

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

**FAO No.6664 of 2012 and
FAO No.6665 of 2012
Date of Decision: 09.11.2017**

Rajvinder Kaur

...Appellant(s)

Versus

Daljit Singh and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. J.S. Cooner, Advocate
for the appellant(s).

Mr. Shilak Ram Hooda, Advocate
for respondents No.1 and 2.

Mr. Ashwani Talwar, Advocate with
Mr. Lalit Kumar, Advocate
for respondent No.3-Insurance Company.

ANITA CHAUDHRY, J.

Two claim petitions were filed with respect to an accident which occurred on 03.01.2007. Vide two separate orders both dated 18.12.2010, the Motor Accident Claims Tribunal, Patiala dismissed both the petitions as it recorded the finding against the claimants on issue No.1. I, therefore, I propose to dispose of both the appeals together.

Kesar Singh was coming from Lalru to his village and his son Lovpreet alias Bobby who was aged about 4 years was sitting in his lap. Both of them were sitting on the mudguard of a tractor bearing No.PB-07/2312, which was driven by Gurmail Singh. The tractor was being driven on the left side of the road. At about

6.00 p.m., a Canter bearing No.HR-37A/3557, driven by respondent No.1 came in a rash and negligent manner and hit the tractor. The tractor turned turtle. Gurmail Singh fell on the Katcha path whereas Kesar Singh and his son came under the tractor. The Canter driver stopped his canter after covering some distance. It was claimed that Harpal Singh and Gurwinder Singh had witnessed the accident.

The claimants did not examine Harpal Singh or Gurwinder Singh and instead examined Gursher Singh who stated that he was an eye-witness.

The Tribunal noted that Harpal Singh was the author of the FIR who had not been examined. It also noted that Gurwinder Singh and Harpal Singh did not support the prosecution version in the criminal trial. It was observed that the driver had fled from the spot, therefore, there was no occasion for anyone to see his face. It noted that Gursher Singh had never appeared before any authority nor any evidence was produced to show that he had taken the injured to the hospital. His testimony was rejected and issue No.1 was answered against the claimants in both the claim petitions. Both the claim petitions were dismissed.

The submission on behalf of the appellants in both the appeals is that the Tribunal has taken into account the judgment rendered in the criminal trial which was not binding nor it was conclusive and the Tribunal has gone wrong in discarding the statement of Gursher Singh. It was urged that it had been settled in a

number of judgments that a criminal Court's judgment is not relevant in a case before the Tribunal and the standard of proof of a criminal case are different from tortuous claims for accident victims and the Tribunal was totally influenced by the acquittal given by the criminal Court. Reliance was placed upon '***Oriental Insurance Company Limited Vs. Balinder Pal @ Varinder Singh and others 2017(1) PLR 253: 2017 ACJ 2140***' and '***Krishan Vs. Tarawati Widow and others 2011(3) PLR 29.***'

On the other hand, counsel appearing for the Insurance Company submits that fraud had been played on the Court and the claimants did not give the name of Gursher Singh in the claim petition and as pleaded Gurwinder Singh and Harpal Singh were the only eye-witnesses and the Tribunal has noted that both the witnesses did not support the prosecution version before the Criminal Court and 3 years after the accident this person is named and examined, who stated that he was not related to the claimants and he did not know them and he did not even convey to them that he was a witness to the accident and he deposes in favour of the claimants. It was urged that this witness has been introduced and there was no evidence to support his statement that he had taken the injured to the hospital. It was urged that the claimants have mislead the Tribunal and action should be initiated for producing a false witness. Reliance was placed upon '***United India Insurance Company Ltd. Vs. Sanjay Singh and others 2000(100) Comp Cas***

705' and 'The Oriental Insurance Co. Ltd. Vs. Kamla and others (FAO No.55 of 2013).'

The Tribunal had disbelieved the statement given by Gursher Singh, who according to the claimants, was an eye-witness. A perusal of the claim petition would show that the name of Gursher Singh is not mentioned in the claim petition. The plea taken in Para-24 of the claim petition was that Harpal Singh and Gurwinder Singh had witnessed the accident. The accident had taken place in January, 2007. It is for the first time in December, 2010 that Gursher Singh appears before the Court. A reading of the cross-examination of Gursher Singh PW-2 demolishes the case of the claimants. He stated that he did not know the claimants and had never told them that he was witnessed the accident. He stated that the police had taken the document in his presence but he had not signed any document. He stated that police had registered a murder case against the driver which was wrong. He did not appear as a witness before the criminal Court.

The evidence led by the complainant consists of the statement of the claimants and the eye-witnesses. Gursher Singh is not the author of the FIR nor had he appeared before the police to make any report. He did not take the injured to the hospital. He does not even know the claimants or their families. He was not summoned by the claimants and had appeared on his own and all these circumstances only point out to the fact that he is a person who has

been introduced. No doubt, the Criminal Court's judgment is not relevant in a case before the Tribunal and the Tribunal did exhaustively deal with the conduct of the witnesses before the Criminal Court which was not necessary. The Tribunal should have confined itself to the evidence which had been led before it as the standard of proof are different and in the claim under the Motor Vehicles Act, the victims have only to prove the involvement.

In the present case, the author of the FIR was not examined. Gursher Singh is a total stranger who has been introduced subsequently. I am of the view that his testimony could not be relied upon to record a finding in favour of the claimants on issue No.1.

There is no infirmity in the findings.

I find no merit in both the appeals and are, hereby, dismissed.

November 09, 2017

ps-l

**(ANITA CHAUDHRY)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No