

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

FAO No.5640 of 2016 (O&M)

Date of decision : 20.12.2016

Paramnanad Mittal

.....Appellant

Versus

Amandeep Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. P. K. S. Phoolka, Advocate for appellant.

DARSHAN SINGH, J.

CM-19440-CII-2016

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 310 days in filing the present appeal is hereby condoned.

Main Appeal

The present appeal has been preferred by the owner of truck bearing registration No.PB-11AN-9745 (respondent No.2 in the claim petition) against the award dated 01.08.2015 passed by learned Motor Accidents Claims Tribunal, Kaithal vide which respondents No.1 to 6-claimants have been awarded compensation to the tune of ₹14,07,740/- on account of death of Narender in the motor vehicular accident which took place on 16.08.2014.

2. The present appeal has been preferred by the appellant-owner of the vehicle to assail the award.

3. I have heard learned counsel for the appellant and have gone through the paper-book carefully.

4. Learned counsel for the appellant contended that the entire case of the claimants was based on the statement of PW-3 Raju, the witness of the occurrence. Said Raju has also appeared as a witness of the occurrence in the criminal case but he did not support the prosecution version in the criminal case and categorically stated that on the date of accident he along with deceased Narender was going on motorcycle No.HR-06S-2263 from Nabha to Kaithal, when they reached near village Bouran Kalana they tried to overtake one unidentified vehicle. The said vehicle suddenly diverted to the side in a rash and negligent manner and struck with the motorcycle. Due to which they fell down. Narender died due to the injuries. Thus, learned counsel for the appellant contended that as per the statement made by Raju in the criminal case, the vehicle owned by the appellant was not involved in this accident. It was the stand of the appellant throughout the trial of the claim petition that his vehicle was not involved in the accident and has been falsely implicated. Thus, he contended that the learned Tribunal has wrongly passed the award against the appellant.

5. I have duly considered the aforesaid contentions.

6. As per the version of the claimants on 16.8.2014 deceased Narender was coming back from Malerkotla to Kaithal via Nabha-

Bhawanigarh on motorcycle bearing registration No.HR-06S-2263 being driven by PW-3 Raju on moderate speed and on the extreme due left side of the road. When they reached near the village Boda Kalana near petrol pump ahead of Nabha, a gas truck bearing registration No.PB-11AN-9745 being driven by respondent No.7 (respondent 2 in the claim petition) at a high speed and in a rash and negligent manner took the sudden turn and hit the motorcycle. Due to the impact, both the occupants of the motorcycle namely Raju and Narender fell down on the road and sustained the injuries. Later on, Narender succumbed to the injuries. The criminal case bearing FIR No.79 dated 17.8.2014 was also registered against respondent No.7 for causing this accident.

7. The appellant and respondent No.7 Gurmit Singh, the driver of the vehicle filed the joint written statement wherein they alleged that the vehicle in question was not the offending vehicle and has been falsely involved in this accident. A false FIR has been lodged against respondent No.7.

8. The respondents No.1 to 6-claimants have examined PW-2 Satvinder Sharma who proved the copy of the FIR Ex.PA and also deposed that the report under Section 173 of the Code of Criminal Procedure, 1973 (for short the "Cr.P.C.") for the offence punishable under Section 279/304A/337 of the Indian Penal Code, 1860 (for short the "IPC") has been forwarded to the criminal court against respondent No.7 Gurmit Singh. PW-3 Raju the witness of the occurrence has fully corroborated the mode of the

accident mentioned by the claimants in the claim petition. He categorically deposed that he was driving the motorcycle at a moderate speed on the extreme left side of the road. Deceased Narender was the pillion rider. When they reached in the area of Pind Boda Kalan near petrol pump ahead of Nabha, respondent No.7 took a sudden fast turn in a rash and negligent manner without giving any indicator and hit against their motorcycle, when they were overtaking the same. As a result of which, they fell down and sustained multiple serious and grievous injuries. Later on, Narender succumbed to the injuries during the treatment. He categorically deposed that the accident has taken place due to the sole rash and negligent driving of truck bearing registration No.PB-11AN-9745 by respondent No.1 and FIR Ex.PA was recorded on his statement. The appellant has not led any evidence in rebuttal to the aforesaid evidence adduced by the claimant. Even respondent No.7 Gurmit Singh the driver of the truck in question has not appeared in the witness box, whereas the evidence adduced by the claimant is also corroborated from the copy of the report under Section 173 Cr.P.C. Ex.PB. The non-appearance of respondent No.7 Gurmit Singh, the driver of the truck, in the witness-box raises the adverse inference.

9. Learned counsel for the appellant has laid much stress on the plea that PW-3 Raju has not supported the prosecution case when he stepped into the witness box in the criminal case. He has stated that the motorcycle was hit by some unidentified vehicle. Respondent No.7 the driver of the truck has also been acquitted in the criminal case. It is settled

principle of law that in the claim petition filed under the Act the Tribunal has to base its findings on the basis of evidence adduced before it. The learned Tribunal has exactly done so in the present case.

10. As already mentioned the evidence led by the claimants on the mode of accident has totally gone un rebutted. The present claim petition was decided by the learned Tribunal on 01.08.2015. Learned counsel for the appellant has placed on file the certified copy of the statement of Raju recorded in the criminal case which shows that the said statement has been recorded on 07.10.2015 i.e. after more than two months of the decision of the claim petition. No doubt in that statement Raju (PW3 in this case) has stated that their motorcycle was struck by some unidentified vehicle. It appears that after the decision of the claim petition PW-3 Raju has been won over by the driver of the vehicle to escape the rigours of the criminal law. Thus, the subsequent divergent statement of PW-3 Raju in the criminal case, which was not part of evidence of the claim petition, is no ground to find any fault with the conclusion arrived at by the learned Tribunal on the issue of negligence. Similarly the subsequent acquittal of respondent No.7 Gurmit Singh the driver of the truck in the criminal case is also no ground to non-suit the claimants in the claim petition filed under the provisions of the Act for grant of compensation. To support this view reference can be made to cases ***Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582, Pepsu Road Transport Corporation, Patiala Vs. Joginder Kaur 2001(3) RCR (Civil) 166, Harbans Lal and others Vs. Shingara Singh and others 2014(2) RCR***

(Civil) 570, Gurpreet Singh Vs. Rajinder Kumar Dhawan and others 2015(7) RCR (Civil) 883 and Charan Singh Vs. Sanjay Kumar and others 2015(8) RCR (Civil) 741.

11. The mode of the accident as pleaded in the claim petition and the evidence adduced by the claimants clearly establishes that deceased Narender was the pillion rider on motorcycle bearing registration No.HR-06S-2263 being driven by PW-3 Raju. The said motorcycle was hit by the truck bearing registration No.PB-11AN-9745 being driving by respondent No.7, as a result of impact Narender fell down and suffered the injuries, which resulted into his death. Thus, the findings of the learned Tribunal that respondent No.7 Gurmit Singh has caused this accident by driving his truck in a rash and negligent manner do not suffer from any perversity or infirmity.

12. No other point was argued before this Court.

13. Resultantly, the present appeal is without any merits and the same is hereby dismissed.

20.12.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No