

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

**FAO No. 2887 of 1996 (O&M)
Date of Decision: March 22, 2017**

SHAKIL AHMED

..Appellant(s)

Versus

SANDEEP KUMAR AND OTHERS

..Respondent(s)

with

FAO No. 2888 of 1996 (O&M)

MAHMOODA BEGUM AND ANOTHER

..Appellant(s)

Vs.

SANDEEP KUMAR AND OTHERS

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sahil Sharma, Advocate for
Mr. Aman Kashyap, Advocate
for the appellant(s).

Mr. S.S. Dinarpur, Advocate
for respondent nos.1 & 2.

Mr. Vipul Sharma, Advocate for
Mr. P.S. Saini, Advocate
for respondent no.3-Insurance Company.

ANITA CHAUDHRY, J.

These are two appeals arising out of an award dated 30.07.1996. An accident led to the death of Farooq and multiple injuries to Shakil Ahmed. Two claim petitions were filed. Both the claim petitions were dismissed by the Tribunal as the involvement of the vehicle could not be proved.

The record of this case had been burnt in the fire accident which had taken place in the year 2011. The file could partially be reconstructed. The appellants have placed on record the claim petitions, the written statement and some evidence. The counsels appearing for the parties agreed that the matter can be decided on the basis of material available on the record.

The facts which are essential are being narrated. Shakil Ahmed and his son Farooq were going on a moped from Jagadhri to their village Mandholi on 23.12.1992. The time was 6:00 PM when they were on Saharanpur – Kurukshetra road, near their village, Farooq turned his moped towards his village, which was on the right hand side. The tanker driven by respondent no.1 came from behind and struck the moped, resulting in Farooq's death and multiple injuries to Shakil. The driver of the tanker sped away from the scene with the vehicle. A report was lodged with the police by Alim who had witnessed the accident. He was on a cycle a little behind the moped.

The onus of issue no.1 was upon the claimants and they had examined Alim, Shakil Ahmed (injured) and Riaz Ahmed to prove the accident and to show the involvement of the vehicle and the driver. The FIR was registered against an unknown vehicle and an unknown driver. The Tribunal made the following observations in para nos.9 to 11 and it reads as under:-

“9. The dispute in this case is regarding the involvement of tanker no.UGY8628 in the accident in question. It is also in dispute if Sandeep Kumar respondent no.1 was the driver of the said tanker at the

time of accident. The FIR was lodged in the first instance by Alim PW2 who stated that he saw the accident as he was going on his own cycle slightly short of the moped when the accident took place. He neither gave the number of the offending vehicle nor name of its driver in the FIR. Shakil Ahmed claimant was travelling on the moped and he received injuries in the accident. He was also not able to identify the driver or note the number of the offending vehicle. Though he deposed in his examination in chief that the accident was caused by tanker no.UGY 8628 which was of red colour but in his cross examination he deposed that he could not tell the number of the tanker and there were two persons in the tanker and he could not say which of them was sitting on the steering wheel. He also deposed that he was told the name of the driver of the tanker by Riaz after about one month. So evidence of PW2 Alim and PW3 Shakil Ahmed claimant is not of any help to the claimants to show the involvement of tanker no.UGY 8628 in the accident. Then remains the evidence of PW5 Riaz Ahmed. He is a resident of Saharanpur which is far away from the place of accident. He deposed that on the day of accident he was travelling in a tractor trolley and when he reached near village Mandholi, he saw a tanker no.UGY 8628 hitting a vicky (moped) driven by Farooq and as he was to catch a train and was in a hurry on the said date, he visited village Mandholi after one month and told the number of the tanker to Shakil Ahmed claimant.

To rebut the statement of this witness Sandeep Kumar respondent no.1 while appearing as PW1 deposed that on 23.12.1992, he did not cause and accident with tanker no.UGY 8628 nor he was driver on

the said tanker. He also stated that no criminal case regarding the accident is pending against him in any Court.

10. *Riaz Ahmed appears to be procured and tutored witness. He was travelling in a tractor trolley which must be driven by some other person. That other person could give information about the number of the offending tanker if that had actually taken place and the number of the offending vehicle had been noted by Riaz Ahmed. If Riaz Ahmed was in a hurry to catch train on the day of the accident, he could come within a day or two so as to tell the number of the offending tanker to the claimant. The FIR was registered regarding the accident in question. Riaz Ahmed did not appear before the police to disclose the involvement of tanker no.UGY 8628 in the accident. Even the claimant did not disclose to the Police that he had come to know of the number of the offending truck after one month of the accident from Riaz Ahmed. So all these circumstances go to show that Riaz Ahmed has been procured by the claimants so as to link the tanker no.UGY 8628 with the accident. His evidence cannot be given any weight when he remained silent for about a month of the accident and even thereafter did not care to tell about the number of the offending truck to the police when the case regarding the accident had already been registered.*

11. *Counsel for the claimants, however, argued that since respondent no.1 and 2 in their written statement have given the manner of accident and respondent no.1 while appearing as RW1 admitted that he had been working as a driver on the tanker no.UGY 8628, which was being used for carrying of petrol from Ambala Cantt. to Saharanpur with respondent no.2 Sanjay*

Kumar, it is enough to show involvement of the tanker no.UGY 8628 in the accident. But the above mentioned circumstances are hardly sufficient to show the involvement of the tanker when respondents no.1 & 2 have specifically denied in para no.10 as well as in para 23 of their written statement about involvement of tanker no.UGY8628 in the accident and Sandeep Kumar has deposed that he was a driver on truck no.URN 4918 and was at Meerut on the said truck on the date of the accident. Even otherwise, the tanker cannot be said to be involved in the accident simply.

It was being used for the carriage of patrol from Ambala Cantt. Depot to Saharanpur because so many other vehicles pass on the road every day. The claimants were required to prove involvement of the tanker in question specifically in the accident in question so as to succeed in their claim. Though there is no dispute about the rashness and negligence of the offending vehicle but the claimants have failed to prove the involvement of tanker no.UGY 8628 in the accident. Resultantly issue no.1 is decided against the claimants.”

The Tribunal dismissed both the claim petitions.

Aggrieved by the order, two appeals were filed which are taken up together for disposal as they arise out of the same accident.

The counsel for the appellants with great vehemence at his command had urged that Shakil Ahmed was present at the time of the accident and he had made a statement after he had recovered and the Tribunal has wrongly ignored the statement of Riaz Ahmed and he had spoken about the involvement of the tanker and his statement was rejected on the ground that he was a procured witness. It was urged that

the driver of the tanker had admitted that he was driving the tanker on that day and in the cross-examination even he denied his signatures on the written statement.

The submission on the other hand is that there was no evidence to prove the involvement of the vehicle and the FIR is against an unknown vehicle and unknown driver and no name was given in the FIR and Shakil Ahmed had suffered serious injury, therefore, he was not in a position to note the number or see the driver and he had stated that he came to know the name of the driver from Riaz after one month of the accident. It was urged that Riaz Ahmed did not appear before the police nor made any statement and his statement was rightly rejected and there is no admission by the driver.

The onus was heavily placed upon the claimants and they had to prove the involvement of the tanker and that it was respondent no.1 who was driving the vehicle. The person who had lodged the FIR had not noted the registration number of the vehicle nor had given its make. One month after the accident Shakil was told about the details by Riaz Mohd. He did not approach the police ever and his statement was rightly rejected as he was a procured witness. Sandeep Kumar RW1 did not admit that he was driving the tanker on that day in fact his statement was that he was not driving the tanker on that fateful day nor he had caused the accident. He had stated that he was at Meerut and was a driver on another truck owned by New Luxmi Stone Crushers.

The involvement of the vehicle could not be proved. The FIR was against the unknown vehicle. Since the claimants had failed to

prove the involvement of the vehicle the claim petitions were rightly dismissed. There is no reason to differ with the finding recorded by the Tribunal and are affirmed.

Both the appeals are dismissed.

March 22, 2017
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No