

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

**FAO No.2100 of 2013 (O&M)
Date of decision: 20.11.2017**

Krishna and others

....Appellants

Versus

Narender and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Goyat, Advocate,
for the appellants.

Mr. R.K. Bashamboo, Advocate,
for respondent No.2-Insurance Company.

RITU BAHRI J. (Oral)

This appeal is directed against the Award dated 14.01.2013 passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'the Tribunal') dismissing the claim petition filed by the claimants-appellants seeking compensation on account of death of Radhey Shyam in a motor vehicular accident which took place on 25.09.2011. Appellant No. 1 is widow, whereas appellant Nos.2 and 3 are children of deceased Radhey Shyam.

Brief facts of the case are that on 25.09.2011, Radhey Shyam (since deceased) along with Ram Niwas and Chhotu Ram was returning from village Siswal on a motorcycle bearing registration No. HR-22-F-1322. When they reached ahead of Lakhpul on Adampur-Siswal road, a Maruti car bearing registration No. HR-20-N-8344 being driven by

Narender-respondent No.1 in a rash and negligent manner, came from the side of Adampur and struck against the motorcycle of Radhey Shyam, as a result of which, persons travelling on the motorcycle received multiple injuries. Ram Niwas and Chhotu Ram expired on the way to hospital. Radhey Shyam was taken to General Hospital, Hisar, but he succumbed to the injuries on the way. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

Upon notice, respondent No. 1-driver/owner of the offending vehicle filed written statement, whereby he had denied the allegations levelled by the claimants. Respondent No.2-insurance company filed a separate written statement and pleaded that respondent No.1 was not holding a valid and effective driving license on the date of accident.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the accident occurred on 25.09.2011 has been caused due to rash and negligent driving of respondent No.1 by driving Maruti Car bearing No. HR-20-N-8344, if so, to what effect? OPP
2. If issue no.1 is proved, to what amount of compensation the petitioners are entitled to, if so, from whom? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petitioners have no locus standi to file the present petition? OPR
5. Whether the petitioners have colluded with respondent No.1, if so, to what effect? OPR2

6. Whether petition is bad for non joinder and misjoinder of necessary parties? OPR2
7. Whether petitioners are estopped by their own acts and conducts from filing the present petition? OPR2
8. Whether the driver of the vehicle was not holding a valid driving license and the insured has violated the terms and conditions of the insurance policy, if so to what effect? OPR2
9. Relief.

Learned Tribunal, after going through the evidence led by the parties, dismissed the claim petition on the ground that the claimants have failed to lead any evidence to prove that the accident in question had taken place on account of rash and negligent driving of offending vehicle by respondent No.1. No eye witness of the occurrence has been examined by the claimants to prove the involvement of offending vehicle in the aforesaid accident.

Feeling dissatisfied with the impugned Award, claimant-appellants have filed the present appeal.

Learned counsel for the appellants has referred to the Award dated 06.12.2012 (Annexure A-1) passed by the Motor Accident Claims Tribunal, Fatehabad, whereby respective claim petitions with respect to the same accident dated 25.09.2011 have been allowed by a common order and compensation of Rs.2,75,000/- and Rs.3,11,000/- respectively have been awarded in favour of claimants for the deaths of Chhotu Ram and Ram Niwas.

I have heard learned counsel for the parties and have gone

through the file carefully.

In the present case, claimants Krishna, Suman and Ashok are widow and children of deceased Radhey Shyam, who has died in the same accident, in which aforesaid Chhotu Ram and Ram Niwas have died and was travelling along with them on a motorcycle bearing registration No.HR-22-F-1322. Both the claim petitions filed by legal heirs (dependents) of Chhotu Ram and Ram Niwas have been allowed by a common order passed by the Tribunal. However, in the present case, the Tribunal has wrongly returned a finding that the claimants have failed to lead any evidence to show as to who was responsible for causing this accident. This is so said because the claimants had examined ASI Kharak Singh (PW-3) before the Tribunal, who had proved on record FIR Ex.P1 and challan under Section 173 Cr.P.C. against respondent No.1-driver as Ex.P2. Registration of FIR and filing of challan in itself was sufficient to prove that the offending vehicle was involved in the accident. On this ground itself, the Award passed by the Tribunal is liable to be set aside.

Resultantly, the impugned Award dated 14.01.2013 is set aside; the matter is remanded back to the Tribunal with a direction to considering the entire evidence led by the claimants in the light of the Award dated 06.12.2012 and pass a fresh Award in accordance with law.

Disposed of accordingly.

(RITU BAHRI)
JUDGE

20.11.2017
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No