

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

FAO No.250 of 1996

Date of decision : 23.03.2017

Kesru Ram and another

.....Appellants

Versus

Dalip Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Malkit Singh, Advocate for appellants.

Mr. Harsh Aggarwal, Advocate for respondent No.2.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 19.07.1995, passed by learned Motor Accidents Claims Tribunal, Ambala (hereinafter called the “Tribunal”), whereby the claim petition filed by the appellants-claimants under Sections 166 and 140 of the Motor Vehicles Act, 1988 (for short—the “Act”) for grant of compensation on account of death of Sita Ram their son was allowed and only compensation amounting to ₹25,000/-, in view of Section 140 (2) of the Act as it stood before the amendment of Act vide Motor Vehicles (Amendment) Act, 1994, was awarded.

2. The present appeal has been preferred by the appellants-claimants for enhancement of award and to challenge the findings of the learned Tribunal on issue No.1 regarding negligence.

3. As per the case of the claimants on 13.07.1992 deceased Sita Ram was coming from Delhi after selling vegetables and was travelling in truck bearing registration No.HIS-7047 along with other persons. The truck was stopped near village Karassan, Tehsil Naraingarh for taking tea, Sita Ram went towards backside of the truck in order to pass the urine. In the meanwhile, a car bearing registration No.PAL-3 being driven by respondent No.1 in a rash and negligent manner came there and hit Sita Ram resulting into multiple injuries. He was taken to PGI for treatment but he succumbed to injuries on 17.07.1992. It is alleged that the occurrence was witnessed by Zila Ram, Sher Singh etc.

4. The factum of accident was denied by respondents No.1 & 3. In the joint written statement filed by them, they took the plea that the car bearing registration No.PAL-3 was not involved in any accident. From the pleadings of the parties, the following issues were framed by the learned Tribunal:-

1. Whether Sita Ram deceased died on account of rash and negligent driving of car No.PAL-3 by respondent No.1 as alleged? OPP
2. If issue No.1 is proved, whether the claimants are entitled to recover the amount of compensation if any. If so, to what amount and from which of the respondents?OPP
3. Whether the respondent No.2 Insurance Company is not liable to pay the amount of compensation as alleged? OPR-2
4. Relief.

5. The learned Tribunal on the basis of appreciation of the

evidence returned the findings under Issue No.1 that the evidence brought on record was not sufficient to prove the rash and negligent driving on the part of respondent No.1 Dalip Singh and it cannot be stated that Sita Ram died on account of rash and negligent driving of car bearing registration No.PAL-3 driven by respondent No.1. Accordingly, issue No.1 was decided against the claimants.

6. I have heard learned counsel for the parties and have gone through the paper-book carefully.

7. Initiating the arguments, learned counsel for the appellants-claimants contended that from the statement of PW2 Layak Ram, the witness of occurrence, who was also travelling in the same truck with the deceased, it comes out that the deceased was hit by car bearing registration No.PAL-3 which was being driven in a rash and negligent manner by respondent No.1 Dalip Singh. Even the criminal case was registered against said Dalip Singh. There was nothing to doubt the presence of said PW2 Layak Ram at the time of the occurrence. Thus, he contended that it was established from the evidence led by the claimants that respondent No.1 was rash and negligent for causing this accident. So, the claimants shall be entitled to the compensation under Section 166 of the Act by taking into consideration his income, loss of dependency and other relevant factors.

8. On the other hand, learned counsel appearing for respondent-Insurance Company contended that the learned Tribunal has rightly concluded that PW2 Layak Ram was not present at the spot. His name is not mentioned in the FIR. He was not cited as a witness in the criminal case. His

name was also not entered in the record of the hospital. There is also material contradiction about the date of accident as narrated by PW2 Layak Ram. He further contended that respondent No.1 Dalip Singh has already been acquitted in the criminal case by the Judicial Magistrate, Ambala City vide judgment dated 14.09.1992 (copy Ex.RQ). Thus, he contended that as the claimants have failed to establish the negligence on the part of respondent No.1, so they have been rightly awarded the compensation under Section 140 of the Act under no fault liability.

9. I have duly considered the aforesaid contentions.

10. There is no dispute with the proposition of law that in order to claim the amount of compensation under Section 166 of the Act it is a condition precedent that the negligence on the part of the driver of the vehicle should be established. The appellants-claimants have examined PW2 Layak Ram on the mode of the accident. This witness has supported the version of the claimants and stated that on 13.07.1992 when they were coming from Delhi on truck bearing registration No.HIS-7047 and reached near Karassan, Sita Ram deceased went to pass urine, as they stopped the truck for taking tea. He further deposed that Sher Singh, Mohan Lal, Dhian Singh and Joginder Singh were also travelling in the said truck. He further deposed that car bearing registration No.PAL-3 came in the rash and negligent manner from the side of Saha being driven by Dalip Singh and hit Sita Ram. The driver of the car tried to escape but he was overpowered. He further deposed that Sita Ram suffered injuries. He was taken to Civil Hospital, Naraingarh, from where he was referred to PGI, Chandigarh and

died on 17.07.1992 at 10:00 a.m. He also deposed that he remained throughout with deceased Sita Ram. But this fact is not disputed that in the FIR the name of PW2 Layak Ram did not figure at all. It was not mentioned that he was also travelling in truck No.HIS-7047 along with deceased Sita Ram. PW2 Layak Ram was also not cited as a witness in the criminal case. Whereas the name of other witnesses namely Mohan Lal and Sher Singh figured in the police case. All the details of the accident have been given in the FIR Ex.P2 lodged immediately after the accident. As per the FIR, the persons travelling with Sita Ram in truck No.HIS-7047 were Dhian Singh, Sher Singh and Joginder Singh. There is no reference of PW2 Layak Ram.

11. PW2 Layak Ram has alleged that he remained throughout with deceased Sita Ram but the claimants have not produced any evidence to show that it was PW2 Layak Ram who had taken the injured to Civil Hospital, Naraingarh and then to the PGI, Chandigarh. If PW2 Layak Ram would have been present, his name must have been mentioned in the hospital record, but this record has been withheld by the claimants which raises adverse inference against them. PW2 Layak Ram has stated that accident has taken place on 13.07.1992, whereas the date of the accident as per the FIR is 12.07.1992.

12. Thus, in these circumstances, I have no reason to differ with the findings recorded by the learned Tribunal that presence of PW2 Layak Ram at the time of accident is not proved and the claimants have not been able to establish that the accident resulting into fatal injuries to Sita Ram has occurred due to rash and negligent driving of car bearing

registration No.PAL-3 by respondent No.1 Dalip Singh.

13. Consequently, I do not find any legal infirmity in the amount of compensation determined by the learned Tribunal to be awarded to the appellants-claimants.

14. Resultantly, present appeal is without any merit and the same is hereby dismissed.

23.03.2017

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No