

340 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3466-2003 (O&M)
Date of decision: 30.08.2017

Kuljeet Kaur and others

.... Appellants

Versus

Sarabjit Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.L.S.Sidhu, Advocate
for the appellants.

Mr.R.C.Kapoor, Advocate
for respondent No.2.

Avneesh Jhingan, J.

Present appeal has been preferred by the claimants against the award dated 13.03.2003 passed by Motor Accidents Claims Tribunal, Amritsar (hereinafter referred to as the 'Tribunal') dismissing the claim petition.

The claim petition was filed by Kuljit Kaur, widow, one minor son, one minor daughter and the mother of Gurdial Singh. The claim petition was filed by stating that on 11.12.1999, Gurdial Singh was going on a scooter bearing registration No.PID-7563 from Attari towards Amritsar. When he reached near the bridge leading to village Lahorimal, a maruti car bearing registration No.PB-02T-6820 which was being driven rashly and negligently came and struck against the scooter, as a result of the accident, Gurdial Singh sustained multiple injuries and died on the spot.

Notices were issued to the owner of maruti car bearing

registration No.PB-02T-6820 (hereinafter to be referred as the offending car) and to the Insurance Company.

Respondents No.1 and 2 filed their respective replies. Replications to the written statements were also filed. The Tribunal framed the following issues:-

- 1) Whether Gurdial Singh died in road accident caused by the maruti car No.PB-02T-6820 driven by the respondent No.1 rashly and negligently on 11.12.1999 in the area of bridge of kacha path leading to village Lahorimal? OPP
- 2) Whether the applicants are the legal heirs and dependant upon the deceased? OPP
- 3) Whether the respondent No.1 was not holding valid driving licence at the time of the accident?OPR
- 4) Whether the applicants are entitled to the compensation. If so to what amount and from whom? OPP

The Tribunal, on the basis of the evidence and witnesses produced, dismissed the claim petition holding that the claimants have not been able to prove that Gurdial Singh died because of accident with the offending car.

Aggrieved of the said award, the present appeal has been filed.

I have heard the learned counsel for the parties and have perused the paperbook with their able assistance.

The first and foremost question required to be proved by the claimants is that the accident had taken place with the offending car.

The facts as stated in the claim petition are that on 11.12.1999,

Gurdial Singh was going on his scooter bearing registration No.PID-7563. He was going from Attari towards Amritsar. On reaching near the bridge leading to village Lahorimal, the offending vehicle which was being driven rashly and negligently, struck with the scooter of Gurdial Singh. Gurdial Singh suffered multiple injuries and died on the spot. The age of the deceased was 42 years at the time of the accident and he was earning Rs.10,000/- per month by running a workshop of manufacturing agricultural implements. The appellants produced Partap Singh-PW2, a 50 years old teacher, who claimed himself to be an eye witness of the accident. The respondents tendered the photocopy of DDR No.20 dated 11.12.1999 as mark 'X'.

Partap Singh, the alleged eye witness, deposed before the Tribunal that he was on the way to Amritsar from Attari and the deceased was going ahead of him on his scooter bearing registration No.PID-7563. He saw the offending car which came from behind and was being driven rashly and negligently by one sikh gentleman whose name he did not know. The said car dashed against the scooter of Gurdial Singh and he fell down on the ground. He stated that he chased the car for a furlong but the car sped away.

Deposition mentioned may appear to be a sufficient proof of the accident but a DDR mark 'X' was also produced before the Tribunal. DDR was reported by Jagir Singh, the brother of the complainant. It may be mentioned here that the accident took place on 11.12.1999 and DDR is also of 11.12.1999. In DDR, Jagir Singh had stated that he along with his brother was coming on their scooters from village Baggra from their sister's house. On reaching near the bridge leading to village Lahorimal, on account of the headlights of on coming vehicle, the scooter of Gurdial Singh hit against the

bridge wall (pulley), he fell down and got injured. It was further stated that it was around 6.30 p.m. and Harbans Singh, son of Vishaka Singh, resident of village Lahorimal, was coming on his motorcycle. Harbans Singh being known to Jagir Singh stopped and in the light of their vehicles they saw that Gurdial Singh died on the spot due to injuries and bleeding.

In *Bimla Devi & Ors. Vs. Himachal Road Transport Corpn. & Ors., 2009 (3) RCR (Civil) 805*, the Hon'ble Apex Court observed that the standard of proof beyond reasonable doubt has not to be applied.

Testing the present case as per the decision of the Hon'ble Apex Court, it is evident that Jagir Singh who was brother of the deceased and who reported the matter to the police, never stepped into the witness box or led any evidence. Not only this, even Harbans Singh, who is named in the DDR being known to Jagir Singh, was also not produced. The so-called eye witness Partap Singh gave the statement which was not worth reliance. He appears to be a procured witness. He neither knew the name of the driver of the offending car nor he ever reported the said incident to the police. Not only this as per Jagir Singh, he and the deceased were coming back on their scooters but Partap Singh nowhere in his statement had mentioned that Jagir Singh was present on the spot. Partap Singh stated that he did not know the name of the driver and he gave no explanation how he came to know that respondent No.1 was driving the offending car at the time of the accident. Partap Singh had only stated that a sikh gentleman was driving the offending vehicle then how the name of respondent No.1 and his parentage came to be known by the appellants. It is surprising to know that Jagir Singh never mentioned about involvement of any vehicle.

It may be further noticed that no FIR or complaint was made by the claimants against respondent No.1 and he never stepped into the witness box so that he can avoid the cross-examination. In the coloum regarding the information furnished before the police regarding the occurrence in post mortem report Ex.PX, it is recorded that Gurdial Singh died due to road side accident by falling from the running scooter on the striking with the pulley.

From the above discussion, the findings of the Tribunal cannot be faulted that the claimants have failed to discharge their onus to prove that the deceased died due to accident with an offending vehicle. In such circumstances, the appeal is devoid of any merit and is hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

30.08.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes