

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
FAO No. 456 of 2001 (O&M)
Date of Decision: 11.10.2017**

Saroj Devi & Ors. **... Appellants**
vs.

Gurmit Singh & Ors. **... Respondents**

with **FAO No. 457 of 2001**

Saroj Devi & Ors. **... Appellants**
vs.

Gurmeet Singh & Ors. **... Respondents**

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Sagar Aggarwal, Advocate
for the appellants.**

**Mr. B.D. Sharma, Advocate
for respondent No.1.**

**Mr. R.C. Kapoor, Advocate
for New India Assurance Co.**

ANITA CHAUDHRY, J.

Though the above-referred appeals, the appellants-claimants have questioned the legality and propriety of consolidated award dated 09.02.2000 vide which their plea for grant of compensation on account of death of Vijender and Ramdhari, was turned down and claim petitions were dismissed.

Brief facts first. The appellants filed claim petitions No.76 and 77 of 1996/97 and had sought compensation on account of death of Vijender and Ramdhari respectively, which had occurred in a motor vehicular accident which took place on 24.08.1996.

The claim set up by the claimants was that Ramdhari was

driver of four wheeler bearing registration No. HR45-2490, whereas his son Vijender was cleaner on it and Ranbir Singh was second driver. Truck No. PB08-9892 which was coming from Delhi was parked as its tyre got punctured. An accident took place, as a result of which Vijender, Ramdhari and Balwinder Singh, driver of the truck succumbed to the injuries.

Four separate claim petitions were instituted viz. two by the claimants on account of death of Vijender and Ramdhari, while a petition was filed by Santosh and Simrandeep Kaur, widow and daughter of Balwinder Singh and another by Kashmir Kaur, sister claiming compensation due to death of Balwinder Singh in the accident.

The appellants Saroj Devi, her minor son and mother-in-law Chand Kaur filed the claim petition alleging that the accident took place due to negligence of truck driver who had parked it without any signal, whereas Santosh and Kashmir Kaur, legal heirs of Balwinder Singh filed the claim petition against Ranbir Singh, the another driver of four-wheeler alleging that when Balwinder Singh was in the process of changing the tyre, he was run over by Ranbir Singh who was driving the four-wheeler negligently. The claimants sought compensation being the dependent on the deceased.

Both the vehicles i.e. four wheeler and the truck were insured with New India Assurance Company.

Gurmit Singh, owner of truck contested the petition filed by the appellants herein and denied his liability pleading that the

accident had occurred on account of negligent driving by Ranbir Singh, which resulted in death of Balwinder Singh.

The insurance company disputed its liability. It was claimed that both the vehicles were driven in violation to the policy, as such no liability could be fastened upon them.

All the claim petitions were consolidated; issues were framed and evidence was led. Vide consolidated judgment dated 09.02.2000 claim petitions filed by appellants herein seeking compensation for the death of Vijender and Ramdhari were dismissed. Claim petition filed by Kashmir Kaur, brother of deceased Balwinder Singh was also dismissed and the claim petition filed by Santosh, Simrandeep Kaur and Jeet Kaur, widow, daughter and mother respectively of Balwinder Singh were only allowed.

It was held that the accident was caused on account of negligence of Ranbir Singh, driver of the four-wheeler against whom a criminal case was registered and the appellants who became the owner of four-wheeler after the death of Ramdhari, by way of succession, are not entitled to claim compensation for themselves and on the same analogy no liability can be fastened on the insurance company especially when there was no judgment against the insured person who had taken the insurance policy.

Dis-satisfied with the same, appellants Saroj Devi and others (claimant in petition No. 76 and 77 of 1996 pertaining to death of Vijender and Ramdhari) have preferred the instant appeals, which are being disposed of by this common order.

I have heard learned counsel for the parties and have gone through the record carefully.

Learned counsel for the appellants had urged that the Tribunal had failed to appreciate the evidence. Referring to the statement of PW Ram Mehar, he had submitted that evidence had been led by the appellants to prove that the accident had occurred due to the negligence of the driver of the truck who had parked the truck on the road without a indicator. According to him, the insurance company had been exonerated wrongly and at the most this could be a case of contributory negligence of both the vehicles and the claimants are entitled to get proportionate compensation on account of death of Ramdhari and Vijender.

Learned counsel for the respondents have supported the impugned award and had prayed for dismissal of the appeals.

The accident is not in dispute. It is also not in dispute that in the accident Ramdhari, Vijender and Balwinder Singh had died. Their post-mortem reports are available on record. In these appeals, this Court is adjudicating the issue pertaining to the deaths of Ramdhari and Vijender only. The appellants had not mentioned in the petition as to in what manner the accident had occurred, but had only blamed the driver of the truck for causing the accident. The stand of the owner of the truck was that it was the driver of the four-wheeler who had caused the accident. In support of their plea, the appellants had mainly relied upon the testimony of PW4 Ram Mehar, while the other evidence led by them was about the income and their

dependency. Since all the petitions were consolidated, the legal representatives of deceased Balwinder Singh, who was driver of the truck, had examined PW5 Balbir Singh to prove that the entire negligence was attributed to the driver of the four-wheeler which had resulted in the accident and death.

The Tribunal had disbelieved Ram Mehar who was produced by the appellants. A perusal of his testimony would reveal that he claimed himself to be present at the time of accident. He claimed that his tanker was behind the four-wheeler and he was a witness to the accident and it had taken place due to fault of the truck driver, but his conduct was unnatural and it is difficult to accept his testimony. He admitted that no statement was made by him before the police about the accident and he left the spot after the accident. According to him, a young man was in senses and had disclosed his address, but he had not shifted the injured to the hospital. He came forward only to the Court to get his statement recorded in the claim petition. Considering these facts, the Tribunal had rightly discarded his statement.

If the testimony of PW5 Balbir Singh is examined, he seems to be truthful. Implicit reliance had been placed on his testimony. His presence at the time of accident was not doubted. On his statement, FIR was registered against Ranbir Singh, the driver of four-wheeler. He was categorical that the truck was parked on the left side of the road as its tyre was punctured. He admitted that the back lights of the truck were on at the time the driver had gone to get the

tyre repaired. He further specifically deposed the manner in which the accident had taken place due to rash and negligent driving of the four-wheeler. He stated that Balwinder Singh was crushed between the two vehicles. The Tribunal had rightly accepted the testimony made by this witness to conclude that the accident had taken place due to negligence of the driver of four-wheeler and no liability can be fastened upon the owner or insurance company of the parked truck.

The claimants had not led any evidence to show that it was a case of contributory negligence. They failed to mention the manner in which the accident had occurred. The evidence brought by them was rightly disbelieved. It does not lie in their mouth to claim it as a case of contributory negligence.

Keeping in view the aforesaid circumstances and observations, the Tribunal had rightly concluded that the claimants are not entitled to any compensation. The findings are based on the evidence adduced on record. No ground for interference is made out. The appeals are dismissed.

11.10.2017

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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No