

In the High Court of Punjab and Haryana at Chandigarh

FAO- 4085 of 2011(O&M)
Date of Decision: 20.12.2017

Vipin Kumar

---Appellant

versus

Hardeep Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.K.Girdhar, Advocate
for the appellant
Ms.Manmohan Kaur, Advocate,
for respondents No. 1 and 2
Mr. A.K. Khunger, Advocate
for respondent No. 3

Rekha Mittal, J.

The present appeal directly challenges against award dated 5.1.2011 passed by the Motor Accidents Claims Tribunal, Rupnagar (in short “the Tribunal”) whereby compensation has been awarded on account of death of Sardara Singh in a motor vehicular accident that took place on 19.9.2009.

The Tribunal assessed compensation to the tune of Rs. 5,69,000/- payable by Ghansham, driver of truck No. PB-05-N- 9371 (since deceased) and Vipin Kumar (appellant herein) whereas no liability has been fastened upon Tilak Raj, registered owner of the vehicle in question.

The sole submission made by counsel for the appellant is that as Tilak Raj, brother of the appellant was registered owner of the vehicle in question on 19.9.2009, he cannot escape his liability to pay compensation. It is further argued that the Tribunal has seriously erred by imposing

liability upon the appellant and exonerating the registered owner namely Tilak Raj.

Counsel representing respondent No. 3, on the contrary, has urged that as the vehicle in question stood sold by him in December 2008 on the basis of documents Exs. R-1 to R-3 and the accident took place on 19.9.2009, the Tribunal has rightly fastened liability against the appellant.

Counsel for the claimants has submitted that due to dispute inter se the two brothers, till date, claimants have not been paid any compensation. It is further submitted that dispute was settled in the Mediation and Conciliation Centre of the Court vide settlement dated 18.10.2016 but later Tilak Raj did not honour his commitment as per the settlement/agreement, prolonging agony of the claimants.

Counsel for the appellant has not disputed factual findings recorded by the Tribunal and so also the documents Ex. R.1 to R.3 available on record. It is also not disputed that on the day of accident, vehicle was in possession of the appellant. That being so, appellant cannot escape his liability to pay compensation.

Counsel for respondent No. 3 has not disputed that on the day of occurrence, offending vehicle stood registered in his name. As respondent No. 3 was registered owner of the vehicle on the date of accident, he cannot escape his liability to pay compensation after the alleged sale of vehicle in favour of Vipin Kumar, his brother. In this regard, reference can be made to judgment of Hon'ble the Supreme Court of India **Pushpa @ Leela and other vs. Shakuntala and others, AIR 2011 (SC) 682**. A relevant extract from para 14 of the judgment is quoted hereunder:-

“14.The decision in Dr.T.V.Jose was rendered under the

Motor Vehicles Act, 1939. But having regard to the provisions of section 2(30) and Section 50 of the Act, as noted above, the ratio of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name, he was indemnified and the claim will be shifted to the insurer, Oriental Insurance company Ltd.”

In view of the above, Tilak Raj respondent No. 3 shall also be jointly and severally liable to pay compensation to the claimants, in addition to liability of the driver and appellant Vipin Kumar.

For the foregoing reasons, award passed by the Tribunal is partly modified by holding that Ghansham driver (since deceased), Tilak Raj registered owner and Vipin Kumar appellant, purchaser of the vehicle in question shall be jointly and severally liable to pay compensation assessed by the Tribunal.

No order as to costs.

(Rekha Mittal)
Judge

20.12.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No