

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 125 of 2006 (O&M)
Date of Decision : 09.11.2016

Smt. Ramo Devi and others

....Appellants

Versus

Satish Kumar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Ms. Monika Arora, Advocate
for Mr. Pritam Saini, Advocate
for the appellants.

Mr. Vinod Gupta, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants Ramo Devi and other legal heirs of Ram Mehar (deceased) against award dated 30.07.2005 passed by the Motor Accident Claims Tribunal, Jhajjar (later referred to as 'the Tribunal') dismissing their petition under Section 166 of the Motor Vehicle Act.

2. As per claimants, the deceased died because of injuries suffered by him in a motor vehicle accident with tractor bearing registration no. HR-12-D-1066 (later referred to as 'the offending vehicle') in the area of Bahadurgarh. The incident was described by claimants in para 24 of claim petition, which read as follows:-

“That the respondent no. 1 did the earth filling job with the help of tractor no. HR-12-D-1066 and trolley in the area of Bahadurgarh Town. The sand was brought by respondent no. 1 from the fields which are situated after crossing village Naya

Gaon in the south of the village Naya Gaon. Deceased was returning from Shri Krishna Paper Mills Ltd. Bahadurgarh by riding bicycle when he was at the distance of 3/4 kms. approximately from village, Naya Gaon. The respondent no. 1 while returning to Bahadurgarh with loaded trolley and tractor between 06.00 p.m. to 08.00 p.m. on 30.03.2001 caused accident by driving the tractor rashly and negligently dashed against cycle and caused death at the spot and ran away. The complainant Mohinder Singh and Dharambir alias Dharam Singh started search and reached at the spot at about 08.00 p.m. on the same day and found lying dead on the road at the distance of 3/4 kms from village Naya Gaon in the north. The bicycle was also lying near the dead body and blood splited over the road. The complainant Mohinder Singh came to lodge the FIR while Dharam Singh remained at the spot of accident. Mohinder Singh reported the matter to Virender Singh, SI, who was present alongwith constable Jagdish near Surajmal Godam situated at the same road towards Bahadurgarh. The statement of complainant was written and sent to Police Station Bahadurgarh for lodging the FIR and investigation. I.O. reached at the spot, recorded the statement of witnesses and submitted the death report and sent the dead body to Gen. Hospital, Bahadurgarh for postmortem.

During the investigation while police was making inquiries, the driver of the said tractor namely Satish Kumar son of Dilbag Singh Jat r/o nearby village Jakhoda

approached to Dharam Singh, ex-vice sarpanch of the village, Naya Gaon and made extra-judicial confession and requested for compromise on 27.04.2001. Shri Dharam Singh escorted the driver and handed over to police on the same day in presence of Ram Niwas.” (Reproduced from photocopy of claim petition supplied by leaned counsel for appellant.)

3. Tribunal dismissed the claim petition with observation in para 11 of the award, which reads as follows:-

“11. I have duly considered the rival contention. It is admitted on the record that there is no eye-witness of the occurrence. The accident had taken place on 30.03.2001. Mahinder Singh had lodged the FIR. In his statement Ex. P-1 Dharam Singh had not named any one as accused. In fact, he had stated that an unknown person had caused accident. I am of the considered view that it is not believable that respondent no. 1 had gone to Dharam Singh PW-4 and had confessed his guilt. There is no evidence on the record that police was after respondent no. 1. There is no evidence on the record that respondent no. 1 was acquainted with Dharam Singh. It is not possible to believe that respondent no. 1 had gone to Dharam Singh and had confessed the guilt. I am of the considered view that petitioners have failed to establish that respondent no. 1 had caused the death of Ram Mehar by driving the tractor in question in a

rash and negligent manner and find this issue against the petitioner.”

4. I have heard learned counsel for the parties and have also gone through the award and copies of paper-book and pleadings supplied by parties, during course of arguments, as well as file of criminal case bearing FIR No. 96 dated 31.03.2001, Police Station Sadar, Bahadurgarh wherein respondent no. 1-Satish Kumar was acquitted of the charge framed against him. File of criminal case no. 110 of 2001 was summoned as per order dated 09.08.2016 as the original paper-book of the FAO No. 125 of 2006 alongwith record of the Tribunal is reported to have got burnt in fire incident that occurred in the year 2011.

5. Learned counsel for appellants has fairly conceded that there is no eye-witness of the occurrence and claimant relied on the sole statement of PW-4 Dharam Singh, who has stated that 20 days after the accident respondent no. 1 came to him and told him that he caused the accident with his tractor. Dharam Singh had also appeared in criminal case no. 110 of 2001 as prosecution witness but did not state that respondent no. 1 made any extra judicial confession before him.

6. Claimants belong to village Naya Gaon and Dharam Singh was also *sarpanch* of village Naya Gaon. The accident allegedly took place at a distance of 3/4 kms. from village Naya Gaon, *Tehsil* Bahadurgarh. Respondent no. 1 is resident of village Jakhoda, *Tehsil* Bahadurgarh. It is not the case of Dharam Singh that respondent no. 1-Satish was related to him or had any occasion to come and made extra judicial confession before him. The testimony of this witness is not corroborated by any evidence on

file. Admittedly, respondent no. 1 was also acquitted in the criminal case. Even if testimony of Dharam Singh be believed that respondent no. 1-Satish made extra judicial confession that accident was caused with his tractor, the question which arises for consideration is as to whether it leads to conclusion that accident was caused due to rash and negligent driving of tractor trolley by respondent no. 1-Satish Kumar. The answer will be in negative as he never confided or conceded that accident was caused due to his rash and negligent driving of the offending vehicle. In the absence of any evidence to this effect, the Tribunal has committed no error while concluding that claimants have failed to establish that respondent no. 1 has caused death of Ram Mehar by rash and negligent driving of tractor in question.

7. No other argument has been advanced by learned counsel for appellants.

8. I find no reason to differ with finding as recorded by the Tribunal. This appeal has no merit and the same is dismissed.

November 09, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No