

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

**FAO No.2265 of 1997
Date of decision :21.01.2016**

Bindro and others

.....Appellants

Versus

Babi and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. M.K. Dogra, Advocate for
Mr. Sandeep Punchhi, Advocate for appellants.

Mr. Pardeep Goyal, Advocate for respondent No.6.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 28.01.1997, vide which the claim petition filed by the appellants/claimants under Section 166 of the Motor Vehicles Act (hereinafter called the 'Act') for grant of compensation on account of death of Major Singh in the present accident has been dismissed.

2. As per the averments in the claim petition, deceased Major Singh was a cleaner on truck bearing registration No.PLM-7815 and was accompanying Vijay Kumar driver of the truck. On 09.01.1991, he was

returning from village Bhabra Azim Shah along with his family members. At about 03:30 p.m., when the truck reached near Lalliwala, the tarpaulin put over the truck went loose. Vijay Kumar stopped the truck on the left side of the road. On the instruction of Vijay Kumar, Major Singh alighted from the truck to tighten the tarpaulin. When he was doing so, then Balwinder Singh, respondent No.2, while driving canter DMC Toyota No.PCE-3083 came from the opposite side and struck against the truck. As a result of which, Major Singh suffered the injuries. When he was being taken to the hospital, he succumbed to the injuries in the way. The claimants have claimed the compensation to the tune of Rs.3,00,000/-.

3. The claim petition was contested by the respondents on the grounds *inter alia* that in fact when canter DMC Toyota No.PCE-3083 reached near village Lalliwala, Tehsil and Distt. Ferozepur the tyre of the canter got punctured. The vehicle was stopped on the left side of the road. Deceased Surjit Singh got the wheel of the vehicle changed with the help of his brother. When after this change of the wheel, he was coming down from the vehicle after putting the tools in the tool-box Vijay Kumar while driving truck No.PLM-7875 rashly and negligently came from the opposite side and collided with the right side of the canter. As a result of which, Surjit and Boota Singh suffered injuries. Surjit Singh later on succumbed to the injuries.

4. The Insurance Company of both the vehicles have also filed the separate written statements and contested the claim petition.

5. From the pleadings of the parties, following issues were framed:

1. Whether Major Singh deceased died in the motor vehicle accident due to the rash and negligent driving of DCM Tyota No.PCE-3083 by respondent No.2 Balwinder Singh driver? OPA
2. To what amount of compensation the claimants are entitled to recover and from whom? OPA
3. Whether the accident took place due to the rash and negligent driving of truck No.PLM-7815 by its driver Vijay Kumar respondent No.2? OPR-1
4. Relief.

6. The learned Tribunal decided issue No.1 against the claimants and in favour of respondents and consequently the claim petition was dismissed vide impugned order dated 28.01.1997. Hence, this appeal.

7. Learned counsel for appellants stated that he has not received any instructions from the appellants with respect to the correct address of respondents No.1 to 4 and legal representatives of respondent No.5.

8. Initiating the arguments, learned counsel for the appellants contended that from the statement of PW1 Chhinda Singh the witness of occurrence, it is established that the canter being driven by its driver in a rash and negligent manner had hit the standing truck where the deceased was tightening the tarpaulin, as a result of which he suffered the injuries and later on died.

9. He contended that there is no reason to disbelieve the statement of PW Chhinda Singh simply on the ground that his name is not mentioned in the FIR as the FIR was lodged at the statement of Charanjit Singh the brother of Surjit Singh, the owner of the canter.

Thus, he contended that learned Tribunal has committed an error in deciding issue No.1.

10. On the other hand, learned counsel for respondent No.6 contended that PW1 Chhinda was introduced by the claimants after much delay of the occurrence. There is no material on record that he had joined the investigation of the criminal case. The version of the occurrence narrated by this witness as well as mentioned in the claim petition is totally contrary to the FIR Ex.A2. The FIR Ex.A2 has not been challenged by the claimants at any point of time. Thus, he contended that the statement of PW1 Chhinda has been rightly disbelieved by the learned Tribunal and there is no other evidence to establish the negligence of the canter driver.

11. I have duly considered the aforesaid contentions.

12. There is no dispute with the proposition of law that the proof of negligence on the part of the driver of the vehicle is a condition precedent to claim the compensation under Section 166 of the Act. In the instant case as per the case of the claimants truck No.PLM-7815 was standing on the side of the road. Deceased Major Singh was tightening the tarpaulin on the said truck and in the meanwhile, DCM Toyota canter No.PCE-3083 being driven by its driver Balwinder Singh in a rash and negligent manner came from the opposite side and hit the standing truck. As a result of which, deceased Major Singh suffered injuries. It is not disputed that for this very occurrence, FIR No.15 dated 08.01.1991, copy Ex.A2, was registered on the statement of Charanjit Singh, wherein the mode of accident is entirely different, rather contradictory to the version

of the claimants. As per the version mentioned in the FIR Ex.A2, the tyre of the canter had got punctured and the canter was standing on the side of the road when the truck No.PLM-7815 being driven by its driver Vijay Kumar came from the opposite side in a rash and negligent manner at the fast speed and hit the stationary canter, as a result of which Major Singh and Surjit Singh suffered the injuries. Thus, totally opposite version has been mentioned in the FIR Ex.A2. The version mentioned in the FIR has not been challenged at any stage by the claimants.

13. The claimants in order to establish their version of occurrence have examined AW1 Chhinda Singh the alleged witness of the occurrence. In his statement he has stated that canter in question was being driven by Surjit Singh (deceased respondent No.1) whereas as per the version mentioned in the claim petition, the canter was being driven at the time of the accident by respondent No.2 Balwinder Singh. So, the statement of Chhinda Singh is contrary to the version mentioned in the claim petition as well as in the FIR Ex.A2.

14. In the cross-examination AW1 Chhinda Singh has stated that he did not accompany Major Singh to the hospital. Though, in the examination-in-chief, he stated that he carried Major Singh to the hospital. He cannot tell how many persons collected at the place of occurrence. He admitted that his statement was not recorded by the police. He could not tell as to whether the amputated arm of Major Singh was lifted from the spot by the police or not. He stated that he did not know any person out of the persons assembled at the spot. The name of this witness does not figure in the FIR. There is also no material on

record to show that he joined the investigation at any point of time. He has also not deposed in which manner the driver of the canter was negligent. Thus, the sole statement of such a procured witness which is contradictory to the claim petition as well as FIR Ex.A2 cannot be relied upon. AW2 Dalip Singh has not deposed anything about the manner of the occurrence. AW3 Boota Singh is the father of deceased Major Singh. He only deposed about the income of the deceased and dependency of the claimants. No other evidence has been adduced by the claimants.

15. The claimants have also not examined the Investigating Officer of the criminal case to show which of the driver was found at fault as a result of investigation conducted by him.

16. Thus, keeping in view my aforesaid discussion, no fault can be found with the findings recorded by learned Tribunal that the claimants have not been able to establish that the present accident had taken place due to rash and negligent driving of canter No.PCE-3083 by its driver.

17. Consequently, the present appeal is without any merits and same is hereby dismissed.

21.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**