

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

FAO No. 769 of 1994(O&M)

Date of decision: 28.11.2017

Satyawati

.....Appellant

VERSUS

Lt. Col. PV. Mohanan and another

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Bhoop Singh, Advocate for the appellant.

Mr. Rajeev Verma, Advocate for respondent No.2-UOI.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 04.01.1994 passed by the Motor Accidents Claims Tribunal, Bhiwani whereby application for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') filed by Smt. Satywati on account of death of Samunder Singh in a motor vehicular accident on 04.02.1992, has been dismissed.

The plea of the claimant is that on 04.02.1992, Samunder Singh was driving motorcycle bearing No.DLX-3870 and proceeding from Bhiwani towards Tosham, at about 6 PM. Army jeep bearing No.85-B-29064-M (Jonga) driven by Lt. Col. P.V. Mohanan – respondent No.1 was coming from the opposite direction and going from Tosham side towards Bhiwani. There was an accident as a result of which Samunder Singh suffered injuries. He was taken to Civil Hospital, Bhiwani in the Army Jeep wherefrom he was referred to medical college, Hospital, Rohtak and

the injured succumbed to the injuries. The post-mortem report dated 23.03.1992 is Ex.P2.

Respondents No.1 and 2 filed their joint written statement giving a detailed account as to how the accident in question took place due to failure of the deceased to stop the motorcycle and eventually the motorcyclist who was coming on a fast speed lost control, swerved towards right and hit the middle portion of Jonga's front bumper and fell down to the right side of the Jonga, on the road.

The Tribunal framed issues, permitted the parties to adduce evidence in support of their respective contentions.

The claimant examined Sher Singh PW-3, a cultivator of village Biran to discharge onus of issue no.1. On the other hand, Lt. Col. P.V. Mohanan examined himself to counter testimony of Sher Singh.

On due consideration of rival contentions raised by counsel for the parties in the light of testimony of Sher Singh PW-3 and Lt. Col. P.V. Mohanan RW-1, the Tribunal answered issue No.1 against the claimant and resultantly the application for compensation was ordered to be dismissed.

Counsel for the appellant has fairly informed that he does not rely upon testimony of Sher Singh PW-3, to point out an error in the findings on issue No.1, recorded by the Tribunal. However, he has referred to testimony of Lt. Col. P.V. Mohanan RW-1 (respondent No.1 therein) to contend that the present is a case of contributory negligence of the deceased and respondent No.1, therefore, findings on issue No.1 are liable to be modified accordingly. To bring home his contention, he has carried me through the statement of P.V. Mohanan particularly a part of testimony extracted hereinbelow:-

“After we crossed Tosham and about 5 kilometres thereafter on Tosham-Bhiwani road, due to the repair of the road, it was partitioned in two portions by using empty drums called coltar drums. It was about 6:15 p.m. when I reached that place, I saw a motorcyclist was coming from Bhiwani side and was proceeding towards Tosham. Before we entered the narrow portion of the road, I sounded the horn and gave an indication that I was to cross that portion first, but the motorcyclist did not stop and kept coming. I also then showed the light, but still he did not respond and kept coming on a high speed. The motorcyclist was wearing a piece of cloth around his head covering part of his face. Only his eyes were visible. The motorcyclist kept coming in the narrow portion of the road and did not respond to my giving light as well as sounding the horn. I stopped my vehicle before entering the narrow road. He kept coming and came about 5/10 yards close to my vehicle and suddenly looked up. Perhaps he lost the control over the vehicle and suddenly sped up his vehicle and instead of going straight, he deviated towards the right and hit in my vehicle and he fell down on the road. I got down of my vehicle and checked that person. He was unconscious, but was breathing.”

According to counsel, as respondent No.1 did not reverse his vehicle and provided complete passage for the motorcyclist to cross the narrow passage without hitting the vehicle in question, respondents cannot escape their liability to pay compensation at least to the extent negligence is attributable to respondent No.1.

Counsel representing the respondents, on the other hand, has supported findings of the Tribunal on issue No.1 stated to be based upon detailed and correct appreciation of the materials on record. It is further argued that aforesaid extract from testimony of P.V. Mohanan, highlighted

by counsel for the appellant cannot form the basis to record a finding that rashness or negligence for the accident can be attributed to P.V. Mohanan.

I have heard counsel for the parties, perused the paper-book particularly copy of testimony of P.V. Mohanan RW-1 and the award passed by the Tribunal.

P.V. Mohanan has given a detailed account as to how the occurrence in question took place due to failure of the motorcyclist to respond to the horn and light given by him and later the motorcyclist having lost control over the vehicle and deviated towards right side instead of going straight and hit the vehicle in question. The witness was cross examined at length but counsel for the appellant has failed to point out any tangible material elicited in his cross examination to bring home his point of rashness or negligence in causing the accident to any extent whatever can be attributed to P.V. Mohanan. The claimant did not ask the witness about the width of the road in question or width of the half portion of the road which was used by the vehicles for going from Bhiwani to Tosham and vice-versa. Nothing has been brought on record as to how much area was available for the motorcyclist to cross the road when the vehicle in question was lying parked at one end of the road where the road was divided into two parts by placing empty drums. It is difficult to infer from the testimony of P.V. Mohanan that because of parking of the Jeep/Jonga at that place, passage for the motorcyclist was reduced much less blocked. On the contrary, P.V. Mohanan has categorically deposed that the motorcyclist lost control over the vehicle, suddenly increased speed and instead of going straight deviated towards right and hit his vehicle. In this view of the matter, I find myself unable to accept contention of the appellant that rashness or negligence in causing the accident can also be

attributed to driver of the jeep in order to say that the present is a case of contributory negligence. That being so, I do not find any reason to interfere in the well-founded findings recorded by the Tribunal negating plea of the claimant that the accident was caused due to rash or/and negligent driving of the alleged offending vehicle, exclusively or partly. As a result, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly. As issue No.1 has been decided against the claimant, she cannot assert her right for grant of compensation.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

NOVEMBER 28, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no