

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

FAO No.2878 of 2008

Date of Decision:-03.05.2017

Mithlesh Rani and others

...Appellants

Versus

Raj Kumari and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sanjay Jain, Advocate
for the appellants.

Mr. B.R. Rana, Advocate
for respondents No.1 and 2.

None for respondent No.3.

Ms. Vandana Malhotra, Advocate and
Ms. Monika Jangra, Advocate
for respondent No.7.

HARI PAL VERMA J.(Oral)

The appellants-claimants have filed the present appeal against the Award dated 4.12.2007 passed by the Motor Accident Claims Tribunal (Fast Track Court), Ambala, whereby the claim petition filed by the respondents/claimants under Section 166 of the Motor Vehicle Act, 1988 was dismissed.

As per the claim petition, deceased Om Parkash Rana was 42 years of age and was working as Senior Helper in Bharat Electronics,

Panchkula. He died in the accident, which took place on 09.5.2004 when he was going along with Pritpal and Abhi Ram to Saharanpur from Ambala Cantt in a maruti car bearing registration No.CHK-0008. The said car was being driven by respondent No.1-Abhi Ram in a rash and negligent manner. Though the said Abhi Ram was cautioned by deceased Om Parkash to drive the car in a proper manner and at a slow speed, but he did not agree to the request so made by deceased Om Parkash. However, when the car reached near Ravi Dass Ashram, Sua Kheri, District Saharanpur, on seeing the truck coming from opposite side i.e. Saharanpur side, respondent No.1 driver Abhi Ram tried to bring the car on the side of the road, but in this process he could not control the car being on fast speed and it struck against a tree standing on the roadside. Due to the impact of this accident, deceased Om Parkash sustained multiple grievous injuries, which proved fatal and ultimately he died at the spot. Other occupants namely Pritpal and Abhi Ram both also sustained injuries.

The respondents including the insurance company have disputed the very accident. The insurance company while filing the written statement, has submitted that the driver i.e. Abhi Ram was not holding an effective and valid driving license. The car was being driven in violation of terms and conditions of the insurance policy. Therefore, the claim petition was not maintainable under Section 163-A or 166 of the Act.

Learned counsel for the appellants has argued that the Tribunal has dismissed the claim petition on the ground that the police did not find any record as no such statement was made by PW3 Ram Singh, who had

deposed that on 09.5.2004 he was attending the Satsang in the area of Police Station Sarsawa. When this witness was coming out of the Satsang Ghar for urinal purpose, he saw a maruti car of red colour bearing Registration No.CHK-0008 coming from Yamuna Nagar side at a fast speed in zig-zag manner. Though this witness has deposed that the accident had taken place but when he was subjected to cross-examined, he deposed that the police had noted down his name but no inquiry regarding accident was made from him. The Tribunal has found that since no FIR was registered in the case, the accident becomes doubtful, but the Tribunal has ignored the DDR (Ex.P6), which was registered on the basis of telephonic information made by PW3 Ram Singh.

Learned counsel for the appellants has further argued that the car in question was initially owned by respondent No.3-Purshotam Lal. He sold the same to respondent No.4-Krishan Lal son of Ram Krishsan. It was further sold to respondent No.5-Delvinder Singh and then to respondent No.6-Harmeet Singh. But he contends that so far as the insurance of the vehicle is concerned, that is not in dispute.

Mr. B.R. Rana, Advocate has put in appearance on behalf of respondents No.1 and 2 i.e. the legal heirs of Abhi Ram, who was driver of the offending vehicle. He has stated that since Abhi Ram has died and claimants have failed to establish the accident, the Tribunal has rightly dismissed the claim petition. He further stated that Abhi Ram, who was driving the vehicle, was not negligent.

I have heard learned counsel for the parties.

Perusal of the Award shows that the claim petition has been dismissed on the ground that no FIR in the case has been registered and apart from the above, except the testimony of PW3 Ram Singh there is no other evidence on record to come to the conclusion that the accident had taken place and the same was because of rash and negligent driving of Abhi Ram. So far as the other witness available with the claimants i.e. Pritpal Singh, who was occupant in the car and also sustained injuries in the accident in concerned, the said witness could not be examined for the reason that he has left the country. Accordingly, in the absence of examination of the said witness, who was co-traveller, the Tribunal has dismissed the claim petition, but the fact that Ram Singh, who reported the matter to the police, was examined as PW3 and the fact that DDR was registered on 09.5.2004 on the basis of telephonic information given by him, cannot be ignored unless it is otherwise motivated. The Tribunal was required to look into the contents of the DDR (Ex.P6).

Accordingly, this Court finds that the Award dated 04.12.2007 passed by the Motor Accident Claims Tribunal, Ambala is required to be revisited. Hence, the Award dated 04.12.2017 passed by the MACT, Ambala is set aside and the case is remanded back to the Tribunal to pass the Award afresh on the basis of the evidence so available or adduced by the parties.

May 03, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No