

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 38 of 2012 (O&M)
Date of Decision : 21.12.2016

Salindro Devi and others

....Appellants

Versus

Jaswinder Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Karan Singh, Advocate
for the appellants.

None for respondent no. 1.

Mr. Arun Sharma, Advocate
for Mr. T.K. Joshi, Advocate
for respondent no. 3.

Surinder Gupta, J.

This is appeal filed by claimants against award dated 2008 passed by Motor Accident Claims Tribunal, Yamunanagar, (later referred to as 'the Tribunal') dismissing the claim petition filed by claimants-appellants under Section 166 of Motor Vehicles Act, claiming compensation for death of Baldev Singh (later referred to as 'the deceased'), husband of claimant no. 1, father of claimants no. 2 and son of claimants no. 3 and 4, in a motor vehicle accident on 09.01.2005 with truck bearing registration No. HR-37-4148 (later referred to as 'the offending vehicle').

BRIEF FACTS

2. Claimants described the accident in para 24 of claim petition, which reads as follows:-

“24. That on 09.01.2005, the deceased Baldev Singh was

going from Ambala Cantt. to his village Saravi, Tehsil Sadhaura, District Yamuna Nagar by driving CD-Dawn Motorcycle No. HR-02F-3593 on the correct left hand side of the road at a moderate speed and his father Jagir Singh was the pillion rider. At about 06.30 p.m., when they reached within the area of village. Khudda Kalan, Teh. & Distt. Ambala, on Jagadhri to Ambala road, in the meantime a truck bearing registration no. HR-37-4148, being driven rashly and negligently by respondent no. 1, came from opposite side and hit the motorcycle of Baldev Singh by going on the extreme wrong side of the road on kachcha berm. As a result, both the occupants of the motorcycle fell down and sustained injuries. Both were taken to Civil Hospital, Ambala Cantt in a three-wheeler but Baldev Singh died on the way to hospital on account of injuries suffered in the accident. The accident witnessed by Amrik Singh also. The accident took place on account of sole rash and negligent driving of truck no. HR-37-4148, by the respondent no. 1.”

3. Respondents no. 1 and 2 i.e. driver and owner of the offending vehicle did not come forward to contest the claim petition while respondent no. 3 i.e. insurer of the offending vehicle pleaded in written statement that no accident as alleged by claimants-appellants took

place with the offending vehicle and the deceased had not died in any road side motor vehicle accident.

4. Pleadings of parties led to framing of the issues as follows:-

1. Whether the accident occurred due to rash and negligent driving of truck no. HR-37-4148 by respondent no. 1? OPP
2. If issue no. 1 is proved, to what amount of compensation the petitioner is entitled to and from whom? OPP
3. Whether the respondent no. 2 has willfully violated the terms and conditions of the insurance policy? If so, to what effect? OPR3
4. Whether there is no privity of contract between the respondent no. 3 and the respondent no. 2? OPR3
5. Relief.

5. Learned counsel for appellants has argued that the Tribunal committed grave error while concluding that PW-3 Jagir Singh, father of the deceased, was not an eye-witness of the occurrence. The accident had taken place at about 06.30 p.m. and FIR was got registered on the same day at 09.20 p.m. on the statement of Jagir Singh. It was specifically stated by Jagir Singh in his statement to police that he was on motorcycle of his son (deceased) when offending vehicle hit it by coming on wrong side of the road. He fell on *kacha* portion of the road while his son fell on the road. His (deceased's) leg came under the motorcycle and head hit the road. Driver of the offending vehicle stopped for a while and taking

benefit of the assembly of public fled from the spot. He took his son in a three-wheeler for treatment to Government Hospital, Ambala Cantt., but he died on the way. Police has also presented the challan against driver of the offending vehicle in which he is facing trial. Jagir Singh is a illiterate person. If the doctor had established identity after taking out driving licence of the deceased from his pocket, it does not suggest that Jagir Singh was not present there. There is no delay in recording the FIR or any reason for falsely implicating the offending vehicle or its driver. It is proved on record that the accident was caused by the offending vehicle and claimants are entitled to compensation for death of only breadwinner of the family.

6. Learned counsel for respondent no. 3 has argued that Jagir Singh, father of the deceased, has projected himself as an eye-witness of the occurrence. As per recital in the FIR, he had accompanied the deceased to Civil Hospital, Ambala Cantt. The owner of three-wheeler, in which the deceased was taken, also appeared as PW-4. The doctor, who examined the deceased on reaching the hospital, had no reason to make a false statement. In case Jagir Singh had not received any injury and was present in the hospital, as stated by him, there was no reason for the doctor to search for the purse and driving licence of the deceased to know his identity. PW-4 Jaspal Singh was examined by claimants. He is also a truthful witness and has stated that he carried two injured to the hospital out of whom one was critically injured while the other was unconscious. Jagir Singh while appearing as PW-3 has stated that he did not receive any injury in the accident. He has also not stated that he

became unconscious after the accident.

7. In support of their case, claimants examined PW-1 Krishan, who has stated that the deceased was a registered medical practitioner and was running a clinic in village Kardhan. Claimant no. 1-Salindro Devi appeared as PW-2. She is not an eye-witness of the accident. Claimants examined Jagir Singh, father of the deceased, as PW-3, who deposed as eye-witness of the accident. His examination-in-chief recorded by the Tribunal is reproduced as follows:-

*“State that about more than one year and two months back, I was going on the motorcycle of Baldev Singh towards Ambala Cantt. When we reached near the school of village Khudda, one truck bearing no. HR-37-4840, then said I am illiterate and I do not know the last number, came from the opposite direction. That truck was in a high speed and it hit us from the front side. Because of this impact, Baldev Singh received serious injuries. **However, I did not receive any injury.** Baldev Singh was taken to Civil Hospital, Ambala Cantt., where he died. Police came in the hospital and recorded my statement. The truck driver remained at the spot for sometime and then left the place alongwith his truck.”*

8. Respondent no. 3-Insurance Company examined Dr. Vijay Kumar, Medical Officer, Civil Hospital, Ambala Cantt as RW-2 before whom dead body of the deceased was brought. His brief statement is reproduced as follows:-

“State that on 09.01.2005, I was posted in Civil Hospital, Ambala Cantt. in causality department, in evening duty. On that day at 07.20 p.m. a dead body was brought by Jaspal Singh son of Mukhtiar Singh, resident of Durala who was just passing by and he was a three wheeler wala as per his version. As per the driving licence the identity of the deceased was known as Baldev son of Jagir Singh, resident of village Kardhan District Ambala. I had sent rukka to the police and photocopy of the same is Ex. R-5, which is correct as per record. Original of Ex. R-5, I have brought today.

xxxxxxx by Shri D.C. Aggarwal, counsel for the petitioner.

It is correct that all the persons accompanying any dead body/injured are not allowed to enter in the hospital except one or two persons. I cannot tell as to how many persons had accompanied the dead body of Baldev on that day. The identity of the deceased was known from the driving licence which was recovered from his personal search. This fact is also mentioned in rukka Ex. R-5. I cannot tell as to whether the father of the deceased was accompanying him or not.

9. In rebuttal, claimants examined Jaspal Singh, owner of the three-wheeler as PW-4, who had taken both the injured in the accident to hospital and has stated as follows:-

(i) He saw an old man and another person lying injured

on the road;

- (ii) On asking of the public, which had gathered at the spot, he boarded both the injured in his three-wheeler and dropped them at Civil Hospital, Ambala Cantt.;
- (iii) The old man was unconscious and the other person was critically injured.
- (iv) The critically injured person was dropped in the emergency of the hospital.
- (v) The doctor who attended the patient in emergency recorded his particulars and address.
- (vi) Identity of the injured (deceased) was ascertained from driving licence taken out from the purse of that person.
- (vii) The other injured, who was an old man, was not examined by doctor in his presence. He was unconscious and was lying outside the emergency.
- (viii) He denied that he had taken only one injured to the hospital.

11. The Tribunal on critical analysis of statements of the doctor and PW-4 Jaspal Singh, concluded that PW-3 Jagir Singh was not accompanying the deceased at the time of accident and discarded his statement.

12. Perusal of statements of witnesses examined by claimants and respondent no. 3-Insurance Company bring out certain facts on file, which are recapitulated as follows:-

- (i) Jagir Singh, father of the deceased, has stated that he was accompanying his son at the time of accident but he did not receive any injury.
- (ii) He Had taken his son to the hospital and then reported the matter to police within three hours of the accident.
- (iii) The Tribunal discarded the testimony of Jagir Singh for the reasons as follows:-
 - (a) Dr. Vijay Kumar (RW-2) Medical Officer, Civil Hospital, Ambala Cantt., came to know identity of the deceased from his driving licence, which was taken out from his purse.
 - (b) The deceased was brought to the hospital by Jaspal Singh, a three-wheeler owner, who was just a passerby and doctor took his identity as the person who brought the injured to hospital and then searched the pocket of deceased, where he found a purse containing driving licence from which he mentioned identity of deceased in *ruqa* (Ex. R-5) sent to the police.
- (iv) *Ruqa* (Ex. R-5) sent by Dr. Vijay Kumar to police reads as follows:-

“This is for your information and necessary action that a patient with following particulars, brought dead at the casualty on 09.01.2005, at 07.20 p.m., due to alleged R.S.A., as Khudda

Kalan, opposite school. Patient was brought by Jaspal Singh son of Mukhtiar Singh r/o Durala (passerby) (three-wheeler wala).

Name. Pt. Baldev son of Jagir Singh R/o V. Kardhan, Distt. Ambala (as per driving licence)

*Sd/- 09.01.2005
M.O.
C.H. A/Cantt.”*

14. In case Jagir Singh had accompanied the deceased to the hospital, there was no necessity for the doctor to search his purse, take out his driving licence and mention in the *ruqa* that identity and particulars of the deceased are as per his driving licence. This depicts that driving licence of the deceased, which was in his purse, was relied upon to know his identity by the doctor as there was nobody to tell identity of the victim. If a close relative is available in the hospital, it is natural that he will interact with the doctor concerned and narrate the whole particulars of the victim. This fact and circumstance belie the testimony of Jagir Singh that he had taken his son to hospital after accident.

15. PW-4 Jaspal Singh has stated that when he reached the spot of accident an old person and another person were lying on the road in injured condition. While old man was unconscious, the other was in critical condition. When doctor examined the critically injured person, the old man was lying outside the emergency ward in unconscious state. This is in contradiction to the statement of PW-3 Jagir Singh, who has stated that he did not receive any injury. As per claim petition, the deceased was going from Ambala to village Sarvai, *Tehsil Sadhaura*

District Yamunanagar at the time of accident but Jagir Singh while appearing as PW-3 has stated that he alongwith the deceased was going towards Ambala Cantt.

16. Admittedly, police presented the challan against driver of the offending vehicle but the vital question which arises for consideration in this appeal is “as to whether claimants have been able to prove that the deceased met with accident with the offending vehicle? For the reasons recorded by the Tribunal and facts that have come on record, I also find testimony of PW-3 Jagir Singh, father of the deceased, as unreliable. No doubt he had reported the matter to the police within three hours of the accident, when it met him at the hospital but he appears to be not an eye-witness. He has stated that he did not receive any injury and took the deceased to hospital. On reaching the hospital, his first priority would have been to meet the doctor to enquire about the deceased and disclose his identity to the doctor. In the FIR recorded by the police, he has stated that the deceased died on the way to hospital while in his statement as PW-3 he has stated that the deceased died on reaching the Civil Hospital, Ambala Cantt. PW-4 Jaspal Singh, the three-wheeler driver, who admittedly took the injured to hospital, has stated that there were two injured at the spot out of whom one (deceased) was critical and the other was an old person, who was unconscious. He dropped both the persons at the hospital. It is also evident from his statement that both were injured and the old man was lying unconscious even when he left the hospital. Claimants have concealed the identity of that injured person, who was accompanying the deceased. It is nowhere the case of Jagir Singh that he

is the same old person, who had become unconscious after receiving injuries at the spot or he gained consciousness in the hospital. Statement of Dr. Vijay Kumar and PW-4 Jaspal Singh examined by claimant when read and considered in proper prospective smashes the testimony of PW-3 Jagir Singh so as to believe that he was an eye-witness of the accident. To my mind, the Tribunal has committed no error while discarding statement of Jagir Singh as eye-witness of the occurrence. On ignoring statement of Jagir Singh, as eye-witness, claimants are left with no eye-witness account of accident. The only other evidence produced by claimants is presentation of final report by the police under Section 173 Cr.P.C. against respondent no. 1-Jaswinder Singh, driver of the offending vehicle. The police had also relied upon testimony of Jagir Singh while presenting the challan. When the Tribunal found so much contradiction in testimony of eye-witness Jagir Singh, the mere fact that the challan has been presented against driver of the offending vehicle, cannot be a reason to discard the finding of the Tribunal.

17. As a sequel of my above discussion, I find no reason to differ with the finding recorded by the Tribunal that claimants have failed to prove that the accident was caused with the offending vehicle.

18. This appeal has no merit. Dismissed.

December 21, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No