

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 884 of 2006

Date of Decision: December 15, 2017

Pawan Kumar

.....Appellant

versus

State of Haryana and others

.....Respondents

FAO No. 926 of 2006

Ved Pal and another

.....Appellants

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Sushant Kareer, Advocate for
Mr. Akshay Bhan, Sr. Advocate
for the appellant (in FAO No. 884 of 2006)
for respondent No. 5 (in FAO No. 926 of 2006)

Mr. Kapil Bansal, DAG Haryana
for respondents No. 1 to 4

None for respondents No. 5 and 6

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Sudhir Mittal, J. (Oral)

This judgment will dispose of FAO Nos. 884 and 926 of 2006. Both appeals arise out of one and the same accident.

2. The accident took place on 10.09.2001 at about 7.45 p.m. on Rohtak-Jind Road near Village Bhagwatipur. The deceased-Anil kumar was riding home from work on his motorcycle. Due to headlights of the vehicles coming from the opposite side, the deceased was blinded and was not able to see a road roller parked

in the middle of the road without any visible indications and his motorcycle struck the road roller resulting in the death of Anil Kumar.

3. The evidence on record indicates that the road was being constructed under the supervision of PWD(B&R), Department of Haryana Govt. A contract had been floated for repair/construction of the road and the same was awarded to the Labour Chowk, Cooperative L&C Society, Rohtak (hereinafter referred to as 'Society'). The said Society hired the concerned road roller from Ved Pal son of Sh. Shehdev Singh (respondent No. 5).

4. Learned Tribunal held the owner of the road roller as well as the Contractor i.e. the Labour Chowk, Cooperative L&C Society, Rohtak equally liable for the compensation payable to the claimants.

5. The present appeal has been filed by Pawan Kumar son of Kesar Dass on the ground that the Society was the contractor and not the appellant and, therefore, liability could not have been fastened upon him in person. There can be no two views on the proposition that the Society being an independent legal entity is distinct from the appellant. The evidence indicates that the contract was entered into between the Society and the Haryana Govt. through its PWD (B&R) Department and, therefore, the liability for payment of compensation has to be borne by the owner of the road roller as well as the contractor. In this view of the matter, the impugned award is modified to the extent that the liability for payment of compensation has to be borne by the Society as well as the owner of the road roller. I am conscious of the fact that the Society was not impleaded before the learned Tribunal, however, the President of the Society (appellant) had been impleaded and he being an Authorized Officer had contested the case before the learned Tribunal. Therefore, the technicality of the Society having not been heard will not stand in the way of deciding these appeals. I am holding the appellant to

be the President and authorized person of the Society on the basis of a categorical finding to this effect by the learned Tribunal which learned counsel for the appellant has not been able to displace by reference to any evidence on record.

6. So far as the owner and driver of the road roller are concerned, they are challenging the impugned award only on the ground that there was no negligence on their part and the accident took place by chance. It is also suggested that it was the negligence of the deceased, which caused the accident. This contention does not find favour as the record shows that the road roller was parked in the middle of the road and there were no indicators at site to make its presence visible to the ongoing traffic at night.

7. In view of the above, there is no merit in either of the appeals and the same are dismissed. However, with no order as to costs.

December 15, 2017

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No