

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.4910 of 2009

Date of Decision.24.10.2017

Smt. Rajpati and others

.....Appellants

Vs

Ram Niwas and another

.....Respondents

Present: Mr. Bijender Dhankhar, Advocate
for the appellant.

Mr. Rajesh K. Sharma, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been preferred by the appellants-claimants, being legal representatives of the deceased-Sukhender Singh, who unfortunately died in the vehicular accident occurred while riding as a pillion rider on motor cycle bearing registration No.HR-32A-2233 with a tractor bearing registration No.HR-21-5046, against the award passed by the Tribunal dismissing the claim petition filed by the claimants.

Mr. Dhankhar, learned counsel appearing on behalf of the appellants submits that the deceased was 30 years of age and was a driver by profession. The Tribunal has committed illegality and perversity in dismissing the claim petition after assessing compensation to the extent of ₹3,83,200/- on the premise that the appellants could not prove that the accident occurred with the offending tractor.

He further submits that FIR was registered and police had

prepared the challan containing the seizure memo of the tractor. The

finding of the Tribunal is without any material on record and based upon conjectures and surmises. In fact, in the FIR registered on 27.03.2007 due to inadvertence, the offending vehicle was written as *rehra*. However, a supplementary statement was recorded on the very same day mentioning the correct particulars of the vehicle. In the written statement, the owner admitted the ownership of the offending vehicle in his name. The insurance company failed to cross-examine the owner *viz-a-viz* the aforementioned statement and therefore, adverse inference is liable to be drawn. Even otherwise, insurance company did not lead any evidence contrary to what has been led to establish the non-involvement of the vehicle and therefore, the finding of the Tribunal *viz-a-viz* non-awarding of compensation against the owner and the insurance company is liable to be set aside.

On the contrary, Mr. Rajesh K. Sharma, learned counsel appearing on behalf of respondent No.2 submits that the finding of the Tribunal is based upon direct and cogent evidence which was not rebutted or controverted either before the Tribunal or through additional evidence before this Court. No documentary evidence has been placed on record to establish that the tractor was involved in the aforementioned accident. The claimants were required to place on record the material with regard to outcome of the challan as to whether the accused therein had been convicted or otherwise. The insurance policy was not issued in the name of respondent No.1 i.e. Ram Niwas whereas it was issued in the name of four persons namely Shanti, Jabgir, Rajesh and Satbir. The claimants have failed to establish the identity of the vehicle actually involved in the accident, thus, urges this Court for upholding of the award under challenge.

I have heard learned counsel for the parties, appraised the

paper book and of the view that there is no merit and force in the submissions of Mr. Dhankhar, for, any admission in the written statement *viz-a-viz* the ownership would not discharge the onus as enshrined under Section 101 of the Indian Evidence Act. It was incumbent upon the claimants to prove the involvement of the vehicle by placing on record direct and cogent evidence. The insurance cover Ex.R5 revealed that it was issued in the name of four persons. No Registration Certificate had been produced on record, much less, outcome of the challan filed in the criminal case. Even the counsel for the appellants during the course of arguments had referred to copy of the challan but it did not contain the mechanical report to establish that the offending vehicle i.e. the tractor was involved in the accident. That is what has been noticed by the Tribunal while dismissing the claim petition, though it assessed the compensation. No additional material evidence had been brought on record to arrive at a finding contrary to what has already been laid down by the Tribunal.

For the reasons aforementioned, no ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

October 24, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No