

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

FAO No.6492 of 2012

Date of decision : 18.05.2016

Gram Panchayat, village Khatiwas, Tehsil & Distt. Jhajjar

.....Appellant

Versus

Raj Kumar and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

- 1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mr. Sanjeev Kodan, Advocate for appellant.

Mr. Manoj Dharkar, AAG, Haryana for respondents No.2 to 4.

Mr. A.S. Sidhu, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 17.11.2011 passed by the learned Motor Accidents Claims Tribunal, Jhajjar (hereinafter called the 'Tribunal') vide which the claim petition filed by the appellant Gram Panchayat for grant of compensation on account of death of buffalo bull belonging to it in the motor vehicular accident which took place on 28.10.2010 has been dismissed.

2. Learned counsel for the appellant contended that the learned Tribunal has dismissed the claim petition on the ground that the Gram Panchayat was not proved to be the owner of the buffalo bull and it was

only a stray animal. Secondly, that there was unexplained delay in registration of the criminal case. He contended that there was sufficient evidence on record to establish that buffalo bull in question belonged to the Gram Panchayat. The delay in lodging the FIR was also not attributable to the Gram Panchayat as the information was given to the police on the same day and police had also moved an application for postmortem examination on the dead body of buffalo bull. Thus, he contended that learned Tribunal has wrongly dismissed the petition.

3. On the other hand, Mr. A.S. Sidhu, learned counsel for respondent-Insurance company contended that there was no evidence on record to establish that the buffalo bull belonged to the Gram Panchayat. He contended that it was alleged that buffalo bull was purchased by contributing the money by the villagers, but no resolution has been brought on record to prove the purchase of the buffalo bull. Thus, he contended that the Gram Panchayat has not been able to establish that the buffalo bull in question was owned by it. The claim petition on its behalf was not maintainable. He contended that in fact the said buffalo bull was a stray animal. He further contended that there was delay of about two months in lodging the FIR, which has not been explained at all, which shows that the story mentioned in the claim petition has been later on concocted. Thus, he contended that the claim petition has been rightly dismissed by the learned Tribunal.

4. I have duly considered the aforesaid contentions.

5. The learned Tribunal has dismissed the claim petition on the

grounds that the appellant-claimant Gram Panchayat has not been able to establish that it was the owner of the deceased buffalo bull and secondly, there was delay of 49 days in lodging the FIR. On appraisal of the record both these grounds are not sustainable. Admittedly there can be no documentary evidence with respect to the ownership of the animal. The appellant-claimant in this case is the Gram Panchayat village Khatiwas, Tehsil & Distt. Jhajjar. So, nobody can have any personal interest in order to raise the false claim. The amount of compensation if any awarded in the claim petition will go to the Panchayat fund and not to the pocket of any individual. It is unexpected that the Members of the Gram Panchayat will present the false claim petition.

6. The claimants have examined PW-2 Dr. Surender Arya, the Veterinary Surgeon, who had carried out the postmortem examination on the dead body of the buffalo bull. He has categorically mentioned that said buffalo bull belonged to Gram Panchayat. In the postmortem report Ex.P9 also, the name of the owner of the dead animal has been mentioned as Gram Panchayat, Khatiwas. The version of PW-2 Dr. Surender Arya with respect to the ownership of the dead animal has not been challenged in the cross-examination. It is settled principle of law that if a witness has not been cross-examined with respect to the facts deposed by him in the examination-in-chief, that part of his statement is deemed to have been admitted by the opposite party. PW-1 Daya Nand, the Member Panchayat of the appellant Gram Panchayat, has also deposed in his affidavit that the buffalo bull in question was purchased by the Gram Panchayat due to the need of the

villagers. There was no reason to doubt the aforesaid evidence adduced by the claimant with respect to the ownership of the dead buffalo bull. So, it can be safely concluded that the dead buffalo bull was owned by the Gram Panchayat.

7. The delay in lodging the FIR is also not attributable to the claimant Gram Panchayat. Ex.P7 is the copy of the application moved by the police for the postmortem examination of the dead animal. In the application it is categorically mentioned that the said animal was hit by the Haryana Roadways bus bearing registration No.HR-61A-5304 i.e. the offending vehicle. This application is dated 29.10.2010 and accident has taken place on 28.10.2010. The application for postmortem examination, detailing therein the number of the offending vehicle, has been moved on the next date of the accident. If the delay has been caused in registration of the criminal case that is not attributable to the claimant-Gram Panchayat. Moreover, mere delay in lodging the FIR is no ground to non-suit the claim. To support this view, reference can be made to cases ***National Insurance Company Limited Vs. Gurbachan Singh and others 2007(5) RCR (Civil) 660, Ravi Vs. Badrinarayan and others 2011(2) RCR (Civil) 190 and Sudesh and others Vs. Naresh and others 2011(3) Law Herald 2010.*** Thus, keeping in view my aforesaid discussion, the findings recorded by the learned Tribunal cannot be sustained in the eye of law. The learned Tribunal has not assessed any amount of compensation. So, the case has to be remanded back to the learned Tribunal for fresh decision in accordance with law.

8. Thus, keeping in view my aforesaid discussion, the present appeal is hereby allowed. The impugned award dated 17.11.2011 is hereby set aside. The case is remanded to the learned Tribunal for fresh decision in accordance with law. The parties are directed to appear before the learned Tribunal on 11.07.2016.

18.05.2016

sunil yadav

(DARSHAN SINGH)
JUDGE