

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

**FAO No.4538 of 2011
Decided on: 19.09.2016**

Shakuntala and others

....Appellants

Versus

Naveen Kumar and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Mrigank Sharma, Advocate
for the appellants.

Mr. Arun Luthra, Advocate
for respondents No.1 and 2.

Ms. Vandana Malhotra, Advocate
for respondent No.3.

REKHA MITTAL, J.

The present appeal has been directed against the award dated 04.03.2011 passed by the Motor Accident Claims Tribunal, Sonapat (in short 'the Tribunal') whereby application under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for grant of compensation in regard to death of Prem Singh has been dismissed in view of findings recorded on Issue No.1.

The facts relevant for disposal of the present appeal are that as per the case of the claimants, on 01.12.2009, Prem Singh along with Shamsher Singh son of Hardeva resident of village Shamri was going from Gohana to Shamri on motorcycle bearing No.HR-11-A-8491 driven by Prem Singh at a moderate speed. At about 08:00 p.m., when they reached one kilometer short of village Gamri, Prem Singh stopped his vehicle for urinating. Later, when Prem Singh was in the

process of starting his motorcycle, tractor bearing registration No.HR-21-M-1598 driven by Naveen Kumar – respondent No.1 at a high speed, rashly and negligently came and struck against motorcycle of Prem Singh. Prem Singh suffered multiple grievous injuries. FIR No.340 dated 02.12.2009 under Sections 279, 337, 304-A IPC was registered in Police Station Sadar, Gohana. A three-wheeler took both the injured namely Prem Singh and Shamsher Singh to CHC, Gohana but Prem Singh succumbed to injuries on the way to the hospital.

The deceased was 35 years old, had a cruiser Jeep for carrying passengers, doing agricultural work, running a dairy and earning Rs.20,000/- per month from the jeep, Rs.10,000/- per month from agricultural work and Rs.5,000/- per month from dairy business. The claim petition was preferred by widow, minor children and parents of deceased with the plea that deceased was the only earning member in the family and claimants were fully dependent upon him.

The driver and owner of the alleged offending vehicle filed their joint written statement, denied the accident and their liability to pay compensation. Lodging of FIR was admitted but it was pleaded that the same was falsely registered by the police in connivance with the claimants.

The insurance company filed its separate reply raising preliminary objections *inter alia* misjoinder and non-joinder of necessary parties, cause of action, *locus standi*, collusion of claimants with respondents No.1 and 2 and availability of defences under Section 134(C), 147, 149, 157 and 170 of the Act. All the averments of the petition have been denied with a prayer for dismissal thereof.

The Tribunal framed the following issues for determination:-

- 1. Whether the accident took place due to rash and negligent driving of respondent No.1 while driving vehicle bearing No.HR-12-M-1598? OPP.*
- 2. If issue No.1 is proved then to what amount of compensation and from whom the claimants are entitled to? OPP.*
- 3. Whether the respondent No.1 was not holding the valid and effective driving licence at the time of accident as alleged? OPR3.*
- 4. Relief.*

The claimants examined Shakuntala PW1, Shamsher Singh PW2, Surender Singh, Clerk PW3, Dr. Parveen Kumar PW4, ASI Ramesh Chander PW5 and Mehar Singh PW6.

Respondents No.1 and 2 tendered into evidence documents Ex.R1 and Ex.R2 whereas respondent No.3 tendered documents Ex.R3 and R4.

After having heard counsel for the parties in the light of materials on record, the learned Tribunal determined issue No.1 against the claimants whereas issue No.3 was decided against the insurer but ultimately, the claim petition was dismissed without recording any finding on issue No.2.

Feeling aggrieved by the verdict of the learned Tribunal, the present appeal has been preferred by the claimants.

Counsel for the claimants has submitted that despite voluminous evidence having been adduced by the claimants to establish their plea that Prem Singh sustained injuries in a motor vehicular

accident due to rash and negligent driving of tractor No. HR-21-M-1598 by Naveen Kumar – respondent No.1 that proved fatal for Prem Singh who died on his way to the hospital, the Tribunal misdirected itself by holding that the aforesaid tractor was falsely indicted in the occurrence in order to get compensation from the insurance company. It is further argued that statements made by Shamsher Singh on 04.12.2009 and 12.02.2009 cannot be discarded more particularly in the circumstances that on due investigation of FIR Ex.P17 lodged with promptitude, challan has been presented in the Court and Naveen Kumar has been put to trial. In addition, it is argued that Naveen Kumar never appeared in the witness-box to counter statement of Shamsher Singh or assert plea of the driver and owner that the vehicle has been falsely involved in the case with an intent to extract compensation.

Counsel for respondent No.3, on the contrary, has supported the findings on Issue No.1 and so also dismissal of the claim petition by relying upon the observations recorded by the learned Tribunal in paras 23 to 25 of the award.

I have heard counsel for the parties, perused the paperbook and records of the Tribunal.

Shamsher Singh, pillion rider on the motorcycle driven by Prem Singh (since deceased) is the star witness of the case at whose behest FIR Ex.P17 was registered on 02.12.2009, the very next day of the accident. He tendered into evidence his affidavit Ex.PW2/A and reiterated the version set up in para 24 of the claim petition with regard to the date, time and manner of the accident. He has further deposed that on 04.12.2009 he submitted his supplementary statement to the

Investigating Officer and submitted his affidavit Ex.P16. Shamsheer Singh was cross-examined by counsel opposite and a relevant extract from his cross-examination reads as follows:-

“I did not know the driver of the tractor prior to the accident. It is correct that at the time of lodging of the FIR I was not aware about the registration number of the tractor. I had come to know about the registration number of the tractor after few days of the accident as I had recognized the tractor near village Gamari. The police did not visit the spot in my presence. It is wrong to suggest that there was no rash and negligent driving on the part of the driver of the tractor or that the accident took place due to the fault of the deceased Prem himself. It is further wrong to suggest that the tractor No.HR-12-M-1598 was not involved in the alleged accident or the same was introduced later on in connivance with the police and respondents No.1 and 2”.

Shamsheer Singh has tendered an explanation as to how he came to know about the registration number of the tractor after few days of the accident. There is no challenge to his testimony in this regard even by way of a suggestion by counsel for the contesting party. A suggestion was put to the witness that there was no rash and negligent driving on the part of the driver of the tractor or the accident took place due to fault of the deceased Prem himself. If driver of the tractor was not there at the spot at the time of accident how can there be a suggestion to the witness that the accident took place due to fault of the deceased himself. The driver of the tractor did not appear in the witness-box to rebut testimony of Shamsheer Singh that the accident was caused due to rash and negligent driving of the tractor or he came to

know about particulars of the tractor few days after the accident as he recognized tractor near village Gamri. Counsel for respondent No.3 (insurance company) has not pointed out any materials on record having any connection between the claimants and owner of the tractor to show that the tractor was introduced later in connivance with the parties with an intent to extract money from the insurance company. Naveen Kumar has been put to trial after due investigation of FIR No.340 dated 02.12.2009 registered in Police Station Sadar, Gohana for offence punishable under Sections 279, 337, 304-A IPC. There is nothing on record to suggest that Shamsher Singh had any hostility against Naveen Kumar to get him falsely indicted in criminal proceedings. Similarly, there is no material on record to show that either Naveen Kumar or Baljeet (owner of the vehicle) ever raised an issue with regard to false implication of Naveen and involvement of the tractor in the criminal proceedings.

As per the settled position in law, strict principles of law of evidence are not applicable to the proceedings before the Tribunal which are summary in nature. The unrebutted and unchallenged testimony of Shamsher Singh coupled with initiation of criminal proceedings against Naveen Kumar, in the circumstances of the present case, are sufficient to establish plea of the claimants that the accident in question took place due to rash and negligent driving of tractor bearing No.HR-12-M-1598 by Naveen Kumar. The learned Tribunal may be right in its observations that there is tendency to convert cases of hit and run to that of cases involving a particular vehicle and the same needs to be curbed by the Courts but every case is to be examined by

the Court in the given facts and circumstances without being influenced by a particular mindset. For the reasons recorded hereinbefore, I find myself unable to affirm the findings of the Tribunal that the present is a case where tractor bearing number HR-12-M-1598 has been falsely indicted to extract compensation. In view of the above, the findings recorded by the Tribunal cannot be allowed to sustain and accordingly set-aside.

As the findings recorded by the Tribunal on issue No.1 have been set-aside and the Tribunal has not recorded any finding on issue No.2 *qua* assessment of compensation, the matter is remitted to the learned Tribunal for recording findings on issue No.2. The parties through their counsel are directed to appear before the learned Tribunal on 17.10.2016. The Tribunal is directed to record the findings on Issue No.2 and dispose of the matter within a period of two months from the date of parties putting in appearance.

19.09.2016
yakub

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No