

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

FAO No.3498 of 2010

Date of Decision.21.11.2017

Baljinder Kaur and others

.....Appellants

Vs

Swaran Singh and another

.....Respondents

Present: Mr. Hemender Goswami, Advocate
for the appellants.

Mr. R.N. Singal, Advocate
for respondent No.2-insurance company.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been preferred at the instance of the claimants whereby the claim petition filed on account of death of Iqbal Singh occurred in a motor vehicular accident on 6.12.2006 has been dismissed.

The case set up before the Tribunal was that Iqbal Singh-deceased was going towards Malaud on motor cycle bearing registration No.PB-10-BA-9897, being followed by PW2-Satwinder Singh, eye witness, on his motor cycle and as per his version when the deceased reached near village Ramgarh Sardaran, a tata sumo bearing registration No.HR-01E-7688 driven by respondent No.1 came from the side of Malaud in a rash and negligent manner and struck against the motor cycle of the deceased. The Tribunal has misread and misinterpreted the statement of the eye-witness made in the examination-in-chief and dismissed the claim petition by giving undue weightage to the statement made by him to the police in a criminal case. Statement of PW-3, Tejinder Singh son of Gurdev Singh has not been referred to as he in unequivocal and unambiguous terms narrated the

accident. He had proved his presence at the spot of accident at the relevant point of time, much less, description of the vehicle and therefore, the award of the Tribunal is liable to be set aside.

The deceased was 47 years of age serving as Patwari in the Revenue Department on monthly salary of ₹14,992/-, thus, having left behind widow, two sons and mother depending upon him liable to be compensated in terms of money. The contents of the FIR has not been looked into correct perspective.

Learned counsel appearing on behalf of the insurance company has drawn attention of this Court to the finding arrived at by the Tribunal in paragraph 10 to 14 to support the dismissal of the claim petition as none of the eye witnesses i.e. PW-2 and PW-3, have been able to prove their presence at the time of accident. Their cross-examination spilled the beans regarding their presence, even the disclosure of the vehicle and driver after 2 ½ months by PW2 and 3-4 months by PW3, thus, urges this Court for upholding the award passed by the Tribunal.

I have heard learned counsel for the parties, appraised the paper book, records of the Tribunal and of the view that the finding arrived at by the Tribunal cannot be faulted with inasmuch as that PW-2 in his cross-examination has not been able to prove his presence at the time of the accident and identification of the vehicle after 2 ½ months was an after thought. PW-3, Tejinder Singh has also spilled the beans in the cross-examination as he admitted that he never made statement to the police regarding the accident nor made any application to the police in this regard. Though he stated in the cross examination that he had left for Delhi but did not produce any record that he was serving in Delhi nor he appeared as

witness in the criminal case. For the sake of brevity, cross-examination of PW-2 and PW-3 reads as under:-

“PW-2.

xxxxmn by Sh. P.S. Majail, Adv. for respondents No.1 and 2.

It is correct that I did not mention the name of the driver and the registration number of the Tata Sumo in my statement before the police. I also did not mention the identification of the driver in my statement before the police. Again said I had seen the driver in the police station. After about 2 ½ months of the accident, when the vehicle was taken into possession. Deceased was uncle in relations. Deceased used to return to his house daily, from the place of his duty. I do not remember the number of the three wheeler in which the injured was taken to Civil Hospital, Malaud. I do not know the name of the driver of the said three wheeler. Gurmail Singh Patwari also came at the place of accident after about 10 minutes after the accident along with two three other persons. They also did not notice the number of the Tata Sumo. It is incorrect to suggest that no accident took place in my presence. It is incorrect to suggest that I have deposed falsely being the relation of the deceased.

Xxxxxmn

by Sh. T.J.S. Jaggi, Adv. for respondent No.3.

I have not brought any document to show that I am working in Dehlon Co.Op. Agricultural Society. On the day of the accident, I went from my house at about 8-30/8-45 AM. I

was going to Malaud at that time. Every thing was visible at that time. I had mentioned in the FIR that there was fog at that time. I did not see the driver of the Tata Sumo at the place of the accident as I started caring the injured. After the accident, the injured was removed to Civil Hospital, Malaud. I cannot tell the number of the three wheeler. I did not see the number of Tata Sumo at the spot. I do not know about the salary of the deceased. It is incorrect to suggest that deceased was not drawing salary of Rs.14,992/-. Patwari had not drawn the salary in my presence. I cannot tell, what salary he was drawing. I did not appear as a witness in the criminal case, since I have not received the summons from the court. (later portion volunteered). It is incorrect to suggest that I have deposed falsely. It is incorrect to suggest that Tata Sumo has been falsely implicated in this claim petition. I have not brought any proof that the deceased was Patwari.

*RO&AC
18-11-2009
sd/-*

*sd/-
MACT
18-11-2009*

PW-3

xxxxmn by Sh. P.S. Majail, Adv. for respondents No.1 and 2.

I joined as a Security Personnel with DMRC, Delhi in January, 2005 and remained there till Oct., 2007. I do not know remember the day, when the accident took place. Accident took place at about 9-30 AM. I was going from my village to Sahran Majra. Accident took place in my presence. I was going to Saharan Majra to see my relations there. I was on my motor cycle. Accident took place near Chowk Ramgarh

Sardaran. The number of the motor cycle of the deceased was PB-10-BA-9897. Driver of the Tata Sumo was about 35 years. Three/four had collected at the spot. I do not know the names of those persons. I did not inform the police about the accident. I did not move any application or complaint to any officer with regard to the accident. Police did not record my statement. I was informed by my mother on telephone, after about 2/3 months after the accident, that some persons had come to meet me. I never visited the police regarding this accident. I did not inform any member panchayat and sarpanch of my village. It is incorrect to suggest that I was not present at the time of the accident. It is incorrect to suggest that I have deposed falsely. It is further incorrect to suggest that I have concocted false story of my presence. It is incorrect to suggest that I was way to Delhi at the time of accident.

Xxxxxmn by Sh. T.J.S. Jaggi, Adv. for respondent No.3.

I have brought no document with me to prove that I was serving at Delhi, at the time of accident. Deceased was not related to me. I cannot tell the number of the three wheeler in which the injured was removed to Malaud. Police never recorded my statement. I have not appeared as a witness in the criminal case. Accident took place near the chowk of Ramgarh Sardara towards Malaud. I have no document or proof to prove that I was present at the place of the alleged accident. It is incorrect to suggest that I was not present at the

time of alleged accident. I am a summoned witness. It is incorrect to suggest that I have deposed falsely at the instance of the claimants. I have brought my voter card. It is incorrect to suggest that Tata Sumo has been falsely involved in this claim petition. It is incorrect to suggest that some other vehicle had caused the accident.”

RO&AC
18-11-2009
sd/-

sd/-
MACT
18-11-2009”

Cumulative reading of the cross-examination of aforesaid witnesses leads to irresistible conclusion that the claimants have failed to prove involvement of the Tata Sumo bearing registration No.HR-01E-7688. The finding arrived at by the Tribunal cannot be reversed as the same is based upon correct appreciation of facts and law. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

November 21, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No