

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

FAO No.1459 of 1999.

Date of Decision: 06.04.2016.

Ram Kali and another

....Appellants.

VERSUS

Parsi Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sagar Aggarwal, Advocate for the appellants.

Respondents No.2 and 6 to 10 were proceeded against exparte
vide order dated 29.05.2015.

Mr. Nitin Goyal, Advocate for respondent No.11.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate for respondent No.12.

SNEH PRASHAR, J.

Assailing the award dated 17.11.1998 passed by Motor
Accident Claims Tribunal, Karnal (for short, "the Tribunal") by virtue of
which claim petition No.84 of 1998 was dismissed, the appellants-claimants
preferred the instant appeal.

Precisely, the averment of the appellants-claimants in the
petition invoking the provisions of Sections 166 and 140 of the Motor
Vehicles Act, 1988 (for short, "the Act of 1988") filed by them was that on
26.02.1995 Rameshwar Dass son of Banwari Lal (since deceased) and his

brother-in-law Roshan Lal son of Ram Singh were going on foot from village Chaugama to village Gumthala Rao. They were walking on the katcha berm beside the road and in the meantime a tractor bearing registration No.HR-05A-0781 (hereinafter referred to as the “offending tractor”), being driven rashly, negligently and in a high speed, came from their backside and hit Rameshwar Dass. Due to the impact, Rameshwar Dass fell down and was run over by the offending tractor. He suffered serious and grievous injuries and died at the spot. His dead body was shifted to his native place where the same was cremated.

Alleging that deceased Rameshwar Dass was 24 years old and was doing the job of tailoring under the name and style of R.D. Tailors by employing 5-6 persons in village Khera and was earning Rs.4000/- per month and further that because of his untimely death they are left with no source of income, the claimants sought compensation to the tune of Rs.5 lacs from owner-Telu Ram (since deceased and represented through his legal heirs), driver-Suresh Kumar and insurer-Oriental Insurance Company Limited (respondents No.1 to 3). Despite service, respondent No.2 did not put in appearance but respondents No.1 and 3 contested the petition. The owner of the offending tractor (respondent No.1) denied the occurrence of accident involving his tractor. He also pleaded that deceased Rameshwar Dass had not met with any accident and had died on 01.03.1995 due to heart attack and that the petition had been filed at the instance of Roshan Lal, brother of wife of the deceased, who is an employee of the insurance company.

Respondent No.3-insurance company also denied the factum of accident and submitted that the claim petition had been filed in collusion with owner and driver of the offending tractor. All other objections available to the insurer under the Act of 1988 were raised by it.

On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. Considering the ocular and documentary evidence led by the parties and the submission made on their behalf, learned Tribunal dismissed the claim petition vide award dated 17.11.1998.

Feeling aggrieved with the award, the appellants-claimants preferred the instant appeal.

The submissions made by learned counsel for the parties have been heard and record perused.

To begin with, learned counsel counsel for the appellants argued that not one but three witnesses were examined by the appellants to prove the occurrence of accident. PW2 Roshan Lal was brother-in-law of the deceased who was accompanying him when the accident took place. He mentioned the registration number of the offending tractor and testified that because of its rash, negligent and zigzag driving the driver had hit Rameshwar Dass from behind when he was walking on the katcha portion beside the road. He fell down and was run over by both the wheels of the tractor. It was further in his statement that while the other persons sitting on the tractor had gone to the house of the deceased to inform about the accident, he had gone to the police station to lodge report about the accident

but the S.H.O. told him that he would record the report only after making inspection of the spot. He then he went to the village of the deceased but by then the dead body had already been cremated under pressure of Zimidars of the village as the tractor owner was having a *Dera* in the village whereas the deceased belonged to a labour class. Subsequently, the report regarding the accident was not registered by the police on the plea that the dead body had already been cremated.

Learned counsel asserted that a representation through registered post was sent by Roshan Lal to higher authorities of the police. The postal receipts are Ex.P1 to Ex.P3 and the acknowledgment receipts are Ex.P4 to Ex.P6. Copies of the telegrams Ex.P8 to Ex.P10 were also given vide receipt Ex.P7. All the said documents are dated 28.02.1995. The said documents controvert the contention of the respondents that the deceased died due to heart attack on 01.03.1995. Had the deceased died a natural death on 01.03.1995, PW2 Roshan Lal could not have sent representation/ telegrams regarding death of Rameshwar in roadside accident on 28.02.1995. The copy of Chowkidara register Mark-A containing an entry showing death of Rameshwar on 01.03.1995 due to heart attack had been fabricated by the owner in connivance with the Chowkidar.

It was further argued by learned counsel that in addition to the statement of PW2 Roshan Lal, the appellants examined PW3 Satya Parkash Pawar, who on the relevant date and time was going from village Gumatala Garh to Indri on his motorcycle and on Gumatala Garhi Birbal road had witnessed the accident near Rao Basti. He too stated that the offending

tractor had hit the pedestrian due to its rash, negligent and zigzag driving. He had then come to know that the injured who died at the spot was Rameshwar from whom he had got his clothes stitched. The statement of PW2 Roshan Lal and PW3 Satya Parkash Pawar was corroborated by PW4 Dalbir Singh who was running a tea shop on the turning of village Khukhni on the road leading from Garhi Birbal to Yamuna Nagar and had witnessed the accident. Deceased Rameshwar had visited the shop of PW5 Sumer Chand in Garhi Birbal on 26.02.1995 at 9:00/9:30 a.m. and he stated that after about an hour he came to know that Rameshwar had met with an accident and had died.

Referring to the statement of PW7 M.S. Gujral, learned counsel urged that he was appointed as investigator by the insurance company. In his report, he too admitted that Rameshwar had died due to the injuries sustained by him in the accident involving the offending tractor but he gave a different narration of the accident based on the information given to him by Telu Ram, owner-insured of the offending tractor. He admitted in his cross-examination that in his report he had mentioned that the tractor of Telu Ram had been taken for carrying members of a *Baarat* and that Rameshwar was sitting on the tractor as a passenger. Learned counsel emphatically argued that from the unequivocal testimony of PW2 to PW5 it stands established that the deceased was going on foot when he was hit by the offending tractor from behind due to rash, negligent and zigzag driving by its driver. Learned Tribunal failed to appreciate the facts and evidence available on record and legally erred in disbelieving the witnesses.

The arguments of learned counsel for the appellants were controverted by learned counsel for the respondent-insurance company. He pointed out that there are major contradictions in the deposition of PW2 Roshan Lal, PW3 Satya Parkash and PW4 Dalbir Singh who were examined by the appellant as eye witnesses of the accident. There is also neither any medical document nor the postmortem report to prove the cause of death of Rameshwar. It appears improbable that PW2 Roshan Lal, who admitted that he was serving the insurance company for the last four years, was accompanying the deceased at the time of accident which according to him had taken place at around 10:00 a.m. in broad day light, had neither lodged a report with the police in respect of the accident nor had taken the dead body to a government hospital for postmortem. What to say of proving the occurrence of accident involving the offending tractor, there is no evidence worth in its name to prove that deceased Rameshwar died as a result of injuries suffered by him in an accident. RW2 Ved Parkash was a resident of village Khera and he categorically stated that on 01.03.1995 he was informed by other villagers and parents of Rameshwar that he had suffered heart attack and was taken to Civil Hospital, Indri but he died on the way. Copy of register of Chowkidar Mark-A was obtained by Barahama Nand, Investigator of respondent-insurance company who appeared as RW4 and stated that he had recorded the statement of Puran Chand, Chowkidar and Hukam Chand, Numberdar of the village who stated that Rameshwar suffered a heart attack and died. He also deposed that Chowkidar Puran Chand told him that Banwari Lal, father of the deceased, had told him that

his son had died due to heart attack.

The appellants mainly adduced ocular evidence in support of their contention that deceased Rameshwar, who was walking on the katcha berm beside the road, was hit by the offending tractor due to its rash, negligent and zigzag driving. Copies of the telegrams Ex.P8 to Ex.P10 dated 28.02.1995 allegedly given by PW2 Roshan Lal fail to inspire truth when from the deposition of PW4 Dalbir Singh the very presence of PW2 Roshan Lal at the time of accident becomes doubtful. He categorically stated that Roshan Lal was not accompanying the deceased when the accident took place. Otherwise also, from the copies of the actual text of the telegrams sent cannot be held to be proved. The complaint Ex.P11 said to be given by PW2 Roshan Lal had no date on the same. There is also nothing to establish that the complaint was actually given to any authority. It is noteworthy that in the complaint, Roshan Lal did not mention that he was an eyewitness of the accident. Discussing the contradictions and infirmities in the ocular and documentary evidence of the appellants, the findings recorded by learned Tribunal are as under:-

“After hearing the learned counsel for both the parties, I am of the view that the claimants have not been able to show that their predecessor-in-interest died in a roadside accident involving the offending vehicle, being driven by respondent no.2 on 26.2.1995 within the area of village Chaugama and Gumthala Rao. First of all, the version of claimants is that at the time of accident, PW2 Roshan Lal was accompanying their predecessor-in-interest Rameshwar Dass, so, he was also examined to prove the version of accident. But his testimony is

unable to show the involvement of respondent no.2 or the offending vehicle in causing the accident. The version of this witness is that after the accident, the tractor was stopped and five persons who were sitting on it went to the house of the deceased to inform his parents but no such version has been given in the claim petition. There is also no version in the claim petition that father and brother of the deceased came at the place of accident after hearing about the same. Though, it is the version of PW2 Roshan Lal that he went to inform to police about the accident but no oral documentary evidence has been adduced in this regard. Copies of telegrams Ex.P8 to P10 dated 28.2.1995 whereas the alleged accident took place on 26.2.95 which shows that the same were sent to the higher police authorities to make out case for a rash and negligent driving of the offending vehicle. Even the complaint Ex.P11 is also without any date and a perusal of the same shows that the tractor driver managed to escape from the place of accident which is contradictory to his statement wherein it was stated by him that the tractor driver alongwith other persons sitting on the tractor went to inform the parents of the deceased about the accident. Then if any accident took place as alleged by PW2 then what prevented him from filing a private complaint when police refused to register case against respondent no.2, is not understandable. Even, it is also his version that he did not give any complaint to the police about the accident. Further, the testimony of PW3 Satya Parkash Pawar and PW4 Dalbir Singh is also unable to show that any accident as alleged by the claimants took place on 26.2.1995. It is also the version of PW3 Satya Parkash Pawar that at the time of accident besides the deceased and another person one Mr. Mehta, Sarpanch of village Gumthala, was present. But the version of PW4 Dalbir Singh is different who stated that some

persons collected at the spot and the person who was accompanying the deceased might have ran away. Moreover, another factor which mark the presence of PW3 Satya Parkash Pawar at the time of accident as doubtful as the fact that he neither told about the accident to any one nor made any complaint to the police or other civil authorities. Even PW2 Roshan Lal who made complaint Ex.P11 to the police did not mention his name as an eye-witness. Similar is the position with regard to the testimony of PW4 Dalbir Singh. Even, this witness denied the presence of Roshan Lal PW2 at the time of accident. Thus, in such a situation, it is not safe to rely upon the testimony of such type of witnesses to prove that any accident as alleged by the claimants took place.”

Learned counsel for the appellant could not demonstrate any mis-appreciation or misreading of the evidence available on record by learned Tribunal. Admittedly, no report with regard to the accident was got registered with the police. The dead body was also not subjected to postmortem examination. It is not even proved on which date the cremation of the dead body had taken place. Admittedly, PW2 Roshan Lal, brother-in-law of the deceased is an employee of the insurance company for the last four years. It is expected that he should be knowing the rules and requirements for proving a case of death in a motor accident. It does not appear plausible that when the accident had taken place in his presence and he had gone to the police to lodge a report with regard to the accident and as deposed by him the father, brother and number of other residents of the village of the deceased had reached the spot of accident, the dead body instead of being taken to the hospital was taken to the village and was even

cremated by the time he reached the village after visiting the police station. The facts pleaded and proved are completely contradictory. The claimants relied on the statement of PW6 M.S. Gujral, an investigator appointed by the insurance company who proved his report Ex.P12. As observed by learned Tribunal in Para No.9 of the award, the version of the claimants was that Rameshwar was on foot and was being accompanied by PW2 Roshan Lal but in his report PW6 M.S. Gujral stated that the deceased was a member of marriage party taking ride on the tractor which met with an accident. He also stated that deceased was not accompanied by Roshan Lal when the accident took place. On the other hand, it is proved from the entry in the Chowkidara register and from the statement of RW2 Ved Parkash, whose credibility could not be shaken on cross examination, that the deceased died due to heart attack. Because of the apparent discrepancies and contradictions in the statement of the witnesses as well as the details of accident given by the appellants the evidence adduced inspires no confidence and does not deserve to be relied upon.

Thus, seen from every angle, there is no merit in the appeal and it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

06.04.2016.
jitender