

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

FAO No.2199 of 2013(O&M)

Date of decision:29.8.2016

Oriental Insurance Co. ltd.

....Appellant

VERSUS

Nirmal Deep Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Madhu Sharma, Advocate for the appellant.

Mr. J.S. Chandail, Advocate for respondents No.1 to 3.

REKHA MITTAL, J.

The present appeal lays challenge to award dated 17.12.2012 passed by the Motor Accident Claims Tribunal, Patiala (in short 'the Tribunal') whereby compensation has been awarded to the claimants in regard to death of Darshan Singh in a motor vehicular accident that took place on 06.06.2005 at about 8.30 AM.

The facts relevant for disposal of the present appeal are that as per case of the claimants, on 06.06.2005, Darshan Singh (since deceased) accompanied by Nirmaldeep Singh (his son) had gone to pay obeisance at the Samadh of 'Mudre Baba' at village Gharama. At about 8.30 AM when they reached at bus stand Shambhu and were to cross the road, Darshan Singh was going ahead of Nirmaldeep Singh. A Maruti Wagon-R car came from the side of Ambala city at a very high speed and struck against Darshan Singh and drove away. Another Indica car bearing No.HR-09-E-0039 was coming behind the aforesaid Wagon-R car which struck against Darshan Singh who suffered injuries on his forehead, head and other parts

of the body. After causing injuries to Darshan Singh, said car stopped and while deceased was being brought to A.P. Jain Hospital, Rajpura in the said car, the deceased succumbed to injuries on the way. The matter was reported to Police Station Sadar Rajpura where First Information Report (in short 'FIR') No.113 dated 06.06.2005 under Section 279/304-A was registered.

On completion of pleadings of the parties, the Tribunal framed the following issues for determination:-

1. Whether Darshan Singh son of Ujjagar Singh died in an accident caused by respondent No.1 while driving car bearing registration No.HR-09E-0039 at about 8.30 a.m. at bus adda Shambu Khurd, District Patiala, rashly and negligently on 06.06.2005 as alleged? OPP
2. Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident, if so its effect? OPR.
4. Relief.

The parties were permitted to adduce evidence in support of their respective claims. After having heard counsel for the parties in the light of materials on record, the Tribunal determined issue No.1 in favour of the claimants and compensation was assessed to the tune of Rs.1,50,000/- payable with interest at the rate of 7.5% per annum from the date of claim petition till realization. Respondent No.1A (owner) and 2 (the insurer) were held jointly and severally liable to pay compensation.

Counsel for the appellant has assailed findings of the Tribunal on issue No.1 with the plea that Indica car bearing No.HR-09-E-0039

insured with the appellant was not involved in the accident. The claimants failed to adduce satisfactory much less cogent and convincing evidence on record to establish that Indica car hit the deceased or caused injuries to him. To substantiate her contentions, counsel has invited attention of the Court towards contents of the FIR (Ex.C/1) lodged at the behest of one of the claimants namely Nirmaldeep Singh and the facts elicited in his cross examination at the instance of counsel representing owner of the vehicle as well as insurance company. It is argued with vehemence that a careful and thoughtful reading of the statement of Nirmaldeep Singh, an alleged eye witness to the occurrence, does not lead to a conclusion even on the basis of balance of probabilities that Indica car was being driven in a rash or negligent manner much less having caused the accident. In addition, it is argued that the claimants indicted Indica car and its driver for rashness and negligence as neither the claimants nor the police (investigating agency) could trace the Wagon-R car that struck against Darshan Singh while he was crossing the road. The last submission made by counsel is that negligence attributable to the deceased and driver of the Wagon-R car (untraced) cannot be fastened upon Indica car in order to extract compensation from the insurer of the vehicle.

Counsel for the contesting respondents/claimants, on the contrary, has supported the findings of the Tribunal on issue No.1 with the submission that the same are based upon detailed and correct appreciation of deposition of Nirmaldeep Singh, an eye-witness to the occurrence and author of the FIR (Ex.C/1).

I have heard counsel for the parties, perused the paper-book and the records of the Tribunal.

Concededly, Nirmaldeep Singh son of deceased Darshan Singh (retired employee of police department) is the author of FIR lodged by the police on 06.06.2005, the day the accident took place. A copy of the FIR has been marked as an exhibit by the claimants. There cannot be any dispute about the settled position in law that FIR is not a substantive piece of evidence. Nirmaldeep Singh, alleged eye-witness to the occurrence appeared in the witness box and tendered into evidence his duly sworn affidavit (Ex.CW1/A). In para 3 of the affidavit, after narrating the occurrence in consonance with the pleadings set up in the claim application, he has stated that FIR No.113 dated 06.06.2005 was registered at the Police Station Sadar Rajpura in this respect but police has recorded in FIR the wrong version contrary to the version given by the deponent in collusion with the respondent (owner and driver of the offending car). It is falsely mentioned in the FIR that accident was caused due to rash and negligent driving of the driver of Maruti Wagon-R car but in fact the accident was caused by respondent No.1 while driving his Indica car bearing registration No.HR-09-E-0039, rashly and negligently. With regard to the role attributed to Indica car, a relevant extract from testimony of Nirmaldeep Singh reads as follows:-

“2.....when they reached at Bus Stand Shambhu and were to cross the road at about 8.30 A.M. Darshan Singh (since deceased) was going ahead to the deponent. Then a car make Maruti Vaganar (Wagon R)came from the side of Ambala City on a very high speed and struck from its side against Darshan Singh deceased and ran away. Another Indica Car bearing registration No.HR-09-E-0039 was also coming behind the above said car which struck against Darshan Singh deceased who suffered injuries on his forehead and head and on other parts of his body. The said car was stopped after causing injuries to Darshan Singh.....

Number of the car and driver of the car was noticed by the deponent. It is worthy to mention here that no injuries was caused by Maruti Wagon-R car which proved serious to deceased Darshan Singh and only minor injuries was caused by it on the person of the deceased. Darshan Singh suffered serious injuries on his head and other parts of his body. He was taken to A.P. Jain Hospital Rajpura by the deponent but he succumbed to the injuries on the way.”

In the FIR (Ex.C/1), there is reference to Indica car with its registration particulars but no rashness or negligence has been attributed to the vehicle nor said to have caused the accident. On the contrary, it has been mentioned therein that Wagon-R car hit deceased Darshan Singh and thereafter the deceased hit Indica car. There is nothing on record suggestive of the fact that since lodging of FIR in June 2005 and till recording of statement of Nirmaldeep Singh in October, 2007, he ever raised an issue before any authority much less a Court of law that the police recorded a false and wrong version contrary to the version given by him. In his cross examination by counsel representing owner of the Indica car, he has deposed, reads as follows:-

“It is correct that accident was caused by the car which was having RC No. of U.P. i.e. Wagon® car. Voluntarily then Indica hit Darshan Singh deceased, then he felt fainted and then he expired in hospital.”

In cross examination by counsel representing the Insurance Company, a relevant extract from his testimony reads as follows:-

“It is correct that the accident was caused due to rash and negligent driving of the driver of Wagon® which ran away and this statement was read over to me by police and I signed it after admitting to be correct.”

A plain reading of the statement as a whole does not substantiate his version that the police did not record his correct version or

recorded contrary to what was disclosed by him. Analyzed from another angle, statement of Nirmaldeep is silent as to how driver of the Indica car was rash or negligent. As per version of the claimant, deceased was crossing the road when he was hit by Wagon-R (untraced). This fact clearly establishes that the deceased himself was negligent as he did not ensure that no vehicle was coming from either side of the road. Secondly, he was hit by Wagon-R car that came at a high speed and was thrown on the road. Assuming that later he was hit by Indica car coming behind Wagon-R, can Indica car be held guilty. As has been noticed above, Nirmaldeep does not say how driver of Indica car was rash or negligent. If driver of Indica car could neither expect that a pedestrian would be crossing the road without taking care nor his being hit by a vehicle going ahead of Indica, it is difficult to affirm the findings of the Tribunal on the basis of assumptions and presumptions that driver of Indica car did not take care expected of a prudent driver much less to hold him rash or negligent.

Another important aspect of the case is that identity of Roshan Lal, stated to be driver of Indica has not been established. The Indica car was owned by a firm M/s Khanna Motors Hisar Road, Ambala. One of the partners of the firm Sh. Swatantar Khanna appeared in the witness box and tendered into evidence his affidavit (Ex.RW3/A). He has deposed that on the day of occurrence, he was driving the Indica car but the car was not involved in the accident. When accident of Darshan Singh took place with a Wagon-R car with registration number of U.P. the car was driven by him. He was cross-examined by counsel opposite but nothing tangible and fruitful has been elicited that Roshan Lal had anything to do either with

M/s Khanna Motors or with the car in question. Even it has not been suggested to the witness that accident in question took place due to rash and negligent driving of Indica car. The only suggestion put to the witness is that Vehicle No.HR-09-E-0039 was involved in the accident.

It is also relevant to note that though the Tribunal in para 11 has held that statement of Nirmaldeep is an afterthought but still answered issue No.1 in favour of the claimants on the basis of his statement only.

As an upshot of the aforesaid discussion, findings of the Tribunal on issue No.1 are the result of mis-appreciation of evidence and liable to be set aside and ordered accordingly.

In view of what has been discussed hereinabove, the appeal is allowed and the judgment passed by the Tribunal is set aside. As a consequence, the claim application filed by the claimants is ordered to be dismissed.

AUGUST 29, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no