

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

FAO No.7327 of 2016 (O&M)

Date of decision : 09.12.2016

Mohammad Akhtar

.....Appellant

Versus

Nirmal Kaur and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Rahul Dev Singh, Advocate for appellant.

DARSHAN SINGH, J.

CM No.25070-CII of 2016

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and the delay of 480 days in filing the present appeal is hereby condoned.

FAO No.7327 of 2016

The present appeal has been preferred against the award dated 04.05.2015, passed by the learned Motor Accidents Claims Tribunal, Rupnagar (hereinafter called the “Tribunal”) in a petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) whereby respondents No.1 to 4-claimants have been awarded compensation to the tune of ₹11,79,700/- along with interest at the rate of 9% per annum from

the date of filing the claim petition till realization on account of death of Tarsem Masih in the motor vehicular accident which took place on 04.11.2012.

2. As per the case of the claimants on 03.11.2012 deceased Tarsem Masih along with Paramjit Singh, Kashmira, Ajay Kumar, Lucky and Vicky hired truck bearing registration No.PB-11AV-7564 to transport their carts and horses. They were returning back from village Kather, Distt. Budgam (J&K). The truck was being driven by the present appellant Mohammad Akhtar. On 04.11.2012 at about 09:30 p.m., they were little behind village Behram. The appellant was driving the truck in a rash and negligent manner. The persons travelling in the truck requested to go slow but he did not pay any heed to their request. When they were behind Behram Toll Plaza near gate Chakk Maidass on Phagwara-Nangal Shahr Road, appellant while driving the truck rashly and negligently took it wrong on the side of road and struck another truck bearing registration No.PB-32G-8538 and then it struck against a tree. Both the trucks turned turtle. All the occupants received serious injuries. Tarsem Masih received the injuries on his head and other parts of the body and died at the spot.

3. The claim petition was contested by the appellant on the grounds *inter alia* that no accident took place due to his rash and negligence driving. The facts pleaded in the claim petition were denied.

4. On the basis of the pleadings of the parties, learned Tribunal framed the following issues on 06.01.2015 : -

1. Whether on 04.11.2012, the accident took place with truck No.PB-

11AV-7564 due to rash and negligent driving of Mohammad Akhtar respondent No.1, which resulted into death of Tarsem Masih? OPP

2. Whether the claimants are entitled to receive compensation? If so, to what amount and from whom? OPP
3. Whether the claim petition is maintainable? OPR
4. Whether the petition is bad on account of non-joinder and mis-joinder of necessary parties? If so, its effect? OPR
5. Relief.

5. On appreciation of the evidence, learned Tribunal held that the accident has taken place due to rash and negligent driving on the part of the appellant wherein Tarsem Masih suffered the fatal injuries and ultimately the awards was passed in favour of respondents No.1 to 4.

6. Learned counsel for the appellant contended that the appellant was not negligent for causing this accident. He contended that in fact another vehicle came from the opposite side and crossed the lane of the road due to which the appellant had to take his truck off the road and was about to hit the tree. The appellant was trying to get the truck under control but the deceased, apprehending the collision, jumped from the truck and suffered the injuries. Thus, he contended that the appellant was not at fault. He further contended that even the witnesses examined by the appellant could not establish that the truck in question was being driven in a rash and negligent manner by the appellant.

7. I have duly considered the aforesaid contentions.

8. Even from the version of the appellant in the grounds of appeal the factum of the accident is admitted. It is also admitted that at the

time of the accident the appellant was driving truck bearing registration No.PB-11AV-7564. The plea raised in Para No.6 of the grounds of appeal that another truck came from the opposite direction and crossed over the lane, the appellant had to take his truck off the road and was about to hit the tree when deceased jumped from the vehicle, was admittedly not pleaded in the written statement. So, this plea raised by learned counsel for the appellant is beyond pleading and cannot be taken into consideration.

9. The claimants have examined PW-2 Harnek Singh the witness of the occurrence. No doubt in the cross-examination he has pleaded that he has reached at the place of accident after 10-15 minutes of the accident, but he has categorically deposed that the truck in question had overtaken him. The same was being driven at fast speed and on the wrong side of the road. It is also not disputed that the appellant is facing the trial in the criminal case for causing this accident. As already mentioned the factum of the accident is even not disputed by the appellant. If he would have been driving the truck in question at a slow speed, he could have easily controlled the truck and avoided the accident. Mere this fact that some witnesses have turned hostile in the criminal case is no ground to absolve of the appellant of his liability for causing this accident as the claim petition is to be decided on the basis of the evidence adduced before the Tribunal.

10. Thus, I do not find any infirmity in the findings recorded by the learned Tribunal that the appellant was negligent for causing this accident which resulted into the fatal injuries to Tarsem Masih.

- 11. No other point was raised before this Court.
- 12. Resultantly, present appeal does not have any merit and the same is dismissed.

09.12.2016
sunil yadav

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No