

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

FAO No.3475 of 2016(O&M)

Date of decision:16.8.2016

The New India Assurance Company Ltd.Appellant

VERSUS

Savitri Devi and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajesh K. Sharma, Advocate for the appellant.

REKHA MITTAL, J.

CM No.16072-CII of 2016

Allowed as prayed for.

Document (Annexure A-1) is taken on record.

FAO No.3475 of 2016

The present appeal has been directed against the award dated 04.11.2015 passed by the Motor Accident Claims Tribunal, Panipat (in short 'the Tribunal') whereby compensation has been awarded in favour of Savitri Devi and others in respect of death of Dev Parsad Mishra in a motor vehicular accident that occurred on 02.02.2012.

Counsel for the appellant has challenged the award primarily on two grounds. The first submission made is that testimony of Ashok Kumar Sharma (PW-5), an alleged eye witness to the occurrence, is not worthy of reliance, therefore, the learned Tribunal has fallen into a grave error in upholding plea of the claimants/respondents that the deceased sustained injuries in a motor vehicular accident on account of rash and negligent driving of Car No.HR-05G-1250 by Satnam Singh – respondent

No.1. To bring home his contention, it is argued that as per the facts elicited in cross examination of Ashok Kumar, Dev Parsad Mishra was known to him prior to the occurrence but the witness neither shifted the injured to the hospital nor accompanied him at the time of shifting, sufficient to create a doubt that he was present at the spot. It has further been argued that the First Information Report was not lodged at the behest of Ashok Kumar and thus it is difficult to believe that he had seen the occurrence.

Another submission made by counsel is that the accident in question took place on 02.02.2012 but the injured/victim died in July, 2012 after a gap of about 5 months. The respondents/claimants have not proved that any post-mortem examination was conducted in order to prove that there is a direct nexus between the injuries sustained by the victim and his death.

I have heard counsel for the appellant, perused the paper-book particularly the award passed by the learned Tribunal.

Ashok Kumar (PW-5) son of late Sh. Jaswant Singh tendered into evidence his duly sworn affidavit (Ex.PW5/A) wherein he deposed that the driver while driving car bearing No.HR-5G-1250 in a rash and negligent manner hit the motorcycle of Mishra Ji from back and he (Mishra Ji) was thrown away along with his motorcycle and suffered grievous injuries on his head, hands, feet and waist. He has further deposed that police from Samalkha Police Station reached the place of accident and took Mishra Ji to Primary Health Centre, Samalkha in a van. It has further been deposed that the police inquired about the accident from him and he gave full details as to how, where and with which vehicle the accident took

place. As the injured victim was shifted to the hospital by the police that arrived at the place of accident, nothing unnatural and abnormal can be noticed in conduct of Ashok Kumar of not accompanying the injured victim to the hospital.

A plain and careful reading of the cross examination of Sh. Ashok Kumar does not lead to a conclusion, as has been sought to be contended, that either he was not present at the spot or he has been introduced as a witness later. Counsel has not pointed out any materials on record to rebut testimony of Sh. Ashok Kumar. In this view of the matter, I find myself unable to accept the submissions made by counsel for the appellant that Sh. Ashok Kumar was not a witness to the occurrence or his testimony is not worthy of credence.

So far as the plea that in absence of post-mortem report, the claimants have not been able to connect the injuries with death of Sh. Dev Parsad Mishra, the learned Tribunal has dealt with this aspect of the matter in para 16 wherein a detailed account has been recorded with regard to period of confinement of the injured victim to different hospitals w.e.f. 02.02.2012 till he passed away on 02.07.2012. There is nothing on record to suggest that between 02.02.2012 to 02.07.2012 anything else intervened in order to substantiate contention of the appellant that death was not due to injuries sustained by the victim. That being so, I do not find merit in the contention that absence of post-mortem examination is either fatal to the claimants' right or the medical evidence on record is not sufficient to record a positive finding that Dev Parsad Mishra died due to the injuries received in the accident.

No other point has been raised.

In view of what has been discussed hereinabove, the appeal fails and is accordingly dismissed in *limine*. No order as to costs.

AUGUST 16, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned

:

yes/no

Whether reportable

:

yes/no