

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

476

FAO NO.1157 of 2013

Decided on : 12.10.2017

*Budhi and another**... Appellants**Versus**Ajay Kumar and others**.. Respondents***CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN**Present : Mr.Shahid Hussain, Advocate
for the appellants.Mr.M.B.Jain, Advocate
for respondent No.3-Insurance Company.**Avneesh Jhingan , J. (Oral)**

Present appeal has been filed against the award dated 21.12.2012 passed by Motor Accidents Claims Tribunal, Palwal (for short 'the Tribunal).

2. On 30.12.2008, Suraj was going to fields at Baghola from Palwal on his bicycle. When he reached near Government School Baghola, District Palawal, allegedly, an Alto car bearing registration No.DL-3CAW-0187 (for short 'the offending vehicle') hit Suraj's bicycle. As a result of the accident, he suffered fatal grievous injuries. Initially FIR No.329 dated 24.8.2009 was lodged by Budhi, father of the deceased. He alleged that one Mahender Singh , who was travelling in a bus from Palwal to Delhi, had seen the accident while travelling in the bus. Mahender Singh came to Narain Singh and asked about the accident. Narain Singh then informed that Suraj who was hit by a car, died. Mahender Singh gave a chit to Narain Singh mentioning number of the

offending vehicle on it, Narain Singh handed over the chit to Budhi.

3. The Tribunal dismissed the claim petition on the ground that claimants had failed to prove that accident was caused by the offending vehicle. Aggrieved of the said award, the present appeal has been filed.

4. I have heard the learned counsel for the parties and perused the paper-book and record.

5. Learned counsel for the appellants argued that in many cases FIRs are registered against the unknown persons and the rights of the deceased got defeated in such manner. He further raises a concern that in such situations, claimants are adversely effected He submits that in such circumstances, once the claimants have claimed that accident occurred with the offending vehicle then the claim petition ought to have been allowed. He contended that the claimants had produced Mahender Singh as PW-1 who filed his affidavit as PW-1/A, therefore, it was proved that accident occurred with the offending vehicle.

6. Learned counsel for the respondent on the other hand, has argued that Mahender Singh was not a reliable witness as he never informed the police or the relation of the deceased. He further argued that Narain Singh was the relevant witness to substantiate the version of Mahender Singh, but he was not produced. He further argued that even the alleged slip on which number of the offending vehicle was given to Narain Singh who further handed over the same to Budhi (father of the deceased) was not produced.

7. The facts in the present case give a very sketchy picture. The accident occurred on 30.12.2008, allegedly, there was an eye witness by

the name of Mahender Singh who appeared before the Tribunal and stated that he was travelling in a bus from Palwal to Delhi when he saw the accident. In the affidavit filed by him before the Tribunal in para No.2, he stated as under:-

2. That after some days the deponent met with a person namely Naryan Singh on his shop at village Baghola which was nearby the place of occurrence and asked him about the condition of the person who was hit by the Alto Car No.DL-3 CAW-0187. Naryan Singh told the deponent that the same person has been died on the same day of occurrence and his name was Suraj S/o Budhi R/o village Baghola, Tehsil & Distt. Palwal. The deponent handed over slip of paper to Naryan Singh on which the number of the said offending car was written on the same day of accident i.e. on 23/08/2009. The deponent also told Naryan Singh his name and address and went away.”

8. From bare reading of the contents of the above affidavit, it appears that on one hand, Mahender Singh is stating that he after some days met Narain Singh at a shop and he asked about condition of person who was hit by the offending vehicle. He was informed that the boy died on the same day. In the later part of the same paragraph, Mahender Singh states that he handed over a slip of paper to Narain Singh on which number of the offending vehicle was written on the same day of the accident i.e. on 23.08.2009.

9. Mahender Singh never informed the police about the accident. It was only when the police reached his place that he filed a complaint with Superintendent of Police, Palwal on 27.05.2010. It is important to note that in the said complaint, Mahender Singh gave the number of offending vehicle as Alto Car HR-51-S7929 whereas he had claimed in affidavit that number was written on the chit on the day of accident.

10. Though the criminal proceedings are not relevant under the case of MACT, but these cannot be totally ignored where issue regarding involvement of the offending vehicle is concerned.

11. Learned counsel for the Insurance Company has produced order dated 10.9.2015 of the Chief Judicial Magistrate, Palwal. In the said order, the driver was acquitted as his involvement in the accident could not be proved. The contents of paragraphs 19 and 20 of the said order are very relevant and are being reproduced:-

“19. From a perusal of the entire evidence, it surfaces that initially, the complainant had reported that the accident was caused by an unknown person with an unknown vehicle. It is clear that no one had eye witnesses alleged incident. To the same effect is the statement of PW-4 Budhi (complainant). He conceded that he has only received information of alleged accident and then he reached the spot. He had not eye witnesses alleged accident. Alleged accident pertained to 23.08.2009. However, more than after one year, on 18.10.2010 a supplementary statement of complainant was recorded in which he submitted that Narain s/o Ram Chand had received a paper slip bearing number DL-3CAW/0187. The paper slip was given to Narain Singh by Mahender s/o Meva Ram. He told that alleged accident was caused by the car bearing No.DL-3CAW/0187. Thereafter, he gave this paper slip to the typist because he wanted police to carry out further investigation in this case. But the typist typed a wrong registration number of vehicle as HR-51S/7929. He moved this application with SP, Palwal. He claimed that the accident was caused by the driver of the said car only.

20. In this manner complainant alleged that the accident was caused by an Alto car bearing number DL-3CAW-0187. He claimed that the typist had typed a wrong number of HR-51S/7929. But in this regard, the statement of complainant Budhi is present even on case file. Said statement is dated 31.07.2010 wherein he has mentioned that the accident was caused with a vehicle bearing registration No.HR-51S/7929. Therefore, it appears that the complainant tried to mislead the investigation by falsely claiming that the accident was caused by said vehicle. Moreover, said Mahender Singh S/o Meva did not step into the witness box to prove that the accident was caused by vehicle bearing No.DL-3CAW/0187. Alleged paper slip which was handed over by Mahender s/o Narain for passing it to Budhi Ram was also not produced on case

file. It is also observed that alleged incident is dated 23.08.2009 by Mahender s/o Meva did not report the matter to police. Even Narain Singh s/o Ram Chand claimed that Mahender had handed over the paper slip to him after some days of the accident. Still that paper slip was not handed over to police by anyone. Said paper slip came into picture after one year of accident in the month of October 2010. Such circumstances make the prosecution case extremely weak in nature.”

12. From the perusal of the above, it is evident that the stand of Mahender Singh that there was a typographical mistake in mentioning the registration number of the car, was not accepted. The said reasoning was not accepted as there was a statement made by the claimant-Budhi, father of the deceased, in that statement also, the vehicle registration number was mentioned as HR-51S-7929.

13. In such circumstances, there was no question of any typographical mistake. The claimants have not been able to discharge the onus to prove that the deceased lost his life because of accident with the offending vehicle. Most important link which was missing in the entire case is that Narain Singh was not produced before the Tribunal.

14. In such circumstances, no fault can be found in the award passed by the Tribunal. The appeal is without any merit, the same is dismissed.

[Avneesh Jhingan]
Judge

12.10.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No