

In the High Court of Punjab and Haryana at Chandigarh

F.A.O No. 526 of 1999 (O&M)

Date of Decision: 01.11.2017

Meero and others

.....Appellants

Versus

Jagbir Sharma and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S.Budhwar, Advocate
for the appellants.

Ms. Neha Sharma, Advocate for
Mr. S.P.Arora, Advocate
for respondent No. 3.

Mr. Navin Kapur, Advocate
for respondent No. 6.

ANITA CHAUDHRY, J

CM-3744-CII-1999

Application is allowed for the reasons stated therein.

Delay of 14 days in refiling the appeal is condoned.

FAO-526-1999

This is the claimants' appeal aggrieved by the dismissal of the claim petition.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Copy of the award and grounds of appeal are available. A copy of the claim petition, written statements and other documents have also been placed on record. Counsel for the parties have stated that the matter can be decided on the basis of the award and other

available material.

Sanjit alias Sarfuddin had died in the accident which occurred on 9.2.1995. Sanjit was travelling in a vehicle bearing No. PAH-6517. The case of the claimants was that respondent No. 1 was driving a dumper bearing registration No. RJ-02-G-1610. The dumper hit a truck bearing registration No. HR-29B-0502. The truck driver lost balance and struck against the tanker in which Sanjit was travelling. The accident resulted in the death of eight persons. The FIR was lodged on the statement given by a police officer.

The legal heirs of Sanjit filed a claim petition which was dismissed for want of evidence. The claimants had approached the Court with a plea that the accident had occurred on account of negligence of respondent No. 1 but when opportunity was given to them to lead the evidence it was Meero one of the legal heirs of the deceased who alone was examined and the copy of the FIR was tendered in evidence.

The Tribunal relied upon a judgment of Division Bench reported in ***Oriental Fire and General Insurance Company Limited and others versus Manjit Kaur and others 1980 (Volume LXXXII) PLR (Punjab and Haryana) Page 520*** and dismissed the claim petition holding that there was no legal evidence. It was observed that it was the duty of the claimants to prove the negligence on the part of respondent No. 1 and had failed and the FIR by itself was not sufficient to record a finding.

Counsel for the appellants has relied upon ***Raju and others versus Sukhwinder Singh and others 2006(4) R.C.R. (Civil) 82*** and urged that if the driver of the offending vehicle does not come forward to deny the negligence then an adverse inference has to be drawn in favour of the claimants and he should be presumed to be negligent. It was urged that in

the light of this legal position the claim should have been allowed.

It would be necessary to first notice the law laid down by the Division Bench in ***Oriental Fire and General Insurance Company Limited*** (supra) and para 10 of the reported judgment reads as under:-

“To conclude on this aspect of the matter we find that there is no evidence whatsoever to ascribe either rashness or negligence to Sehdev Seth appellant. It is axiomatic that before he can be saddled with liability negligence must be established by the claimants against him. The following observation of Kailasam, J., speaking for the final Court in [Minu B. Mehta v. Balkrishna Ramchandra Nayan](#), 1977, ACC CJ 118: (AIR 1977 SC 1248) are instructive:-

".....The concept of owner's liability without any negligence is opposed to the basic principles of law. The mere fact that a party received an injury arising out of the use of a vehicle in public place can not justify fastening liability on the owner. It may be that a person bent upon committing suicide may jump before a car in motion and thus get himself killed. We cannot perceive by what reasoning the owner of the car could be made liable. The proof of negligence remains the lynch pin to recover compensation."

And Again:

"..... We conclude by stating that the view of the learned Judges of the High Court has no support in law and hold that proof of negligence is necessary before the owner or negligence is necessary before the owner of the 'insurance company could be held to be liable for the payment of compensation in a motor accident claim case."

In the case cited by the appellants, evidence had been led by the claimants and there was an eye witness account and in those circumstances,

this Court had observed that non-examination of the driver of the offending

vehicle was an adverse instance and finding recorded on issue No. 1 was reversed.

In the case in hand there is absolutely no evidence from the claimant's side. The submission of the FIR by the counsel in his statement was not sufficient to discharge the onus placed upon the claimants. The basic principle of law is that the party who approaches the Court and alleges negligence or rashness on the part of any person then it has to be established by the claimants and the non-examination of the driver of the offending vehicle was not sufficient to pass an award. There are no grounds to reverse the finding. There was no evidence from the side of the claimants. There is no infirmity in the finding recorded by the Tribunal.

The appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 01, 2017

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No