Krishan Lal. The claimant was taken to CMC Hospital in the offending vehicle and respondent no.1 assured father of the claimant that they will bear the entire medical expenses for the treatment and also deposited initial amount in the hospital. Father of the claimant entered into a compromise with respondent no.1 who undertook to pay the medical expenses but respondent no.1, thereafter did not pay the agreed amount and father of the claimant then lodged FIR No. 118 dated 26.8.2011 under Sections 279,337, 338 of IPC in this regard.

Claimant through his father filed claim petition under the Motor Vehicles Act for grant of compensation.

Notice of the claim petition was served upon the respondents. Respondent no.1 appeared and filed his written statement submitting therein that no accident as alleged had ever

taken place. Respondent no.2 filed its written statement submitting therein that the claim petition was not maintainable as the offending vehicle did not have any valid documents. It was further submitted that offending vehicle was not insured with it at the time of the alleged accident.

From the pleadings of the parties, following issues were framed by the trial Court:

- 1. Whether claimant received injuries on 7.8.2011 on account of rash and negligent driving of respondent no.1 driving Chhota Hathi bearing registration No.PB-06L-2859 on 7.8.2011? OPP.*
- 2. Whether claimant is entitled to compensation of Rs.5,00,000/- along with interest @ 12% per annum if so from whom? OPP.*
- 3. Whether present claim petition is not maintainable? OPR.*

The Tribunal has returned a finding rightly in favour of the claimant that the accident was caused on account of rash and negligent driving of respondent no.1 as no evidence was led in rebuttal after registration of the FIR Ex. C189 and respondent no.1 after putting in appearance was proceeded against ex parte. With regard to the liability of Insurance Company, the Tribunal has returned a finding on issue no.2 that the Insurance Company-respondent no.2 was not liable to make any compensation as the vehicle was never insured with them.

Having incurred an amount of Rs.4,53,000/- on his treatment as per medical bills, claimant under the circumstances was held entitled to recover the aforesaid amount from respondent no.1 along with interest @ 8% per annum from the date of filing of the petition till recovery thereof.

Counsel for the appellant has argued that as per the judgment dated 1.8.2013 passed by the Judicial Magistrate First Class, Ludhiana (Annexure A-1) in CrI. Case No. 493 filed by State against the driver of the offending vehicle i.e Krishan Lal, he has been acquitted and in the judgment it has been observed that it is not the universal law that the person who is driving a vehicle is always guilty of causing the offence in question. The injured was crossing the road to catch the ball and the driver of the offending vehicle could not perceive that any person will suddenly appear before him on the road and in such case he could not be held guilty for causing hurt to the injured. The facts and the evidence led before the criminal Court would be applicable to decide the compensation claimed in the proceedings in the Tribunal.

Keeping in view the facts and circumstances of the case, I am of the view that the degree of evidence is required to be much higher for conviction in a criminal trial. However, this Court, in a number of judgments, where pedestrians were hurt while walking on the road has held that it is the duty of the driver of the heavy vehicle to perceive and be careful for the pedestrians who are walking on the road. Reference can be made to a judgment in the case of **Usha**

Rani and others vs. Barejesh Kumar and other 2012 (5) RCR (Civil) 687, where it was held by the Co-ordinate Bench of this Court that in a situation of motor accident where a pedestrian got killed by a motor vehicle a driver of the motor vehicle has to remain more careful to mind the safety of any pedestrian, even, in a situation where a pedestrian is prone to be careless. The claimants were awarded a compensation of Rs.15,80,000/-

Reference at this stage can also be made to a judgment passed by this Court in a case of **Mohindro Devi vs. Sukh Ram, passed in FAO No. 48 of 1991** wherein one person died in an accident, while he was travelling in a cycle. He had turned from left to roadside of the road without minding a truck, which was coming from the opposite side and killed in the accident. In para 3 of the judgment, it has been observed as under:-

3. I am of the view that the approach of the Tribunal was wholly faulty. Learned counsel for the insurance company would argue that there was no negligence at all of the truck and the accident had taken place only by the negligence of the cyclist. Any driver of a motor cycle ought to know that a cyclist or a pedestrian has just as much use for the road as they have. There shall be a greater degree of circumspection for a driver on a motor vehicle, than a pedestrian or a

cyclist. The reasons are obvious. A pedestrian dashing against another pedestrian does not cause death nor a cyclist could cause death to a pedestrian. It is only a faster moving vehicle with heavier mass can cause death by its impact. A person that drives a truck ought to be prepared at any time for even a careless use of the road by a pedestrian or a cyclist. I will be loath to infer an element of negligence for a cyclist or a pedestrian ever. I would, on the other hand, hold a driver of the motor cycle to be always responsible if there results an impact with the cyclist and he comes to harm and in this case, a person was crushed to death. It will be wrong to assume that a driver, who could drive the vehicle FAO No.48 of 1991 -4- carefully, would cause death by the negligence of another. Even an issue of contributory negligence in such situations ought not to be easily inferred. I would, therefore, reverse the finding that the accident took place only by the negligence of the cyclist and that the driver of the truck was careful in his driving.

In view of the above judgments passed by this Court, this

appeal requires no interference of this Court. There is no illegality and infirmity in the judgment passed by the Tribunal. Hence the present appeal is hereby dismissed.

November 19, 2015

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**(RITU BAHRI)
JUDGE**