

In the High Court of Punjab and Haryana at Chandigarh

FAO-987 of 1993(O&M)
Date of Decision: 07.11.2017

Gurmail Kaur and others

---Appellants

versus

Gulzar Ram and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. A.S.Dhindsa, Advocate
for the appellants

Mr. Kirpal Singh, Advocate,
for Mr. Harish Dwivedi, Advocate
for respondent No. 2

Mr. Amit Kundra, Advocate
for respondent No.3

Rekha Mittal, J.

The present appeal directs challenge against award dated 2.11.1992 whereby application filed by Gurmail Kaur and others for claiming compensation in respect of death of Balwinder Singh @ Bhola in a motor vehicular accident that took place on 21.8.1989 has been dismissed.

As per plea of the claimants, on the fateful day, Balwinder Singh @ Bhola came from his village to Patiala to attend the Court of XEN (Canal), Patiala. After attending the proceedings, he alongwith Nikka Singh of village Kakrala and many others was standing at Octroi post at Patiala Samana road. They boarded truck No. PGI 4729 for Samana. Balwinder

Singh and Nikka Singh sat on the tool box and others sat in the driver's cabin. The truck was driven by Gulzar Ram son of Jagir Singh. As a result of rash and negligent driving of truck by Gulzar Ram son of Sultan Ram, respondent No. 1, the truck struck against a *tali* tree and as a result thereof, Balwinder Singh @ Bhola received serious injuries and died on the spot. Nikka Singh and other occupants of the truck also received injuries.

Four claim applications filed by the victim families/victims arising out of the same accident were decided by common award dated 2.11.1992 passed by the Motor Accidents Claims Tribunal, Patiala (hereinafter to be referred to as "the Tribunal"). The Tribunal accepted plea that accident occurred due to rash and negligent driving of Gulzar Ram while driving truck No. PGI 4729 but dismissed claim qua death of Balwinder Singh @ Bhola for the reasons recorded in para 23 of the award with regard to failure of the claimants to prove that Balwinder Singh @ Bhola died in the accident in dispute.

Counsel for the appellants has submitted that in sub para III of para 23, the Tribunal has held that no co-passenger of the truck was produced and none had deposed that Balwinder Singh @ Bhola was travelling in the truck and died in this motor vehicular accident. It is argued with vehemence that this finding of the Tribunal is the result of non-application of mind and ignoring testimony of Nikka Singh AW6 which finds detailed reference in para 17 of the award. Another submission made by counsel is that the insurance company in its reply has not denied Balwinder Singh @ Bhola to be one of the occupants of the offending vehicle and rather raised a plea that the injured was travelling as a passenger in the truck at the time of accident, thus, the answering

respondent has got no liability to indemnify respondent No. 2 (owner of the offending vehicle) as it has not issued any policy covering risk of passengers in the truck. In addition, it is argued that Gulzar Ram driver of the offending vehicle appeared in the witness box as RW1 and has nowhere denied Balwinder Singh @ Bhola being one of the occupants of the truck at the time of accident. According to counsel, testimony of Nikka Singh AW-6 that various persons who were waiting at Patiala-Samana octroi post had boarded the truck finds corroboration from testimony of Gulzar Ram RW1.

Counsel representing respondent No. 2, on the contrary, has supported findings of the Tribunal in the light of various circumstances taken note of in para 23 of the award by the learned Tribunal. It is argued with vehemence that as the claimants failed to produce any documentary evidence that Balwinder Singh @ Bhola sustained injuries in the occurrence in question, plea of the claimants for grant of compensation has rightly been rejected by the Tribunal.

I have heard counsel for the parties, perused the paper book and copies of documents made available during the course of hearing as records got burnt in a fire incident.

Counsel for the parties would inform that they are not in possession of copies of statements of Nikka Singh AW6 and Gulzar Ram RW1. Nevertheless, fortunately the Tribunal in para 17 has given a detailed reference to the statement of Nikka Singh AW6. A relevant extract therefrom reads as follows:-

“In order to prove these issues, my attention has been drawn by the learned counsel for the claimants to the statement of AW-6 Nikka Singh and A.W.5 Gurmail Kaur, Nikka Singh A.W.6

deposed that about 3 years back, he came to Patiala to attend the court case in the office of XEN (Canal) alongwith Balwinder Singh. They reached bus stop of Samana Octroi post at about 5 p.m. and boarded truck No. PGI 4729 for going to their village. The truck stopped at village Pasiana and Gulzar Singh started driving the truck rashly and negligently. When it reached near Chaunt Kheri, the driver struck the same against a sheesham tree. He received injury on his right leg which was fractured. He was removed to Rajindera Hospital, Patiala. Balwinder Singh and Bhajan Singh died at the spot. In cross examination, this witness admitted that he alongwith Balwinder Singh paid Rs. 5/- each as fare to the driver of the truck for going from Patiala to Samana.”

The Tribunal has relied upon testimony of Nikka Singh to record a finding that the accident took place due to rash and negligent driving of truck No. PGI 4729 by Gulzar Ram RW1. In para 23 of the award, there is no reference to testimony of Nikka Singh, admittedly one of the occupants of the truck in question, having sustained injuries in the occurrence. This fact alone is sufficient to prove that findings recorded in sub para III of para 23 are the result of non-application of mind and failure to take into consideration statement of Nikka Singh AW6. Gulzar Ram driver of the offending vehicle did not contest the present appeal. Owner of the offending vehicle namely Krishan Lal Dhingra was ex parte before the Tribunal. Counsel for respondent No. 2 is not in a position to point out any materials elicited in cross examination of Nikka Singh AW6 and Gulzar Ram RW1 to negate plea of the claimants that Balwinder Singh @ Bhola

was also one of the occupants of the truck in question at the time of accident. There is also nothing on record suggestive of the fact that Gulzar Ram in his reply to the application has denied Balwinder Singh @ Bhola to be one of the travellers in the truck in question at the time of accident. Taking into consideration testimony of Nikka Singh AW6 corroborated by Gulzar Ram RW1 that several passengers were travelling in the truck in question at the time of accident, I find merit in contention of the appellants that there is sufficient material on record to conclude that Balwinder Singh @ Bhola sustained injuries in the occurrence and succumbed to injuries at the spot. That being so, Gurmail Kaur and others are entitled to get compensation in regard to death of Balwinder Singh @ Bhola.

The Tribunal has not assessed compensation in regard to death of Balwinder Singh @ Bhola. The matter is liable to be remitted to the Tribunal for assessment of compensation.

For the foregoing reasons, the appeal is partly allowed. The matter is remitted to the Tribunal for assessment of compensation. Parties through their counsel are directed to appear before the Tribunal on 4.12.2017.

(Rekha Mittal)
Judge

7.11.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No