

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.1270 of 2002

Date of Decision.07.07.2017

Rekha Singla and others

.....Appellants

Vs

Taresm Singh and others

.....Respondents

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. Paul S. Saini, Advocate
for the insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal is against the award passed by the Motor Accident Claims Tribunal dismissing the claim petition seeking compensation on account of death of Sushil Kumar Singla in a motor accident on 17.05.1998.

Mr. Vivek Suri, learned counsel appearing on behalf of the appellants submits that the appellants are legal representatives of late Sh. Sushil Kumar Singla, who was travelling in a car bearing No.PJR 96 on the correct side of the road along with Rekha Singla, Manoj Kumar, Onkar, Saloni, Charu and Munia. When the car reached within the revenue limits of village Pehar, a vehicle from the opposite direction with lights on came and resultantly, the car hit the rear portion of the truck bearing No.PAT 8716 which was parked on the metalled road, as the deceased could not see the parked truck on account of reflection of lights of the vehicle coming from the opposite direction. The truck parked on the road had not kept the parking lights on or given any signal as it was pitch dark. In fact, the

truck was liable to be attributed to some extent, much less, the insurance company. However, in the FIR registered, truck number was not mentioned but secured the name of the owner and number of the truck from the conductor and cleaner at a later stage. The name of the driver was disclosed as Tarsem Singh.

The Motor Accident Claims Tribunal has committed illegality and perversity in dismissing the claim petition on the premise that in the claim petition, the driver of the truck bearing No.PAT 8716 insured with New India Assurance Company was impleaded as respondent No.2 and insurance company as respondent No.3. Though the driver of the truck denied the accident or parking of the vehicle on the road, an untraced report of the police would not be a clinching evidence for the Tribunal to form an opinion against the claimant.

The counsel for the appellants emphatically relied upon the statement of AW2 to submit that number of the truck was given by the aforementioned witness and that was sufficient requirement of an evidence i.e. the discharge of burden of proof whereas on the contrary, respondents have not examined any evidence to what has been led by the claimants. The Tribunal could not have relied upon the statement of Harjit Singh, IPS (retired), the investigator examined on behalf of the insurance company to exonerate it from liability, much less, statement of RW2, ASI Gurpartap Singh, Police Station Civil Lines, Patiala.

Mr. Paul S. Saini, learned counsel appearing on behalf of the insurance company submits that the claimants have failed to discharge the onus with regard to involvement of the truck bearing registration No.PAT 8716. Reference to the written statement of the driver did not establish the

involvement of the accident, as the occurrence of the accident has emphatically been denied except the parking of the same and therefore, presumption cannot be drawn that the aforementioned vehicle driven by the driver, in which the deceased had died, actually hit the aforementioned truck. An extensive cross-examination of RW1 was done but no dent has been caused to establish the involvement of the offending vehicle and rightly, the insurance company has been exonerated.

In rebuttal, Mr. Suri has relied upon paragraph 14 and 15 of the judgment of Hon'ble Supreme Court in **Bimla Devi and others Vs. Himachal Road Transport Corpn. and others 2009 (13) SCC 530**, in order to enable this Court to form an opinion that the burden of proof as envisaged under Section 106 of the Indian Evidence Act has been discharged and as a result discrepancy in the evidence would not absolve the owner or the insurance company from liability even if the FIR does not contain the number of the vehicle and therefore, judgment of the Tribunal is liable to be set aside.

Reference to another judgment rendered by this Court in **Kiran Rani and others Vs. Pepsu Road Transport Corporation and others 2007 (2) RCR (Civil) 486** has been made to contend that non-lodging of the FIR would not be sufficient evidence. The Tribunal has to reply upon the evidence led in the case.

I have heard learned counsel for the parties and appraised the paper book. AW2, the eye-witness, in the cross-examination stated that he did not go to the police station to lodge the report and had made statement to the police in Rajindra Hospital and not at the site of the accident. He further stated that he learnt about the fact that the number of the truck was

not mentioned in the report but after ten days came to know of the name of the driver as Tarsem Singh at the site of accident from the conductor/cleaner. The aforementioned cross-examination is sufficient to exonerate the insurance company from liability, for, neither the conductor nor the cleaner have been examined. The involvement of the vehicle has emphatically been denied in the written statement and therefore, the onus had been shifted to claimants to establish the accident.

On the other side, RW1, the investigator, who had investigated the matter had been examined in extenso but no concrete evidence has surfaced in order to establish that the vehicle in which the deceased was travelling had actually met with accident with the parked truck insured with the insurance company i.e. the truck bearing No.PAT 8716.

There is no dispute to the ratio decidendi culled out in the judgments cited supra but the facts and circumstances of each case has to be seen. The sole testimony of AW2 does not establish the involvement of the truck. The claimants should have taken the assistance of certain other parameters by ascertaining while conducting the cross-examination of the ASI, Gurpartap Singh as to whether he has prepared the site plan or not.

There is another aspect of the matter. As per the argument of Mr. Vivek Suri, deceased was in the process of overtaking the parked truck and then suddenly, realizing that a truck was coming from the opposite direction, applied brakes and hit the rear side of the parked truck to avoid the collision with the vehicle coming from the front side, thus, he himself was driving in a rash and negligent manner.

For the aforementioned reasons, I do not intend to differ with the finding rendered by the Tribunal in non suiting the claimants from

compensation, in the absence of any evidence to establish the involvement of the truck in the accident and fastening the liability of indemnification upon insurance company. No ground for interference is made out. The appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 07, 2017
Pankaj*

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No