

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

**F.A.O No. 1638 of 2005 (O&M)
Date of decision :19.02.2016**

Krishan Lal

..... Appellant

Versus

Sahab Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.J.S.Cooner, Advocate
for the appellant.

None for respondent no.1.

Mr. Rajvinder Kaur, Advocate
for respondent no.3.

DARSHAN SINGH,J

The present appeal has been preferred against the award dated 04.12.2004 passed by the learned Motor Accident Claims Tribunal, Ambala (for short 'Tribunal'), vide which the claim petition filed by the appellant under Section 166 of the Motor Vehicular Act (for short 'Act') for grant of compensation on account of the injuries suffered by him in the motor vehicular accident, which took place on 01.04.2004 has been dismissed.

2. Shorn of the unnecessary details, the facts of the case are that

on 01.04.2004, the claimant was going from his village Baraula, Tehsil and District Ambala to his village Thaska by plying mule cart. His son was plying another mule card and was going ahead of him. At about 7.00 A.M, when they reached in the area of village Malva, District Ambala, a truck bearing registration no. HR-01-GA/0323 being driven by respondent no.1 in a rash and negligent manner came from the opposite side and by coming on the wrong side struck against the cart. As a result of which the claimant suffered the injuries including the fracture of the back bone, ribs and left leg. Thus, he has claimed the compensation to the tune of Rs. 5 lacs.

3. The claim petition was contested by the respondents no.1 and 2 by filing separate written statements, wherein they denied the accident.

4. Respondent no.3 was proceeded against ex-parte before the learned Tribunal.

5. From the pleadings of the parties, the following issues were framed by the learned Tribunal:-

1. Whether the claimant sustained injuries due to rash and negligent driving of truck no. HR-01-GA/0323 by respondent no.1?OPP
2. If issue no. 1 is proved in the affirmative, what amount of compensation the claimant is entitled to and from whom?OPP
3. Whether respondent no.2 is not liable for payment of compensation, as alleged in the preliminary objections of its written statement?OPR-2
4. Relief.

6. The learned Tribunal returned the findings under issue no.1 against the appellants-claimants on the ground that the involvement of

truck bearing registration no.HR-01-GA/0323 is not proved in the accident. Ultimately, the claim petition was dismissed. Hence, this appeal.

7. I have duly considered the aforesaid contentions.

8. Initiating the arguments, learned counsel for the appellant contended that even from the Daily Diary Report (for short 'D.D.R') registered on the statement of claimant, which has been categorically mentioned that they have taken their carts on the *Kuchha* portion of the road, but the truck struck the cart and they suffered injuries. He contended that from the aforesaid evidence, the negligence on the part of respondent no.1 and involvement of truck bearing registration no. HR-01-GA/0323 is clearly established. The learned tribunal has misinterpreted the statement of the appellant-claimant recorded by the police. Thus, he contended that the impugned judgment/award is not sustainable in the eyes of law.

9. Learned counsel for the respondents contended that appellant-claimant has made the statement before the police that the accident has occurred due to frightening of the mule. So, respondent no.1 cannot be stated to be driving the truck in question in a rash and negligent manner.

10. I have duly considered the aforesaid contentions.

11. This fact is not disputed that on 04.02.2002, on the basis of the statement made by the claimant, the DDR no. 10 was registered in Police Station, Sadar, Ambala. Wherein, the claimant has categorically stated that they had taken their carts on the *Kuchha* portion of the road and they were standing on the ground. Suddenly, the vehicle struck the

cart and the mule frightened. The cart was entangled in the truck and both the carts were overturned. Due to which, he suffered the injuries. From the aforesaid statement, it comes out that the truck has struck the cart. The mule got frightened. The carts were entangled in the truck and were overturned. The striking of the truck in the cart standing on the *Kuchha* portion of the road shows the negligence on the part of the driver of the truck. The impugned award further shows that some written compromise mark B had also taken place between the parties, which was signed by number of persons of the village of the claimant as well as respondent no.1. But, that document could not be proved by the claimant. Primarily, the claim petition has been dismissed on the basis of the statement of the claimant recorded by the police on the basis of which the DDR No.10 has been recorded. But, the averments in the DDR does not absolve of the driver of the truck. So, the impugned award is liable to be set aside and the case deserves to be remanded back to the learned tribunal for deciding the entire matter afresh.

12. **Before parting with the judgment, it is made clear that anything expressed by this Court in this judgment will not influence the mind of the learned tribunal. The learned tribunal will be at liberty to form its own independent opinion with respect to the issue of negligence, identity of the driver of the vehicle and the alleged involvement of the vehicle on the basis of evidence already led by the parties.**

13. Thus, keeping in view of my aforesaid discussion, the present appeal is hereby allowed and the impugned award dated

04.12.2004 is hereby set aside and the case is remanded back to the learned tribunal for fresh decision and the parties are directed to appear before the learned tribunal on 14.03.2016.

February 19, 2016

s.khan

**(DARSHAN SINGH)
JUDGE**