

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

**FAO No.3747 of 2007 (O&M).
Date of Decision: 24.05.2016.**

Geeta and othersAppellants.

VERSUS

Balwan Singh and othersRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Sukhdeep Singh Sandhu, Advocate for the appellants.

Mr. Aditya Kochar, Advocate for respondent No.3.

SNEH PRASHAR, J.

CM-21231-CII-2013

This is an application filed under Section 151 of the Code of Civil Procedure for early hearing of the appeal. Learned counsel for respondent No.3 has no objection to the application.

In view of the above, the appeal is taken up for hearing and the application stands disposed of.

FAO-3747-2007

Assailing the award dated 06.08.2007 passed by learned Motor Accident Claims Tribunal, Panipat (for short, "the Tribunal") by virtue of which claim petition No.197 of 2006 was dismissed, the appellants-claimants preferred the instant appeal.

The facts extracted from the record are as under:-

The appellants-claimants averred in the claim petition filed by them that on 11.03.2006 at about 10:30 p.m., Vinod (since deceased) alongwith Kanwar Pal was going from Sector-29, HUDA, Panipat to village Nangal Kheri on a bicycle. When they reached near bus stand village Nangal Kheri, a maruti van bearing No.HR-01K-9843 (hereinafter referred to as “the offending van”), being driven rashly, negligently and in a high speed by Balwan Singh (respondent No.1), came from the opposite direction and straight hit into their bicycle. They both fell on the road and suffered serious and fatal injuries and died at the spot. After the accident, respondent No.1 stopped for a moment at some distance and then sped away.

Alleging that the accident, which took life of Vinod, had taken place solely due to rash and negligent driving of Balwan Singh, the appellants claimed compensation from the driver, owner and insurer of the offending van impleaded as respondents. The deceased was said to be engaged in dairy farming and was having income of Rs.6000/- per month.

The petition was contested by the respondents. The driver and owner of the offending van (respondents No.1 and 2) admitted the factum of accident as well as involvement of the offending van in the accident but pleaded that fault on part of the cyclist had caused the accident. According to them, the offending van was being driven in a moderate speed and when the driver was in the process of overtaking the cyclist, the cyclist abruptly turned towards right side of the road on which the driver could not control the offending van and hit the bicycle.

Respondent No.3-insurance company pleaded that the deceased was hit by some other vehicle and not by the offending van. It was also

come with clean hands. In addition to the same, objection was also raised that the driver of the offending van was not holding a valid and effective driving licence on the date of accident and that the vehicle was being driven in violation of terms and conditions of the insurance policy. All other defences available to the insurer under the Act of 1988 were also taken.

On the basis of pleadings of the parties, following issues were settled:-

- (1) Whether the accident had taken place due to rash and negligent driving of Maruti Van No.HR-01K-9843 by the respondent no.1 and whether Vinod died on account of the injuries received in said accident, as alleged? OPP.
- (2) If issue no.1 is proved to what amount of compensation the petitioners are entitled and from whom? OP Parties.
- (3) Whether the respondent no.3 is not liable to pay any compensation in view of the preliminary objections taken by it in the written statement? OPR3.
- (4) Relief.

Both the parties adduced evidence in discharge of the onus of issues 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 06.08.2007.

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

The submissions made by Mr. Sukhdeep Singh Sandhu, learned counsel for the appellants and Mr. Aditya Kochar, learned counsel for respondent No.3-insurance company have been heard and record perused.

At the very outset, learned counsel for the appellants argued that there was one eye-witness of the accident in question namely Hawa Singh son of Raja Ram who was examined by the appellants as PW4. He testified that on 11.03.2006 he was coming back from village Naultha to Samalkha in a three wheeler and when the driver of the three wheeler stopped near village Nangal Kheri to pick up passengers, he saw that two boys, who were going on a cycle towards Panipat on the other side of the road, were hit by the offending van which came from the side of Delhi and was being driven in a rash and negligent manner. The boys fell down on the road and were crying. He went to the spot and the driver of the offending van also stopped at some distance and the driver told him that he would take the injured to the hospital. As he was in urgency, he went away in the three wheeler but noted the number of the offending van. After 3-4 months, he went to village Garhi (Nangal Kheri) and came to know that the vehicle which had caused the accident had not yet been apprehended and both the boys who had suffered injuries during the accident had died. He then told one ASI about identity of the vehicle involved in the accident.

Learned counsel contended that the statement of PW4 Hawa Singh was corroborated by PW3 ASI Randhir Singh, the Investigation Officer. He stated that he had impounded the offending van and on the statement of Hawa Singh son of Raja Ram had challaned respondent-Balwan Singh, driver of the said vehicle. Respondent-Balwan Singh, driver of the offending van stepped into the witness box as RW1 and admitted the occurrence of accident as stated by PW4 Hawa Singh. He stated that the accident occurred due to fault of the cyclists, but failed to prove the defence

Randhir Singh and PW4 Hawa Singh duly established the occurrence of accident as well as identity of the vehicle involved in the accident. Hawa Singh was neither related to the deceased nor had any reason to falsely implicate respondent-Balwan Singh and learned Tribunal erred in disbelieving his testimony.

The arguments of learned counsel for the appellant were controverted by learned for the respondent and rightly so as the testimony of PW4 Hawa Singh by itself was sufficient to prove that he was a procured witness. First of all, it is important to note that in their pleadings the appellants nowhere named Hawa Singh as an eyewitness of the accident. Secondly, the story of the appellants with regard to the accident was that the deceased alongwith one Kanwar Pal was going from Sector-29, HUDA, Panipat to village Nangal Kheri whereas PW4 Hawa Singh stated that near Nangal Kheri, he saw two boys going on a bicycle towards Panipat when they were allegedly hit by the offending van. Analyzing the deposition of Hawa Singh, the findings of learned Tribunal are as under:-

“Having heard the learned counsel for the parties, I agree with the learned counsel for respondent no.3 that it was a case of hit and run by some unknown vehicle and that van in question has been introduced falsely with a view to help the claimants to claim false compensation. It is doubtful that PW4 Hawa Singh was an eye-witness to the accident. Had he seen the accident, he would have reported the matter to the police same day and if he was in a hurry to go at the time of accident, then he could report the same to the police next day. It is very unnatural and unbelievable and after four months, he went to

village Nangal Kheri, where he came to know that vehicle which had caused the accident had not yet been identified and at that very time, PW3 Randhir Singh ASI who was investigating officer of the case also appeared, as the latter knew that the person who had seen the accident would arrive there and then recorded his statement. It is also unusual that he was still remembering the registration number of the offending vehicle which had allegedly caused the accident, whereas he was not remembering the registration number of the three-wheeler in which he was travelling at the time of accident. When in cross-examination, he was asked to tell about the registration number of the three wheeler and the name of the driver in which he was travelling he failed to tell about the same. It all is suggestive of the fact that PW4 Hawa Singh is an introduced witness and that he was not present at the time of accident”.

Learned counsel for the appellants failed to demonstrate misappreciation or misreading of the evidence by learned Tribunal in recording the above findings. Admittedly, the First Information Report Ex.P1 in respect of the accident in which the deceased and his friend Kanwar Pal died was registered on 12.03.2006 at Police Station Chandni Bagh, Panipat on the statement of one Ishrar Ahmed. As per his version, he was told by a worker of his factory that two persons, who were going on a cycle, had been hit by an unknown vehicle on the G.T. Road. He went to the spot and identified the dead body of the boys. Meaning thereby that the

reported about the accident to the police on the next day of the accident and stated that the identity of the vehicle which had hit the deceased was not known. PW4 Hawa Singh, who claimed that he had witnessed the accident, remained silent for 3-4 months and then suddenly one day he went and made a statement before the investigating officer of the case disclosing identity of the offending vehicle.

It is not only his remaining silent for 3-4 months that makes his conduct doubtful, his unnatural behaviour at the time of accident also leaves no scope to believe his testimony. He stated that he saw the accident and also saw the injured crying. He went to the spot but being in urgency he left the injured unattended and went away in the three wheeler in which he was travelling. Though he stated that the driver of the offending van told him that he will take the injured to the hospital, yet an eyewitness of the accident who had taken the trouble to go to the spot even when he was travelling in a three wheeler, would not leave the injured crying at the mercy of the offender. It is also strange that as per his version the driver of the three wheeler did not go to the spot of the accident. He stated that the three-wheeler had stopped to take some passengers which means according to him there were other people also present but strangely none either took the injured to the hospital or informed the police about the accident. The accident had taken place near village Nangal Kheri and Kanwar Pal, the companion of the deceased was said to be resident of village Nangal Kheri. The testimony of PW4 Hawa Singh only indicates that he had cooked up a false story. The admission of the factum of accident and involvement of the offending van on part of respondents No.1 and 2 (driver and owner of the offending van) as well as deposition of respondent-Balwan Singh clearly

proves that there was collusion between the appellants and respondents No.1 and 2.

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

(SNEH PRASHAR)
JUDGE

24.05.2016.
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