

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

**FAO No. 780 of 1994 (O&M)
Date of Decision: 30.05.2017**

Dal Chand & Ors. ... Appellants
vs.

Gajraj & Ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Arun Yadav, Advocate
for the appellants.**

**Mr. R.K. Agnihotri, Advocate for
Mr. Kapil Aggarwal, Advocate
for respondents No.1 to 3.**

**Mr. Neeraj Khanna, Advocate
for respondent No.4.**

ANITA CHAUDHRY, J.

The paper-book and records of the case were burnt in the fire incident that took place on 30.01.2011. Only the copy of the claim petition, written statement filed by respondents No.1 to 3 and statements of Narbada Devi(PW1), Roshan Lal (PW2) and Gillu @ Shibu (PW3) could be reconstructed. None of the parties could give any other material for reconstruction of the record. The counsel appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

The appellant-claimants have filed the instant appeal questioning the legality and propriety of the award dated 23.11.1993 passed by the Motor Accident Claims Tribunal, Rewari(for brevity, the Tribunal) dismissing the claim petition seeking compensation for

the injuries of Dal Chand. Initially, the claim petition was filed by Dal Chand and his wife Narbada Devi seeking compensation for the injuries sustained by him in the accident on 01.01.1992. It was claimed that the accident had occurred due to rash and negligent driving of tractor No. HR34-0974 by respondent No.1, which was owned by respondents No.2 and 3 and insured with respondent No.4. After the accident, Dal Chand had become permanent disabled and unable to do any vocation. A handsome amount was spent on his treatment.

It is apt to mention here that Dal Chand had died during pendency of the petition and his sons and daughters were impleaded as claimants along with the widow, being legal representatives.

The respondents disputed the accident and denied their liability to compensate the claimants.

The learned Tribunal vide award dated 23.11.1993 turned down the plea of the claimants and held that they had failed to prove that Dal Chand had sustained injuries in the accident and dismissed the claim petition.

I have heard learned counsel for the parties and have perused the records carefully.

The submission of learned counsel for the appellants was that the Tribunal had gone wrong in holding that the appellants had failed to prove the accident, whereas there was ample evidence on record to prove the accident. Referring to the statements of PW2 Roshan Lal and PW3 Gillu @ Shibu, the eye-witnesses, it was

submitted that it goes to show that the accident had taken place due to rash and negligent driving of tractor No. HR34-0974 by respondent No.1 in which Dal Chand had sustained grievous injuries and later died.

In the instant case, it was claimed that the accident took place on 01.01.1992 and it was witnessed by Roshan Lal and Gillu @ Shibu. Both the witnesses though claimed that the accident had taken place due to rash and negligent driving of tractor by respondent No.1 but their testimonies were shattered from the fact that on 04.01.1992 when Dal Chand was admitted in the hospital, it was stated by Shiv Kumar, his brother-in-law that it was a non-medicolegal case and nothing was stated about the accident. An attempt was made to hide the real genesis. It was disclosed for the first time on 08.01.1992 that Dal Chand had suffered injuries in an accident which occurred on 04.01.1992. This time also, a wrong date was mentioned. The FIR was registered on 10.01.1992 against respondent No.1. The perusal of award shows that Shiv Kumar was not examined by the appellants for the reasons best known to them. PWs Roshan Lal and Gillu @ Shibu were held to be an introduced witnesses just to extend undue favour to the claimants. PW2 Roshan Lal claimed that he took Dal Chand to Civil Hospital, Dadri and then to Delhi and informed the matter to the family of Dal Chand and to the police. He claimed that his statement was recorded by the police after 3-4 days of the accident, but as noticed above, it was initially stated to be a non-MLC case by a close relative of Dal Chand. The conduct of PW3 Gillu @ Shibu was

unnatural as he admitted that he had not made any statement to the police and only informed the family members. Both the witnesses were found contradictory, unreliable and untrustworthy. Their statements were threadbarely discussed and discarded by the Tribunal as per observations made in para Nos. 7, 8 and 9 of the award, which read as under:-

“7. PW2 Roshan Lal and Gillu PW3 had claimed themselves to be the eye witnesses of the occurrence and had broadly supported petitioners evidence. The case of the respondents, however, had been that no accident whatsoever had taken place with the said tractor and a false case had been lodged by the petitioners to claim compensation. Learned counsel for the respondents vehemently argued that before appreciating the evidence of the alleged eye witnesses, the background of the case may be seen. Learned counsel for the respondents took me through copy of MLR Ex.PB which shows that petitioner Dal Chand, since deceased, had been medico legally examined on 8.1.1992 at 6.30 PM. He was accompanied by his brother-in-law Shiv Kumar. A further close scrutiny of the MLR shows that Dal Chand was admitted in the hospital on 4.1.1992 at 11.42 AM and no medico legal report was prepared at that time as close relative of Dal Chand had given non-MLC statement which amounts to non-medico legal case. It is, therefore, evident that at the time of admission of Dal Chand, his close relative had told the hospital authorities that it was not a medico legal case. It can, therefore, be inferred that at that time according to close relative of Dal Chand, he had not suffered injuries in any accident. The MLR was,

however, prepared on 8.1.1992 on the order of Medical Superintendent MCH Rohtak. Even at the time of examination on 8.1.1992 it was alleged that Dal Chand had suffered injuries in a road side accident on 4.1.1992. The FIR of the case was got recorded on 4.30 PM on 10.1.1992 and it was at that time it was for the first time stated that Dal Chand had suffered injuries on 1.1.1992 and the said accident had been caused by rash and negligent driving of Tractor No. HR34/0974 driven by Gajraj respondent No.1. Even in that statement it had been stated that Shibbu, Roshan Lal and Ram Kumar had firstly taken him to Rohtak for treatment in a private hospital and then the doctor had sent him to Medical College Hospital, Rohtak. He had not made any statement that he was ever taken to Civil Hospital, Dadri.

8. *PW2 Roshan Lal had, however, stated that they had taken Dal Chand to Civil Hospital, Dadri and then to Rohtak. Dal Chand had stated in his statement in the cross-examination that police had recorded his statement at Rohtak about 3-4 days after the occurrence. According to to his statement, therefore, if the accident had taken place on 1.1.1992, his statement must have been recorded by the police on 3rd or 4th day of January, 1992. There is, however, no question of recording his statement either on 3rd or 4th or even on 5th of January, 1992, as even the report of the occurrence had been lodged with the police for the first time on 10.1.1992. It would, therefore, be very evident that the witnesses were not telling the truth and were supporting the petitioners case only for the purposes that petitioners may get some compensation. PW2 Roshan Lal appears to have actually no knowledge of anything. It*

is not disputed that Dal Chand had died on 24.5.1993 but Roshan Lal had stated that he died about 8 or 9 months after the accident. If statement of Roshan Lal, is, therefore, accepted, the accident must have been taken place sometime in the month of September, or October, 1991. The witnesses are residents of the same village as the petitioners and had, therefore, feelings with the petitioners. PW2 Roshan Lal had admitted that he alongwith Dal Chand was serving in Army Medical Corps. He had gone to the extent of saying that when the police had recorded his statement, the police had got his signatures on that statement. It is common knowledge that police never obtain signatures on statement under sec. 161 Cr.P.C.

9. Similarly statement of PW3 Gillu is also incredible. He had stated that Dal Chand had told him that he was to go to village Sahlong. As against it, Dal Chand had stated in his petition that he was going to his fields. PW3 Gillu had stated that Dal Chand was standing towards side of vill. Bahu on a kacha portion of the road. PW2 Roshan Lal had contradicted him by stating that he was not standing on the side of village Bahu. PW2 Roshan Lal had stated that respondent Gajraj had struck his tractor against Dal Chand from his back side. PW Gillu has not made any such statement. PW3 Gillu had rather introduced that a tempo was coming from the side of vill. Chiriya and the tractor while avoiding the said tempo had struck against Dal Chand. Neither of these facts find mention either in the FIR or in the petition. A careful scrutiny of the Medico Legal Report Ex.PB, would, therefore, indicate that actually Dal Chand had not suffered injuries in any motor vehicle accident caused by rash and negligent

driving of Tractor No. HR-34/0974 and a belated effort had been made to show that the injuries had been suffered by him in a motor vehicle accident, so that he may become entitled to have compensation under the Motor Vehicles Act. The petitioners had not examined Shiv Kumar, the brother-in-law of Dal Chand to explain why he had made a statement in the hospital that it was a non-Medico Legal case. The statement of the witnesses are, therefore, quite contrary to the facts mentioned in the MLR Ex.PB. Even on 8.1.1992 according to the MLR injuries are reported to have been suffered in a road side accident, on 4.1.1992 but later as Dal Chand had perhaps suffered injuries on 1.1.1992, so it was made out to be a case of accident on 1.1.1992.”

Keeping in view the aforesaid circumstances, the Tribunal had rightly disbelieved both of them to conclude that the claimants had failed to prove that Dal Chand had sustained injuries in an accident. The fact germane to the issue was that the accident was not proved, which is a sine quo non for awarding compensation. The findings are based on the evidence adduced on record. No ground for interference is made out. The appeal is dismissed.

30.05.2017

Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No