

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

FAO No.47 of 1994 (O&M)

Date of Decision: 13.10.2017

Gurpreet Kaur and others

. . . Appellants

Versus

Subash Kumar and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Vinod Kataria, Advocate
for the appellant/petitioner.

Mr. Ravinder Arora, Advocate
for respondent No.3.

Mr. Vinod Chaudhri, Advocate for
Mr. Rohit Goswami, Advocate
for respondent No.4.

B.S. Walia, J. (Oral)

1. Challenge is to award dated 13.08.1993 passed by the Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as the 'Tribunal') awarding compensation of Rs.25,000/- only on account of No fault liability under Section 140 of the Motor Vehicle's Act, 1988 (hereinafter referred to as 'Act').

2. Brief facts of the case leading to the filing of the appeal are that a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 by the widow, minor children and parents of Lakhvir Singh claiming compensation for his death in a accident involving Bajaj

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Chetak Scooter bearing registration No. PJI-7760 driven by Lakhvir Singh and a four-wheeler bearing Registration No. PCS-9775 driven by Gurdial Singh, respondent No.2 while the former was going from village Mallan to Village Kot Karor to see his married sister on 02.11.1989. As per the case set up by the claimants, when Lakhvir Singh reached near Village Tehna on Farikot-Talwandi Bhai Road at about 6.30 p.m., his relatives, Pritam Singh and Karam Singh, met him on the Bus Stand where the three talked for some time whereafter Lakhvir Singh left for village Kot Karor. In the meanwhile, a four-wheeler bearing Registration No. PCS-9775 driven rashly and negligently by Gurdial Singh, respondent No.2, came from the opposite side and struck against the scooter of Lakhvir Singh as a result of which Lakhvir Singh fell down from the scooter, received multiple injuries and died at the spot. Driver of the offending vehicle stopped the Tempo at some distance, came to PW-2 Santokh Singh and disclosed his name as Gurdial Singh.

3. Owner and driver of the offending vehicle i.e. respondent Nos.1 and 2 denied the allegations against them and took up the stand of the accident having taken place due to the negligence of Lakhvir Singh with some other vehicle. Lakhvir Singh's age at the time of his death, was also disputed and it was claimed that he was more than 55 years of age, was unemployed, had no income and the claim was vague and highly exaggerated. It was also alleged that the deceased was not having a valid driving license and that the claim petition was bad for non-joinder of the owner and insurer of scooter No. PJI-7760.

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4. Insurer of the four wheeler i.e. respondent No.3 also raised similar objections and confined its liability as per the provisions of the Act, terms and conditions of Insurance Policy. Involvement of the four wheeler in the accident was denied.

5. According to Insurance Company, respondent No.4, its liability as per the Policy was against third party and not the driver of the scooter. Respondent No. 4 also took up the stand that it was not liable for any compensation and that even as per the stand of the claimants, the accident had taken place on account of the negligence of respondent No.2 in driving four wheeler No. PCS-9775. Another plea was that drivers of both the vehicles were not holding a valid driving licence at the time of the accident.

6. On the basis of the pleadings of parties, the following issues were framed :-

- 1. Whether Lakhbir Singh died on account of negligent driving of 4-wheeler TDV No. PCS-9775 by Gurdial Singh respondent No.2 on 02.11.1989 as alleged? OPA.*
- 2. Whether the applicants are the legal representatives of Lakhbir Singh deceased? OPA.*
- 3. Whether the aforesaid vehicle is owned by Subhash Kumar respondent No.1? OPA.*
- 4. Whether the claimants are entitled to compensation? If so, how much? OPA.*

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5. *Whether the aforesaid vehicle No. PCS-9775 was not being driven by an authorized person having a valid driving licence at the time of the accident? OPR3.*
 6. *Whether the aforesaid vehicle was not having a valid permit and fitness certificate at the time of accident? OPR-3.*
 7. *Whether Scooter No. PJI-7760 was not being driven by an authorized person having a valid driving licence at the time of accident? OPR-3.*
 8. *Whether the application is bad for non-joinder of necessary parties? OPR.*
 9. *Whether the claim application is not maintainable? OPR 1 and 2.*
Relief.
7. Award has been assailed inter alia on the ground that the Tribunal based its findings on the judgment of the Criminal Court acquitting the driver of the offending vehicle on a technical ground, that the findings of the Tribunal were contrary to the evidence on record, that it was the duty of the investigating officer to get the signature of Pritam Singh on the inquest report and absence of signature on the inquest report and recovery memo did not imply absence of Pritam Singh at the time and scene of accident, that the Tribunal had categorically held that the offending vehicle was involved in the accident, that the finding of the Tribunal with regard to negligence of driver of the offending vehicle was erroneous and the negligence of the driver of the offending vehicle had been amply proved, therefore the award denying

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compensation was liable to be modified and compensation as claimed awarded.

8. PW-2 Santokh Singh, father of the deceased and PW-3 Pritam Singh were the main witnesses in the case with PW-3 Pritam Singh was alleged to be eyewitness to the accident. Entire case with regard to the manner in which the accident took place is based on the statement of PW-3 on whose statement the FIR Ex. PC, was recorded under Section 304-A IPC against Gurdial Singh, driver of the offending vehicle i.e. respondent No.2.

9. It needs noticing here that the Tribunal disbelieved PW-3 on account of acquittal of the driver of the offending vehicle in the criminal case registered against him by observing that in view of the acquittal, PW-3 was a put up witness and was actually not an eyewitness to the accident. However, the Tribunal recorded that there was no dispute with regard to the involvement of the offending vehicle in the accident leading to the death of deceased Lakhvir Singh. Tribunal also took into account relationship of PW-3 with the deceased and observed that there was only the solitary assertion of Pritam Singh that the driver of the offending vehicle struck against the driver of the scooter who fell down and died but there was no other corroborative evidence by way of photographs of the scene of occurrence, site plan showing the position of the four wheeler or any skid marks which could provide necessary material to the court to draw inference of negligence of the driver of the four wheeler on the principle of *res ipsa loquitur*. The Tribunal observed that keeping back of vital evidence

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was not without design. Tribunal also observed that although it was true that the judgment of the criminal Court was not binding for determining liability of the owner, driver and insurer regarding compensation in respect of death of the deceased, nevertheless, the same was relevant as it contained facts and circumstances which had been suppressed by the claimants. The Tribunal observed that the learned Magistrate had recorded that as per PW-3 the police came to the spot after about 10 minutes, recorded his statement and took into possession the four wheeler, but according to the endorsement of Sub-Inspector Mukhtiar Singh on his statement, he reached the spot after four hours, prepared the inquest report and took the four wheeler into custody. The Tribunal further observed that the inquest report was attested by Mohinder Singh resident of Ferozpur Road near Petrol Pump and Santokh Singh resident of Mallan, father of the deceased and not PW-3, on whose information the FIR was registered. Similarly, recovery memo regarding the seizure of the four wheeler was attested by Constable Karnail Singh and Bakhtaur Singh volunteers of Punjab Home Guard and that had Pritam Singh and Karam Singh really witnessed the accident, then vital documents like inquest report and recovery memo of the offending vehicle would have been attested by them and that absence of the same proved that they were put up witnesses and not eye witnesses of the occurrence. In the aforementioned background, the Tribunal, observed that the findings of the criminal court were unassailable.

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10. The Tribunal also took into account that according to the medico legal report Ex. PA of Dr. K. K. Aggarwal, the deceased had crush injuries on his head, face and chest and during cross-examination of Dr. K. K. Aggarwal, it had come out that injury No.1 was possible only if one was run over by a vehicle or some heavy substance had fallen on the head, therefore, scientific medical opinion was categorical that the death of Lakhvir Singh was on account of crush injuries to the head, lungs and heart which was possible only if the deceased was run over by some vehicle, but according to the oral statement of PW-3 Pritam Singh, the offending vehicle had struck the scooter of Lakhvir Singh as a result of which Lakhvir Singh fell down and died. In the aforementioned background, the Tribunal came to the conclusion that Pritam Singh PW-3 was not actual witness, therefore it could not give any credence to his assertion that the accident took place due to the rash and negligent driving of the offending vehicle by respondent No.2. The Tribunal also took into account that the criminal court acquitted respondent No.2 i.e. Driver of the offending vehicle by holding that PW's Pritam Singh and Karam Singh were put up witnesses and had not really seen the occurrence. In the aforementioned background, the Tribunal by holding Pritam Singh as a put up witness and not attaching any weight to his evidence awarded only Rs. 25,000/- on account of 'No fault liability' under Section 140 of the Act. Learned counsel for the respondents reiterated the reasoning of the Tribunal.

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11.I have considered the submissions made by learned counsel for the parties and perused the record.

12.The site plan reflecting recovery of the offending vehicle after the accident as was prepared by the police was not produced on record. As per PW-3 i.e. Pritam Singh, the police came to the spot after 10 minutes of the accident, recorded his statement and took the offending vehicle into its possession, but according to the statement of Sub Inspector Mukhtiar Singh, he reached the spot of incident after four hours, prepared inquest report and took the offending vehicle into possession. The inquest report prepared at the spot was attested by Mohinder Singh resident of Ferozepur Road, Near Petrol Pump and Santokh Singh, resident of Mallan i.e. father of the deceased and not by PW-3 Pritam Singh on whose behest the FIR was registered. Likewise, recovery memo regarding seizure of the four-wheeler was attested by Constable Karnail Singh and Bakhtaur Singh, volunteers of Punjab Home Guards. Had Pritam Singh and Karam Singh i.e. PW-3 and PW-2, respectively, actually witnessed the accident, aforementioned vital documents like inquest report, recovery memo of the canter, would have been attested by them and the same would have proved that they were actually witnesses to the occurrence. Although, the findings of the criminal Court are not binding on the MACT, yet the finding to the effect that PW-3 and PW-2 were put up witnesses, cannot be brushed aside in the face of a number of discrepancies which militate against the claim of PW-3 being an eye witness to the accident as also of the driver of the

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offending vehicle having caused the accident due to rash and negligent driving. PW-3 claimed to be the eyewitness of the accident and categorically stated that the offending vehicle came from behind, struck against the scooter as a result of which Lakhvir Singh fell down and the offending vehicle stopped at a distance from the place of occurrence. However, as per report i.e. MLR Ex.PA, given by Dr. K.K. Aggarwal, the deceased received crush injuries on his head, face and chest and in his cross-examination clarified that injury No.1 was possible only if one was run over by some vehicle or some heavy object fell on the head and that the death of Lakhvir Singh was on account of crush injuries to the head, lungs and heart which was possible only if the deceased was run over by the vehicle, but according to the oral statement of PW-3 Pritam Singh the offending vehicle struck Lakhvir Singh's scooter, as a result of which Lakhvir Singh fell down and died. There is not even a whisper in the evidence of PW-3 that the offending vehicle ran over the deceased. Once, he was an eye witness, aforementioned crucial aspect of the accident could not have been missed out. In the circumstances, the only unerring conclusion is of Pritam Singh, PW-3 not being an eye witness to the accident.

In the light of the position as noted above as also in view of the fact that where on the basis of evidence, view taken by the court or tribunal of plenary jurisdiction is plausible, the Appellate Court would not take a contrary view, merely because another view is possible- [2008\(20\) R.C.R.\(Civil\) 948- Dharambiri Devi vs Ministry of](#)

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Railway, I am unable to find any infirmity whatsoever with the Award so as to interfere with the same. Accordingly, finding no merit in the appeal, the same is dismissed. However, no order as to costs.

[B.S. WALIA]
JUDGE

October 13, 2017.

Sachin/joyti chawla

Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No