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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5690-2011

Date of decision : 19.09.2017

Kunta Devi and others

... Appellants

Versus

Falinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ram Bilas Gupta, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The appellants-claimants having not successful before the Motor Accident Claims Tribunal, Faridabad (in short 'the Tribunal') in a claim petition, on account of death of Babu Ram, who unfortunately died in an road accident on the night 25/26.10.2010 at about 02.30 a.m., have approached this Court for setting aside the impugned award dated 27.04.2011.

Mr. Ram Bilas Gupta, learned counsel appearing on behalf of the appellants-claimants submits that the findings arrived at by the Tribunal are contradictory viz-a-viz the statement of PW-2 Parvesh Thakur, recorded before the Police and the Tribunal has not been referred to. Neither the owner nor the driver came forward to cross-examine the statement suffered in the examination-in-chief, tendered by way of affidavit, even the Insurance Company was also *ex parte*, thus, the statement made in the examination-in-chief deemed to have been admitted. The statement before the Police and the Tribunal viz-a-viz the identification of the offending

vehicle i.e. Tralla bearing No.HR-38M-9919, is coherent and consistent, even an FIR bearing No.561 dated 28.10.2010 (Ex.P-1), has been registered against the owner of the Tralla, who is facing the trial i.e. Falinder Singh son of Shri Sobran, resident of Muieya Nangla, District Karnoj (Uttar Pradesh). No complaint whatsoever had been made to the police regarding the false implications and it leads to an irresistible conclusion that the vehicle was involved and therefore, no occasion arose for the Tribunal to deny the compensation. The deceased Babu Ram, at the time of accident, was 46 years of age and was drawing the salary of ₹ 6,500/-, while working in a private factory. In support of his contentions, he relies upon the following judgments:-

1. *“Kusum Lata and others V/s Satbir and others” (2011) 2 Supreme Court Cases (Cri.) 18;*
2. *“National Insurance Company Ltd. V/s Smt. Pushpa Rana and others” 2009 (3) AICJ 573;*
3. *“Sudama Devi and others V/s Kewal Ram and others” 2008 (2) RCR (Civil) 72;*
4. *“Raju and others V/s Sukhwinder Singh and others” 2006 (4) RCR (Civil) 82; and*
5. *“Girdhari Lal V/s Radhey Shyam and others” 1994 (1) ACJ 168.*

On the contrary, Mr. Subhash Goyal, learned counsel appearing on behalf of respondent No.3/Insurance Company submits that the appellants-claimants were to stand on their own legs, but have not been able to establish the involvement of the vehicle. The finding rendered by the Tribunal by relying upon the *ruqqa* (Ex.P-13) leaves no manner of doubt that the vehicle was not involved in the accident being insured with the Insurance Company.

He further submits that the statements recorded before the Police and as well as at the time of the accident, are not consistent as in the

statement dated 26.10.2010, the aforementioned witness was stated to having meal with PW-3 Yasbir Singh at Amritsari Dhaba, whereas as per statement 06.11.2010, he was returning home after attending the marriage along with his friend on motor cycle. All these factors weighed in the mind of the Tribunal while exonerating the Insurance Company and urges this Court for upholding the award under challenge.

In rebuttal, Mr. Gupta, learned counsel counsel for the appellants-claimants submits that the statement dated 06.11.2010 recorded before the police does not bear the signatures of the witness.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gupta, for, no doubt the aforementioned FIR was registered against the driver, but the fact remains that the aforementioned vehicle was found to be involved in another FIR, as noticed by the Tribunal and no corroborative or any evidence in rebuttal, had been placed on record. For the sake of brevity, the relevant finding of the Tribunal rendered in para 12 reads as under:-

"Apart from his, a perusal of Ex.P-6 i.e. application moved by respondent No.2 for release of offending vehicle on superdari shows that police reported that this vehicle was earlier involved in another case i.e. FIR No.175 dated 14.07.2009, under Sections 283, 337, 304-A IPC, Police Station Sector 31 Faridabad. This goes to sows that offending vehicle was planted in this case."

Ruqqa (Ex.P-13) establishes that the deceased Babu Ram was brought to hospital in Ambulance by Manjeet Singh and Maiye Dutt having

mobile Nos.9310073316 & 9953847694, respectively. The aforementioned witnesses were not examined. For the reasons best known, even the factum of conviction of the driver in the aforementioned FIR also remained a mystery. All these factors read cumulatively lead to an irresistible conclusion that though, unfortunately the deceased was found lying injured on road at Ajronada Chowk, the appellants-claimants failed to establish the involvement of the Tralla, which was insured with the Insurance Company.

There is no dispute to the aforementioned judgments relied upon by Mr. Gupta, but the facts and circumstances of each case has to be seen and in all the aforementioned cases, the Hon'ble Supreme Court and the other High Courts, had an occasion to arrive at an opinion by taking into the aid of the other relevant factors and not on simply on the premise of a hit and run case. Nothing prevented the appellants-claimants to examine the aforementioned witnesses, stated to have brought the deceased Babu Ram to the Hospital i.e. Asian Institute of Medical Sciences, Faridabad, on 26.10.2010 at 03.15 a.m.

For the foregoing reasons, I do not find any illegality and perversity in the findings rendered by the Tribunal, much less, no ground is made out for interference and accordingly, the appeal is dismissed.

19.09.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned Yes/ No

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Whether Reportable Yes/ No