

472

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2367-2012 (O&M)

Date of decision : 01.09.2017

Hardev Singh

... Appellant(s)

Versus

Rajinder Kumar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Rangi, Advocate
for the appellant.

Mr. Vinod Kanwal, Advocate and
Mr. Ashit Malik, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The appellant-claimant is stated to have received the injuries in a road accident, occurred on 21.01.2008 sought the compensation, but was not successful on the premise that the appellant-claimant failed to establish that the accident had taken place due to rash and negligent driving of Rajinder Kumar, driver of the tractor Make Mohindera 475/D1 bearing Engine No.420, Chassis No.420, which was insured with the Iffico-Tokio General Insurance Company/respondent No.3.

Mr. S.S. Rangi, learned counsel appearing on behalf of the appellant-claimant submits that the Motor Accident Claims Tribunal (in short 'the Tribunal') has committed illegality and perversity in dismissing the claim petition on the premise that none of the witnesses either Amaninder Singh or Hardev Singh-claimant had referred the name of the

driver, who was driving the tractor-trolley, whereas it has been reflected in the affidavit submitted by way of examination-in-chief and as well as in the FIR. The nature of the accident has been narrated, but the same has not been appreciated in correct perspective. At the best, it could have been a case of contributory negligence, therefore, the appellant-claimant is entitled to compensation.

Mr. Vinod Kanwal and Mr. Ashit Malik, learned counsel appearing on behalf of respondent No.3/Insurance Company, submits that the case set up by the claimant/appellant itself establishes the negligence on his part as he was crossing the jeep, when it hit the tractor-trolley coming from other side, rightly so, the claim petition has been dismissed and urges this Court for upholding the award, under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

It would be apt to reproduce the para 2 and 3 of the affidavits submitted by way of examination-in-chief of PW-1 and PW-2, respectively, which read thus:-

"2. That I state on oath that on dt. 20.1.2008 the deponent along with Hardev Singh son of Balbir Singh resident of Sanour Distt. Patiala had gone to Sabzi Mandi Kharar for selling Tomato which was loaded in Mohindra Picup Jeep bearing No.PB-11AF-8777. After selling the tomato the deponent along with Hardev Singh were coming back to their village via Badali Bassi Pathana Road. The Mohindra Picup was being driven by Hardev Singh and deponent was sitting with the said Hardev Singh. At about 5 P.M. when they reached within the limits of Village Madanpur then a Tractor make Mohindra 475/D1 with Red colour bearing engine

No.420 Chasis No.420 with the trolley in which Popllar trees woods were loaded came from the front side and the same was being driven by respondent No.1 Rajinder Kumar. When the said Hardev Singh was crossing the jeep then the respondent No.1 wrongly and illegally by taking the said tractor trolley towards the right side struck his tractor in the jeep. As such the Hardev Singh suffered fracture/injuries on his right arm and fracture in both legs and hip joint was dislocated and the jeep of the was badly damaged."

"3. That I state on oath that on dt. 20.1.2008 the deponent along with his cousin Amaninder Singh son of Bharpur Singh resident of Chaura Raod Sanour Distt. Patiala had gone to Sabzi Mandi Kharar for selling Tomato which was loaded in Mohindra Picup Jeep bearing No.PB-11AF-8777. After selling the tomato the deponent along with his cousin brother were coming back to their village via Badali Bassi Pathana Road. The Mohindra Picup was being driven by deponent and Amaninder Singh was sitting with the deponent. At about 5 P.M. when they reached within the limits of Village Madanpur then a Tractor make Mohindra 475/D1 with Red colour bearing engine No.420 Chasis No.420 with the trolley in which Popllar trees woods were loaded came from the front side and the same was being driven by respondent No.1 Rajinder Kumar. When the claimant/deponent was crossing the jeep then the respondent No.1 wrongly and illegally by taking the said tractor trolley towards the right side struck his tractor in the jeep. As such the deponent suffered fracture/injuries on his right arm and fracture in both legs and hip joint was dislocated and the jeep of the was badly damaged."

Admittedly, the appellant-claimant, who was driving the Mohindera Pick Up/Jeep bearing registration No.PB-11-AF-8777, was

overtaking the vehicle/jeep. It is not a case where the road was very wide and accident could have been averted. The tractor driven on left-hand side of road was struck with the Mohindera Pick Up/Jeep and rightly so, the Tribunal has, in my view, held that it was the claimant, who was negligent and not the Driver of the Tractor.

For the foregoing reasons, I do not find any illegality and perversity in the award, under challenge, much less, no ground is made out for interference and accordingly, the present appeal is dismissed.

01.09.2017	(AMIT RAWAL)
Yogesh Sharma	JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No