

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

FAO No. 1459 of 2003 (O&M)
Date of Decision: November 08, 2017

Harminder Sharma

..Appellant(s)

Versus

Sarabjit Kumar and others

..Respondent(s)

with

FAO No. 1485 of 2003 (O&M)

Anisha and others

..Appellant(s)

Versus

Sarabjit Kumar and others

..Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Kamal Chaudhry, Advocate for
Mr. Sanjeev Gupta, Advocate
for the appellant(s).

Mr. Aakash Singla, Advocate
for respondent no.1.

Appeal qua respondent no.2 already dismissed.

Mr. Sanjiv Pabbi, Advocate
for respondent no.3-insurance company.

ANITA CHAUDHRY, J.

I propose to take up both the appeals together as they arise out of an accident which occurred on 14.04.2000. The Motor Accident Claims Tribunal, Patiala (here-in-after referred to as the Tribunal) had decided both the cases separately. Both the claim petitions were dismissed as issue no.1 was decided against the claimants.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only the copy of the award could be reconstructed. None of the parties could give any material for reconstruction of the record. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

Few facts need to be detailed first. Harminder Sharma was going from Patiala to Bhadson on a scooter. He was near the octroi when a tractor bearing registration no. PB-11-P-7958 came from Sidhuwal side driven by Bhinda. The tractor hit a Rehri (cart) which was being drawn by Madan Lal and then another Rehri and scooter of the injured and it crushed Akil. Akil died and injuries were suffered by Harminder and Madan. The plea set up by the claimants in both the petitions was that the accident was witnessed by Madan, his son Malkiat and one Suresh Kumar.

The claimants examined Madan Lal and Suresh and a Constable with the police department.

Madan Lal in his affidavit disclosed the manner of accident but in the cross-examination he stated that he had also suffered injuries in the accident. He did not place any document. He stated that he did not lodge any case with the police. He, however, maintained that he had noted the registration number of tractor at the time of the accident but said that he did not know the colour of the tractor but it was attached with a trolley.

Suresh Kumar PW-5 Head Constable with the Punjab

Police stated that his duty was on the octroi post and on his way back he had stopped to purchase some groceries and he heard a raula that a tractor had run over two Rehdiwala and the said tractor was bearing registration no. PB-11-P-7958 and it was driven by Bhinda but he came to know the name later on. He stated that the tractor had even hit his cycle and his cycle was damaged extensively. In the cross-examination he stated that he was not a summoned witness and had been called up by the counsel representing the claimants. He stated that he had taken oral permission from the Munshi to leave the police station on that day. He stated that he did not inform anyone regarding the accident nor he informed the nearest police station but he inquired about the initiation of criminal proceedings on the next day. He stated that the accident site was at a distance of one and a half kilometer from his house. He stated that he did not make any effort to take the injured to the hospital. He also stated that the octroi post was about a kilometer from the place of accident.

The copy of the FIR Ex. P-4 was tendered in evidence.

As against this, the respondents had examined Sarabjit who denied the accident and stated that his tractor on the day of the accident was at a workshop for repair and it was released after repairs after a week. He also examined the mechanic to vouch in his favour.

The Tribunal after assessing the evidence and found that the FIR was against a unknown person and a unknown driver and that its author was Madan. It disbelieved the statements of both the witnesses as it found too many contradictions. It noted that the witnesses could not even give the colour of the tractor and a wrong date of accident was given. It also found that the MLR of Madan had not been filed to support the plea that he was injured.

I have heard both the sides and have gone through the evidence and I find no merit in the appeals.

The FIR was against a unknown vehicle and a unknown driver. Madan Lal was the author of the FIR. He did not give the details of the vehicle to the police at the time of lodging of the FIR. There is no evidence whether any challan was presented. The Tribunal had rightly held that neither of the witnesses had seen the accident and the claimants could not prove the involvement of the vehicle. There is no reason to take a different view.

Both the appeals are dismissed.

(ANITA CHAUDHRY)
JUDGE

November 08, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No