

205.

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

FAO No.6485 of 2010 (O&M)

Date of decision:11.04.2016

Raj Pal Singh

... Appellant

versus

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Govind Chauhan, Advocate,
for Mr. Ashish Aggarwal, Advocate,
for the appellants.

Mr. Sushil Bhardwaj, Advocate,
for respondents 2 to 4.

K.Kannan, J. (Oral)

1. The appeal is at the instance of the 4th respondent who was implicated jointly and severally with respondents 1 and 2. It was a case of the deceased travelling in a three wheeler that was said to have been dashed against an unknown tractor attached to a trolley. At the trial, the 4th respondent was impleaded as an alleged owner of the tractor. There was no registration number given even at the trial but an engine number was set out. 4th respondent contended that he had never owned a tractor and he had not claimed the tractor from even the police at any point of time.

2. In the case of denial, the petitioner felt contended to rely on the evidence of two witnesses who said they could identify the 4th respondent as the driver of the vehicle. The court observed that the police had reported to have taken a statement under Section 161 Cr.P.C. and that he had admitted to the ownership of the vehicle.

3. I find the order of the Tribunal as perverse and would require to set aside in so far as it casts the liability on the 4th respondent. If the ownership of the vehicle is denied, the only manner in which sure liability could have been fastened was to establish the ownership of the vehicle to make the owner of the tractor liable. If the tractor did not have a registration number, the petitioner ought to have taken steps to secure evidence as regards the engine number disclosed from the DTO's office and elicited information about the ownership of the vehicle. Additionally, the deceased could have also examined the investigating officer connected to the case which was registered to find out whether the reference to unknown vehicle as stated in the FIR could be connected to the vehicle that bore the engine number in the application and also secure the information of whether any statement had been recorded from the 4th respondent and his ownership could be ascertained in the course of investigation. The problem always has been that the Tribunals do not play a pro-active role and merely watch the proceedings as though one of the other parties has to

prove the case. If there had been any attempt on the part of the Tribunal to get at the truth even in the failure of the claimant to examine to bring the best evidence by securing the details from the DTO's office or from the police authorities themselves the result would have been different. It has done neither. It will be too fragile an evidence to rely on some persons who identify that the 4th respondent was driving the tractor when he was denying that he ever learnt any driving or that he had ever owned the tractor.

4. The award against the 4th respondent is set aside. The claimant shall be at liberty to enforce the award against respondents 1 and 3 before the Tribunal who are arrayed as respondents 6 and 8- Raj Kumar and Ram Kumar respectively.

5. The award stands modified and the appeal is allowed to the above extent.

(K.KANNAN)
JUDGE

11.04.2016
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