

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. 1946 of 1996

Date of Decision: April 6,2016

Lakhpati and others Appellants

Versus

Baldeva and others Respondents

Coram: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. R.S.Bajwa, Advocate
for the appellants.

Mr. Harish Nain, Advocate
for respondents No. 2(i) to 2(iv)

Mr. Gopal Mittal, Advocate
for respondent No.3.

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LISA GILL, J.

This appeal has been preferred by the widow, two children and parents of the deceased Khushi Ram against the judgment/Award dated 29.8.1995 passed by the Motor Accidents Claims Tribunal, Jind, whereby their petition under Section 166 of The Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act'), claiming compensation on account of death of Khushi Ram has been dismissed.

Khushi Ram son of Mehar Din is stated to have died due to injuries sustained in a motor vehicle accident which occurred on 14.4.1992. As per the facts narrated in

the claim petition, Khushi Ram and his son Sumeer Ahmad (one of the claimants) were coming back to their village Kaloda Kalan, Tehsil Narwana, District Jind after meeting Khushi Ram's sister at Patran. Khushi Ram was driving his moped No. HYW-7415 with his son Sumeer Ahmad, a minor, riding pillion. When they reached near village Bailerkhan on Patiala-Narwana road at about 7:30 p.m. a tractor was seen coming from the opposite direction from Narwana side without any lights, driven in a rash and negligent manner at high speed by its driver Baldeva, respondent No.1 (now represented by his legal representatives). The tractor driver did not blow its horn and on seeing the tractor being driven in an irregular manner, Khushi Ram steered his moped to the extreme left side on the unmetalled berm. Still the tractor hit against the moped directly from the front side resulting in multiple injuries to both Khushi Ram and Sumeer Ahmad who were removed to General Hospital, Narwana where Khushi Ram succumbed to his injuries. Post-mortem was conducted on 14.4.1992 (Post-mortem report is Ex.P2). Injuries suffered by Sumeer Ahmad are reflected in the medico-legal report (Ex.P3). FIR No. 77 under Sections 279/337/304-A IPC dated 15.4.1992 (Ex.P1) was registered at Police Station Garhi. The name of the driver or the

number of the offending vehicle were, however, not mentioned in the FIR. Respondent No.1 was ultimately proceeded against in the above said case and it is informed that he has since been acquitted.

Two claim petitions were preferred, one by the present appellants claiming compensation on account of death of Khushi Ram and another Claim petition No.97 dated 15.10.1992 by Sumeer Ahmad, the minor son of the deceased Khushi Ram through his uncle Ratia Ram, claiming compensation on account of the injuries suffered by him in this accident. The present appellants, which includes Sumeer Ahmad, claimed a sum of ₹7 lacs as compensation on account of death of their sole bread earner. The deceased Khushi Ram was stated to be working as a Dispenser in the Haryana Ayurvedic Dispensary in village Kaloda and also deriving income from selling milk and engaging in agriculture work. A sum of ₹60,000/- was claimed by Sumeer Ahmad on account of the injuries suffered by him.

The claim petitions were opposed by the respondents with the respondent driver and owner taking a specific stand that no accident had occurred involving tractor No. HYJ-7131 and respondent-Baldeva or the vehicle in question were not involved in any manner. The said

vehicle was duly insured with the respondent Insurance Company which has also denied the factum of the said accident with an additional plea of the drivers of the tractor and moped not holding valid and effective driving licences at the time of occurrence.

Replication was not preferred by the claimants to the written statement filed on behalf of the respondents. Learned Tribunal framed the following issues on the basis of the pleadings of the parties:-

1. Whether the accident in question took place due to the rash and negligent driving of tractor no. HYJ-7131 by respondent No.1, which was owned by respondent No.2 and was insured with respondent No.3 at the time of accident in question; and whether Khushi Ram (deceased in the main case) and Sumeer Ahmad (Claimant in the connected case) suffered injuries in the said accident; and whether Khushi Ram succumbed to those injuries; and what was the nature of the injuries suffered by Sumeer Ahmad-claimant in the connected claim petition? OPP
2. Whether the claimants in the main case, entitled, Lakhpatti and others Vs. Baldeva and

others, are the legal heirs/legal representative/dependents of deceased Khushi Ram and whether they alone are his legal heirs/legal representatives/dependents? OPP

3. Whether the claim-petition, titled, Samir Ahmad Vs. Baldeva and others is within limitation? OPP

4. Whether the connected claim-petition, entitled, Samir Ahmad Vs. Baldeva and others is not maintainable as the same has not been filed by legal and proper guardian and next friend of minor Samir Ahmad? OPP

5. Whether deceased Khushi Ram was holding a valid driving licence at the time of accident in question? OPP

6. Whether Baldeva-respondent No.1 was holding a valid driving licence at the time of accident in question ? OPR-1.

7. To what amount of compensation, if any, are the claimants in the main case entitled to receive due to the death of said Khushi Ram and to what amount of compensation is the claimant in the connected case entitled to receive due to the injuries suffered by him in the accident in

question. If so, from whom? OPP

8. Relief.

The learned Tribunal on taking into consideration the entire facts and circumstances of the case inclusive of the pleadings and the evidence on record dismissed both the claim petitions on the ground that the claimants were unable to prove the factum of the accident in question having been caused by the rash and negligent driving of tractor No. HYJ-7131 by its driver Baldeva.

It is relevant to note that FAO No. 1893 of 1996 filed by Sumeer Ahmad challenging the award dated 29.8.1995 was dismissed in default on 10.10.1996. The application for restoration of this appeal was also dismissed for non-prosecution on 20.2.1998.

Learned counsel for the appellants vehemently argues that there is sufficient evidence on record to prove that the accident in question has indeed been caused by the above said tractor being driven in a rash and negligent manner by its driver Baldeva. It is argued that in the present proceedings, mere registration of an FIR itself, is evidence enough of the accident having been caused by the above said vehicle driven by Baldeva. Further more, PW3 Sumeer Ahmad, an injured eye witness of the accident has given a

graphic account of the accident as it happened. PW3 has stated that the offending tractor was being driven in a rash and negligent manner and it directly hit against the moped being driven by his father, due to which both of them received multiple injuries and his father ultimately succumbed to the same. It is, thus, submitted that the finding returned by the learned Tribunal is erroneous and thus liable to be set aside. It is prayed that this appeal accordingly be accepted, the abovesaid findings be set aside, consequently holding that the accident in question was caused due to the rash and negligent driving of tractor No. HYJ-7131 by its driver, Baldeva and adequate compensation be awarded to the appellants on account of death of Khushi Ram.

Learned counsel for the respondents vehemently oppose the claim of the appellants and submit that present is a case of no evidence at all. Apart from the fact that vital particulars were not furnished in the FIR, no evidence whatsoever has been led by the claimants to prove their case. There is nothing on record to prove that the accident in question was caused due to the rash and negligent driving of the offending tractor by its driver Baldeva. Learned counsel for respondent No.1 Baldeva (since deceased)

submits that he has instructions to state at the bar that respondent No.1 Baldeva was acquitted in criminal proceedings against him. Furthermore, both the driver Baldeva and his father Hari Chand, respondent No.2 have nothing to do with the accident in question. Thus the impugned award should be upheld.

I have heard learned counsel for the parties and have gone through the record.

It is an admitted fact that the FIR (Ex.P1) does not disclose the number of the offending vehicle or the name of its driver. There can be no quarrel with the settled position of law that mere non mentioning of the above said information by itself is not a ground to negate a valid claim. However, it is equally true that there has to be some vestige of proof to indicate the involvement of a particular vehicle and its driver in the accident in question, which is conspicuous by its absence in this case. The FIR, Ex.P1 dated 15.4.1992 was registered on the statement of Sumeer Ahmad wherein he has stated that when he along with his father were proceeding on their moped (driven by his father). At about 7:30 p.m. when they had reached near village Bailerkhan on the Patiala-Narwana road, a tractor approached from Narwana side at a very high speed, being

driven in a rash and negligent manner without blowing the horn. On seeing the said tractor his father resorted to use a dipper of the moped but the tractor was seen to be traversing towards the right and left of the road in an erratic manner. Therefore his father steered his moped towards the extreme left side of the road on the unmetalled berm but still the tractor directly hit against their moped due to which they fell and sustained multiple injuries. PW3 fell unconscious but regained consciousness in 5-7 minutes. In the meanwhile, another tractor came towards them which he signalled to stop and another private bus followed which was stopped by him. They were taken to the hospital by the bus driver.

As per the testimony of PW4 Kartar Singh ASI, the Investigating Officer of the FIR, the name of the driver and the number of the offending vehicle surfaced on 16.4.1992 on account of information supplied by Sakir Ahmad i.e. another son of the deceased Khushi Ram and brother of Sumeer Ahmad PW3. In response to a specific question of the Court as to when the Investigating Officer came to know about the above said details, PW4 has replied that the name of the driver and the number of the offending tractor was revealed on 15.4.1992 at about 7/8:00 p.m. by Sakir Ahmad,

when the post-mortem was being conducted. In response to the second question of the Court as to whether Sakir Ahmad was an eye witness of the accident or not, the said PW replied in the negative stating that he revealed the name of the driver and the number of the tractor from making inquiries from here and there. It is relevant to note that the said Sakir Ahmad, though one of the claimants, has not been examined to prove their case. PW3 has made an attempt to salvage the situation by stating that they came to know the above said relevant details because the driver of the offending vehicle came to the hospital on the next day to effect a compromise. It is apparent that the claimants have failed to adduce sufficient evidence to prove the accident in question having been caused due to rash and negligent driving of the offending tractor No. HJY-7131 by Baldeva. Sakir Ahmad who is stated to have revealed the details to the Investigating Officer has not been examined before the Tribunal even though he is one of the claimants. Contention of learned counsel for the appellants that the dent on the "front side of the rear bumper" of the tractor proves the accident to have been caused by the said vehicle is misplaced in the facts and circumstances of the case and is hence rejected. There is no mechanical report by any expert

of the tractor neither is there any mechanical report regarding the moped in question. There is no site plan on record to substantiate the abovesaid plea. It is a direct hit which has been alleged in the FIR but the same is not proved in any manner by the evidence on record. The eye witness of the accident i.e. Sumeer Ahmad PW3 admittedly did not reveal the details at the time of lodging of the FIR, but the matter does not rest here. Sakir Ahmad, the claimant who revealed the details has conveniently been left out of the array of witnesses by the claimants. Despite being one of the claimants Sakir Ahmad did not have the courage to step into the witness box to support their claim. The driver of the tractor as well as the bus driver who were allegedly stopped by PW3 Sumeer Ahmad after the accident have also not been examined by the claimants. Reliance of learned counsel for the appellants on the judgment of the Hon'ble Supreme Court in Kusum Lata and others v. Satbir and others (2011) 3 Supreme Court Cases 646 is of no avail in the present case. It has been held by the Hon'ble Supreme Court that in cases relating to motor accident claims the claimants are not required to prove their case as in a criminal trial. Reliable evidence available on record can be looked into by the courts for this purpose even if the

number of the offending vehicle is not disclosed in the FIR. However, in the present case as discussed above, there is no vestige of evidence available on record, much less reliable evidence, to prove the involvement of the tractor No.HJY-7131 or its being driven in a rash and negligent manner by respondent No.1 leading to the accident in question. Learned Tribunal has, thus, returned a correct finding that the appellants have failed to establish the identity of the offending tractor or its driver, consequently dismissing the claim petition filed by the appellants.

Learned counsel for the appellants is unable to point out any illegality or infirmity in the impugned judgment/Award dated 29.8.1995 passed by the Motor Accidents Claims Tribunal, Jind which warrants interference. Consequently, this appeal is dismissed with no order as to costs.

(LISA GILL)
JUDGE

6.4.2016
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