

FAO No.2127 of 2001

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

Sr. No.203

FAO No.2127 of 2001

DECIDED ON: April 25, 2017

SALOCHANA DEVI

..APPELLANT

VERSUS

HARDEV SINGH @ PAPPI AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Rishabh Gupta, Advocate,
for the appellant.

Mr. Pardeep Goyal, Advocate and
Mr. Abhishek Goyal, Advocate,
for the respondent No.3-Insurance Company.

JASPAL SINGH, J.

Aggrieved against the impugned Award dated December 06, 2000 passed by Motor Accident Claims Tribunal (for short 'Tribunal') bearing MACT No.60 of 1998 captioned as Salochana Devi vs. Hardev Singh @ Pappi and ors. moved under Section 166 of Motor Vehicle Act, 1988, on account of injuries sustained by appellant/claimant-Salochana Devi on September 30, 1997 in the area of Dera of Gujratia involving tractor bearing No.HR-40-3768 (for short 'offending tractor'), she has approached this Court by way of filing instant appeal.

2. Briefly stated in the facts giving rise to the instant appeal are

that on September 30, 1997, appellant/claimant along with her children was travelling in a Peter Rehra owned and being driven by respondent No.2-Devi while coming from Assandh to her village when they reached near village Gujratia, an offending tractor came from opposite side being driven by respondent No.1 in a rash and negligent manner that too, at a very high speed struck against Peter Rehra. As a result of accident, appellant sustained multiple grievous and serious injuries including fracture of her right arm. She has rushed to Haryana Nursing Home of Dr. K.L. Sachdeva, where she was treated. She claimed compensation to the tune of ₹3,00,000/- on account of injuries sustained by her in road side accident. Upon notice, claim petition was resisted by the respondents. Respondent No.1-driver as well as owner of offending tractor filed written statement while denying the accident and alleging that accident had occurred due to rash and negligent driving of Peter Rehra. In fact, tractor was not at all involved in the accident, which was lying parked in nearby fields. Thus, driver of Peter Rehra who caused the accident and was also challaned by police in a case under Sections 279, 337, 338 IPC is responsible for accident as well as to compensate or indemnify the claimant/injured.

3. Respondent No.2 alleged that claimant was not at all travelling in Peter Rehra. In fact, it was the driver of offending tractor who is responsible for the accident and on the day of accident, he was returning from his village after purchasing fertilizer from Assandh and when he reached near service station of Assandh Jind Road, respondent No.1 came from opposite direction while driving offending tractor rashly and negligently and dashed into some persons passing nearby including claimant

who also sustained injuries. He further alleged that he has falsely been implicated in criminal case just to accept the compensation.

4. Respondent No.3 -Insurance Company also contested claim petition pleading that offending tractor has been involved in this case falsely and accident appears to have been occurred due to the negligence on the part of driver of the Peter Rehra i.e. respondent No.1. Moreover, driver of offending tractor was not holding a valid & effective driving licence and was not authorized to drive the tractor. Since, tractor was being driven in contravention of terms and conditions of Insurance Policy, respondent No.3-Insurance Company is not liable to indemnify respondent No.1. In order to decide the matter in controversy between the parties, following issues are culled out by learned Tribunal:-

- “i. Whether the accident took place due to rash and negligent driving of tractor No.HR-40-3768 in which the claimant received injuries as mentioned in the petitioner? OPP*
- ii. To what amount of compensation, if any, the claimant is entitled and if so, again whom? OPP*
- iii. Relief.”*

5. Parties to the claim petition were afforded an ample opportunity to adduce and conclude their evidence in support of their respective pleadings, they led as oral and documentary evidence.

6. After hearing learned counsel for the parties and appraisal of evidence, claim petition was dismissed vide impugned Award dated December 06, 2000 by learned Tribunal.

7. Aggrieved against dismissal of claim petition, claimant

preferred instant appeal, this has been contested by respondent No.3-Insurance Company.

8. While assailing the findings recorded by learned Tribunal on both the issues and consequent dismissal of claim petition, it has been argued with vehemence by learned counsel for the appellant/claimant that same are absolutely against the evidence available on file and settled canons of law. Misreading, misinterpretation and misappreciation of the evidence and the statements of witnesses has resulted into miscarriage of justice. It is an undisputed fact that appellant/claimant was travelling in Peter Rehra which was driven by respondent No.2, which was Jally used by the villagers as a conveyance from one place to another place though without complying with provisions of Motor Vehicles Act. In fact, appellant has successfully proved on record that accident occurred due to rashness and negligence driving of offending tractor by respondent No.1. PW-2 Harjeet Singh who is one of the eye-witnesses of the accident has categorically deposed that accident occurred due to rashness and negligence driving of offending tractor by respondent No.1 but his statement has been ignored and disbelieved by learned Tribunal without assigning any cogent reason. In addition to testimony of PW2-Harjeet Singh, claimant-Salochana Devi has also attributed rashness and negligence on the part of the driver of offending tractor for causing the accident.

9. Learned counsel for the appellant has further contended that though learned Tribunal has arrived at a conclusion while giving findings on issue No.1 that accident has occurred due to rashness and negligence on the part of respondent No.2 i.e. driver of Peter Rehra but claim petition has

been dismissed without any sufficient reason. Thus, findings recorded by learned Tribunal are liable to be reversed and deserves to be decided in favour of appellant/claimant. Consequently, claimant is entitled to just and adequate compensation on account of injuries sustained by her.

10. On the other hand, respondent No.3-Insurance Company has supported impugned Award, it has been submitted by counsel of Insurance Company that appellant/claimant has taken absolutely contradictory stands. While lodging FIR with police against respondent No.2, she alleged that accident occurred due to rashness and negligence of Peter Rehra which was being driven by respondent No.2 but at a subsequent stage, while filing instant claim petition, it has been alleged by her that though she was travelling in Peter Rehra at the time of accident but due to rashness and negligence driving of offending tractor by respondent No.1, it struck against Peter Rehra as a result of which she sustained injuries. Shifting of entire liability from respondent No.2 to respondent No.1 makes the case of appellant/claimant doubtful and suspicious and in such a situation, testimony of PW1-Salochana Devi or PW2-Harjeet Singh cannot be relied upon. In fact, it can be said that they did not approach the Court with clean hands and have failed to bring on record true version in which accident took place. Thus, learned Tribunal has rightly dismissed claim petition.

11. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, appraisal of evidence available on file, this Court does not find any legal and factual weight made in the submissions by learned counsel for the appellant and is further of the view that there is no infirmity, illegality, impropriety or perversity in the

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impugned Award dated December 06, 2000.

12. At the very outset, it would be pertinent to mention that after a great protest and agitation raised by Salochana Devi, FIR No.985, dated October 07, 1997, under Sections 279 & 338 IPC was registered at Police Station Assandh. The driver of Peter Rehra namely Devi Singh-respondent No.2 was made liable for causing accident, while getting aforesaid FIR registered. This fact stands established from testimony of Ashwani Kumar, Additional Ahlmad who has deposed in clear terms that a criminal case against respondent No.2-Devi Singh was registered, when injured-Salochana Devi agitated and raising the matter with higher authorities i.e. Deputy Commissioner, Karnal and an application moved by appellant/claimant to that effect was available on judicial file of criminal case. At that time, stand of appellant/claimant was that accident had been caused by respondent No.2 while driving Peter Rehra in a rashly and negligently that too, at a very high speed. But when she appeared in witness box as PW1, she completely somersaulted and deposed that accident had occurred due to rashness and negligence driving of offending tractor by respondent No.1. She was thoroughly cross-examined and confronted with her application moved to Deputy Commissioner, Karnal as well as statements while holding responsible to respondent No.2 for causing accident. Had the accident been occurred due to rashness and negligence driving of offending tractor by respondent No.1, FIR would have been registered against respondent No.1 but while filing claim petition, the entire story was twisted for the reasons best known to claimant/appellant. It appears that appellant/claimant twisted the story with regard to rashness and

negligence on the part of respondent No.1. While driving offending tractor for the sole object of extracting compensation is that offending tractor was insured with respondent No.3-Insurance Company. A person who has completely change the entire story with a view to extract compensation from Insurance Company does not deserve to be heard even on merits. PW1-Salochana Devi has miserably failed to explain as to why case was got registered by her by lodging protest against respondent No.2, if, respondent No.1 was responsible for causing accident.

13. Thus, this Court is of the considered view that there is no cogent and convincing evidence to hold that accident occurred due to rashness and negligence driving of offending tractor by respondent No.1 and learned Tribunal has rightly concluded against appellant/claimant while dismissing claim petition vide impugned Award dated December 06, 2000.

14. No doubt, learned Tribunal has observed that accident had occurred due to rashness and negligence driving of Peter Rehra but it was not the case of petitioner and as such, she cannot be asked to indemnify the claimant/injured.

15. In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such, same is dismissed, whereby impugned Award dated December 06, 2000 is upheld.

16. No order as to costs.

April 25, 2017
Ankur

(JASPAL SINGH)
JUDGE

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