

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

FAO No.4277 of 2012

Date of Decision.20.09.2017

Smt. Biro Devi and others

.....Appellants

Vs

Virender and another

.....Respondents

Present: Mr. Vivek Suri, Advocate
for the appellants.

Mr. Harsh Aggarwal, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The present appeal has been preferred on behalf of legal representatives of one Partap, who unfortunately died in an accident alleged to have taken place on 07.06.2010 while travelling in a three wheeler bearing registration No.HR-46C-0998. As per the averment made in the claim petition, the deceased along with Vijay and others was travelling in the aforementioned three wheeler when a Tempo bearing temporary registration No.HR-61M-HQ-2937, driven and owned by respondent No.1 and insured with respondent No.2-insurance company hit against the three wheeler. Due to the impact, Partap son of Lal Chand and other occupants suffered serious and grievous multiple injuries. The passerby took the injured to PGIMS, Rohtak where Partap was declared as brought dead. In this regard, an FIR bearing No.231 dated 7.6.2010 under Sections 279, 304-A IPC on the basis of statement of eye witness namely Vijay son of Shiv Dhan.

Mr. Vivek Suri, learned counsel appearing on behalf of the

appellants submits that in the case of hit and run, first and prime consideration of the relatives of the injured persons is to take care of the injured ones instead of focusing on noting down the number of the vehicle. In fact, the aforementioned tempo insured with the United India Insurance Company Limited was involved in the accident as the FIR was lodged on the same date. He referred to statement of PW1, PW2 and PW4, whose testimonies according to him established the involvement of the aforementioned tempo, thus, urges this Court for setting aside the award passed by the Tribunal.

Mr. Harsh Aggarwal, learned counsel appearing on behalf of the insurance company submits that the tempo insured with the insurance company was never involved in the accident. It was a planted vehicle as eye witnesses had not disclosed the name of the driver. In the testimony of Biro Devi, it has been found that Hawa Singh, brother of the deceased was married in village Pakasma i.e. the same village where the owner of the vehicle resided. Even PW4 has attributed the negligence to some other three wheeler and not the tempo, thus, rightly so, the Tribunal formed an opinion that the claimants have not been able to establish the death being caused by the tempo insured with the insurance company.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Suri. In order to appreciate the controversy raised above, it would be apt to reproduce the statement of PW1, PW2 and PW4:-

“PW1 Vijay Singh son of Shiv Dhan, aged 60 years, agriculturist, resident of village Titoli District Rohtak on S.A.

Stated that on 7.6.2010, I along with my nephew Partap was returning from Sampla after finishing of our work. We

were coming in a three wheeler No.HR46C-0998. The three wheeler was being driven at a normal speed. When we reached at village Kultana turn, one tempo bearing No.HR61M-HQ-2937 came from the opposite direction in rash and negligent manner and he brought the vehicle on the wrong side and hit our three wheeler. Because of this impact, I became unconscious. We were then sent to the PGIMS, Rohtak. In the hospital, I regained consciousness. My statement was recorded by the police and on my statement, First Information Report, Exhibit P1 was recorded. The accident occurred due to the fault of the driver of the tempo. The name of the driver could not be known even by now to me. xxxxxmn by Shri D.S. Chouhan, counsel for respondent No.3.

The registration number was told to me by one third person after I got recorded the First Information Report. It is correct that in the First Information Report, the number was not given. I have told o the police that the vehicle which hit was Tempo (confronted with Exhibit P1, wherein the factum of offending vehicle being Tempo is also not mentioned). I did not inform to the Police the registration number even after I was told the number on the same evening by one third person. I cannot tell the name of that person, who had told me the number, but they were 8-9 persons, who were travelling in the same three wheeler. I was medico-legally examined. I have not filed any claim. I have not brought any document to show that I suffered injuries. It is wrong to suggest that the offending vehicle has been falsely introduced so as to get the bogus claim. Pakasma village is at a distance of 18-20 kms from our village. The brother of Partap is married in Village Paksama but I do not have any relation in village Pakasma. I do not know as to with whom he is married in village Paksama. It is wrong to suggest that the petitioners in collusion with the respondents No.1 and 2 have filed a false claim and I am deposing falsely.

11.2.2011

MACT, Rohtak

PW2 *Biro Devi widow of Shri Partap Singh aged 50 years, household, resident of village Titoli District Rohtak on SA.*

Stated that my husband aged 54 years, doing the work of agricultural and dairy farming, has died in a vehicular accident. I have four children i.e. two sons and two daughters. My both daughters are married and Ravinder my son is aged 30 years, but his IQ is not upto the mark. My second son Naresh has died and he has one widow and two children namely Garima and Gaurav. My husband used to earn Rs.1,75,000/- per year from the above said two vocations. My husband was also having 16 acres of land. The copies of jamabandies are Exhibit P2 and P3. The copy of the post-mortem report is Exhibit P4. My husband has also purchased a tractor in the name of my elder son Ravinder. I have brought the original registration certificate, copy of which is Exhibit P5. The photocopy of form-J is mark-A. Now, we are unable to do any agricultural work and we are unable to maintain ourselves.

We have spent Rs.20,000/- on the cremation of my son.

xxxxmn by Shri DS Chouhan, counsel for respondent No.3.

We did not get medically examined Ravinder so as to show that he is not mentally fit. However, he is a simpleton man and is not married. Hawa Singh brother of Partap was married in village Paksama. The name of his brother in law is Jaina. I do not know whether the accident occurred with a truck or with any other vehicle. When I filed the petition, the Advocate read over the same to me. The Advocate has not told as to against whom, he has filed the petition. Even today, I do not know as to with which vehicle, my husband has met with an accident. We have proclaimed for the sale of the tractor but the same has not been sold by now. My husband was not maintaining any bank account but he was utilizing the money by purchase of plot and construction of house etc. It is wrong

to suggest that I am exaggerating the income and deposing falsely with regard to the age of my husband. It is wrong to suggest that the petitioner No.2 is doing the agricultural work. It is also wrong to suggest that he was not doing the work of dairy farming.

RO&AC

11.2.2011 RTI Biro Devi

-sd-

MACT/Rohtak

PW4 *Piare son of Sudhan, aged 60 years, Idle, resident of village Chuliyana on S.A.*

(The witness is pretending to be hard of hearing because the questions are put very loudly to him).

Stated that about one year back, I along with other persons had started from Sampla in a three wheeler at about 1.30 p.m. When three wheeler was short of 2 acres from the turning of Gandhra village, then a three wheeler came from the opposite direction and he dashed his three wheeler in our three wheeler. I am quite illiterate. I was along with one person of village Ritoli (despite specific question whether it is village Titoli or village Ritoli, the witness states that he was of village Ritoli). After about one hour, the driver of the offending vehicle of village Paksama had come at the bus stand and not at the spot. The driver has told his name but now I have forgotten. However, I have also forgotten the name of the owner, which was told by him. However, the village was told as Pakasma. My leg and hand were broken. I do not know whether I was brought in medical college or somewhere else. I do not have any document and I do not know where such document has gone. The accident occurred due to the fault of the driver of that three wheeler, which come from the front side.

xxxxmn on behalf of the respondent No.3.

I was not have any sense so as to file the claim petition. Today, a person from village Ritoli has brought me who has asserted that I also received injuries and his father has also died in this accident and I should depose in the Court. The

driver of the three wheeler in which we were travelling was telling himself to be of village Pakasma. Then said, I do not know who was the driver of the three wheeler in which we were travelling but the offending three wheeler was driven by a person of village pakasma. I have not lodged any complaint because of the death of my son. The person who has died was of village Ritoli. I do not have any relation in village Pakasma. I do not know the registration number of the three wheeler, who has caused the accident. It is wrong to suggest that a tractor trolley full of bricks was parked on the road in that tractor trolley, our three wheeler was dashed. Volunteered it was another three wheeler which came from the opposite direction and dashed in our three wheeler. It is wrong to suggest that no accident took place with the three wheeler coming from the opposite direction. It is wrong to suggest that in collusion with the petitioners, I am deposing falsely. It is also wrong to suggest that I was not in the three wheeler and no accident took place.

*RO&AC
25.5.11*

*-sd-
MACT, Rohtak.”*

PW-1 in his examination-in-chief stated that name of the driver could not be known to him, though he stated that he was author of the FIR but did not give registration number of the vehicle to the police even after the number was told to him by a third person on the same evening. Even the name of the person who told him the number had not surfaced, as he did not know the name of that person. He also admitted that brother of the deceased is married in village Pakasma as admitted by Biro Devi where the owner of the alleged offending vehicle resided. PW-4 has not given the correct story corroborating with the evidence in the claim petition and admitted that the accident had taken place with some other three wheeler and not with Tempo.

In view of the aforementioned facts, I do not find any illegality and perversity in the award passed by the Tribunal and the same cannot be faulted with. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

September 20, 2017
Pankaj*

Whether reasoned/speaking Yes

Whether reportable Yes