

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

F.A.O No. 1720 of 2013

Date of decision:- 03.10.2017

Talwinder Singh

...Appellant

Versus

Jarnail Singh & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms. Ekta Thakur, Advocate
for the appellant.

Mr. Sandeep Saini, Advocate for
Mr. Sumit Gupta, Advocate
for respondent Nos. 1 and 2.

Mr. Rajesh Bansal, Advocate
for respondent No. 3-Insurance Company

RITU BAHRI J. (Oral)

This appeal is by the claimant/injured-Tajinder Singh against the award dated 08.09.2012 passed by Motor Accident Claims Tribunal, Mohali (for brevity 'the tribunal'), vide its order/award dated 08.09.2012 whereby the claim petition filed by the appellant under Section 166 of the Motor Vehicle Act, has been dismissed.

On 03.10.2008, Talwinder Singh along with his wife and daughter Navpreet Kaur were going from Daon Majra towards village Pucci Rurki, Tehsil Kharar District Mohali on motorcycle bearing registration No. PB-27-C-1236. When they reached on G.T. Road near village Daon Majra, the claimant gave dipper light to the driver (respondent No. 1) of tractor trolley but he turned his tractor trolley towards the centre of the road, as a result of which the motorcycle driven by the appellant struck against the

tractor trolley. He along with his wife and daughter fell on the road. While he and his wife suffered injuries, his daughter Navpreet Kaur died on the spot. The claimant was admitted in PGI Chandigarh and he got himself discharged on 07.10.2008 being not satisfied with the treatment and got himself admitted in Indus Hospital, SAS Nagar Mohali from where he was discharged on 14.10.2008.

The learned Tribunal dismissed the claim petition filed by the appellant by observing that the negligence if any was on the part of the appellant and not the driver of the tractor trolley as the appellant is said to have blown horn and given dipper light while crossing the tractor trolley but he definitely did not take the green signal from the driver of the tractor trolley to cross the same. It has further been observed that no driving licence of respondent No. 1 was placed on record which was valid at the time of accident.

Learned counsel for the appellant at the very outset submits that the order/award dated 08.09.2012 is liable to be set aside on the ground that once in a separate claim petition filed by the wife of the appellant for getting the compensation on account of death of daughter Navpreet Kaur, the issue No. 1 i.e “whether Navpreet Kaur died in a motor vehicular accident occurring on account of rash and negligent driving of tractor trolley No. HR-05-J-3083 by respondent No. 1” was decided in favour of the claimant, the present appellant is also liable to get compensation. The learned Tribunal has held that the accident was result of contributory negligence and ordered the compensation on 08.06.2012 of Rs.2,29,500/- to be paid by the insurance company of the tractor as well as by the insurance company of the motorcycle driven by the appellant.

On the other hand, learned counsel for the Insurance Company submits that the order/award dated 08.06.2012 was passed in a claim petition filed under Section 163-A of the Motor Vehicle Act and in the present case, the appellant filed the claim petition under Section 166 of the Motor Vehicle Act and thus he has to prove the negligence of the driver of the offending vehicle.

Heard learned counsel for the parties.

It is not in dispute that the accident had taken place and further the Insurance Company of both the motorcycle and the tractor trolley have not filed any appeal against awarded dated 08.06.2012 and thus this award attained finality wherein it has been categorically held that the driver of both the vehicles are at fault and the learned Tribunal ordered the compensation to be paid by the insurance company of the tractor as well as by the insurance company of the motorcycle driven by the appellant. Thus, the claim petition filed by the appellant could not be dismissed on the ground that the appellant was negligent in driving his vehicle.

In view of the above factual position, award dated 08.09.2012 passed by the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the matter afresh on merits after giving due notice to the parties.

The petition stands partly allowed.

03.10.2017

G Arora

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No