

In the High Court of Punjab and Haryana at Chandigarh

FAO-1704 of 2014(O&M)
Date of Decision:12.12.2017

Bhupinder Kaur and another

---Appellants

vs.

Karnail Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Tarun K.Dhingra, Advocate
for the appellants

Mr. Vipin Sharma, Advocate
for Mr. Rajesh Paul, Advocate
for respondent No. 1

None for respondent No. 2

Mr. D.R.Bansal, Advocate
for respondent No. 3

Rekha Mittal, J.

The present appeal directs challenge against award dated 5.10.2013 whereby application for compensation filed by Bhupinder Kaur and another in regard to death of Satvinder Singh in a motor vehicular accident that took place on 6.2.2011 has been dismissed by the Motor Accidents Claims Tribunal, Kurukshetra (in short “the Tribunal”) on the basis of findings recorded on issue No. 1.

The facts relevant for disposal of the present appeal are that the appellants filed petition under Sections 166, 140, 141 of the Motor

Vehicles Act, 1988 (in short “the Act”) for claiming compensation to the tune of Rs. 20 lakhs. It is averred that on 6.2.2011, Satvinder Singh (since deceased) was travelling on his motor cycle bearing No. PB-65F-8328 from H.S.Farm, Zirakpur to village Fateh-Ulapur. Surinder Singh son of Bachan Singh [brother-in-law (Jija) of Satvinder Singh] and Swaran Singh son of Ujjagar Singh were following the deceased on their separate motor cycle(s). When the deceased reached near turn Khuni-Majri in the area of village Sante-Majra, Karnail Singh respondent No. 1 while driving truck bearing No. HR-37B-8253 in a rash and negligent manner came and dashed the motor cycle of deceased from behind after coming on wrong side. The deceased fell on the slab existing on the road and sustained injuries,. He was taken to Civil Hospital, Kharar. Respondent No. 1 left the spot alongwith the offending vehicle.

Respondent Nos. 1 and 2 filed joint written statement controverting the allegations that the accident was caused due to rash and negligent driving of the alleged offending vehicle by Karnail Singh. It is further averred that a false FIR was got registered against respondent No. 1 in collusion with the police.

The insurance company (respondent No. 3) also filed reply denying the allegations that the accident was caused by the truck driver. It raised certain legal objections that respondent No. 1 was not having a valid and effective driving licence; there was no valid registration certificate, fitness certificate and route permit of the offending vehicle and; application is the result of collusion of claimants with respondent Nos. 1 and 2.

The controversy between the parties led to framing of following issues by the learned trial court:-

1. Whether the accident in question took place on 6.2.2011 at about 5.00 p.m. near Khuni-Majra turn in the area of village Sante-Majra under Police Station, Sadar Kharar due to rash and negligent driving of the truck bearing registration No. HR-37B-8253 by respondent No. 1 and it resulted in death of Satvinder Singh? OPP
2. If issue No. 1 is proved in affirmative, what would be the amount of compensation payable to the petitioners and by whom?OPP
3. Whether respondent No. 1 was not having a valid and effective driving licence at the time of accident and insurance company is not liable to indemnify the compensation, as alleged?OPR
4. Relief.

The appellants/claimants examined Kuldeep Singh, Criminal Ahlmad PW1, Sohan Singh PW3 and Bhupinder Kaur, one of the claimants appeared in the witness box. On the other hand, the respondents tendered into evidence documents Rx. R1 to R10, detailed in para 7 of the award.

After having heard counsel for the parties in the light of materials on record, learned trial court refused to rely upon testimony of Sohan Singh PW3 and negated claim of the appellants that the accident was caused due to rash and negligent driving of truck in question. As the Tribunal answered issue No. 1 against the claimants, it did not record

findings on the remaining issues.

Counsel for the appellants would urge that the first information report with regard to the occurrence was lodged at the instance of Surinder Singh son of Bachan Singh on 7.2.2011 wherein there is a detailed reference to the date, manner of the accident, vehicle and driver involved in the accident in question. On the basis of investigation conducted by the police, Karnail Singh was put to trial for committing offence punishable under Sections 279 and 304-A of the Indian Penal Code(in short Cr.P.C.”). It is further argued that as there arose some property dispute between Surinder Singh and widow of Satvinder Singh, Surinder Singh did not come forward to support cause of the claimants. It is further argued that as Surinder Singh and Swaran Singh refused to depose in the court, it does not take away right of the claimants to examine another eye witness to the occurrence merely because he is not cited as a witness by the prosecution in the criminal case. Further argued that Sohan Singh was cross examined at length but nothing tangible and material has been brought forth to prove that he is a procured witness much less an interested one or beneficiary in case the claim is accepted. According to counsel, in view of testimony of Sohan Singh coupled with the first information report lodged with the police and the factum that driver of the offending vehicle faced trial, there was no reason for the Tribunal to record findings against the claimants while answering issue No. 1. The last submission made by counsel is that proceedings before the Tribunal are summary in nature and do not admit proof beyond shadow of reasonable doubt, required in a criminal case.

Counsel representing the insurance company, on the other hand,

has supported findings of the Tribunal with the submission that name of Sohan Singh to be a witness to the occurrence did not figure in the criminal proceedings initiated against Karnail Singh, therefore, the Tribunal has rightly refused to rely upon his testimony. Another submission made by counsel is that the claimants have averred that the accident was caused by the truck driver after coming on wrong side but the said fact is not borne from the entire materials on record.

I have heard counsel for the parties, perused the paper book and the records.

Bhupinder Kaur, widow of the deceased tendered into evidence her duly sworn affidavit Ex. PW2/A. In her cross examination by counsel for the respondents before the Tribunal, she has stated that now a days they are not on visiting terms with abovesaid Surinder Singh due to property dispute. There is no challenge to statement of Bhupinder Kaur in this regard. This fact alone is sufficient to indicate that the claimants were left at a loss not only because of untimely death of Satvinder Singh but also because of subsequent developments that after death of Satvinder Singh there was property dispute between the claimants and Surinder Singh as Surinder Singh is the husband of sister of Satvinder Singh (since deceased). Under the circumstance, it is not far to seek as to why Surinder Singh did not support his first version given to the police in the criminal proceedings and also did not appear before the Tribunal to prove the said version.

The question that arises for consideration is whether testimony of Sohan Singh could be discarded merely because he was not cited as one of witnesses by the prosecution in criminal proceeding launched on the

basis of FIR No.18 dated 7.2.2011. The answer, at the outset, appears to be in the negative. Perusal of the FIR lodged promptly by Surinder Singh would reveal that it has been mentioned therein that many people gathered at the spot after the occurrence. Sohan Singh tendered into evidence his affidavit Ex. PW3/A. Para No. 1 of the affidavit contains a detailed narration of the accident and as to how Sohan Singh happened to be present near the place of occurrence. It has been deposed that he was sitting in front of his atta chakki in the area of Sante Majra road leading from Landran to Kharar when the accident took place. In his cross examination, he has deposed that on that day, he did not have proof regarding his occupation of the atta chakki at the alleged place. Counsel for the respondents before the Tribunal did not pray for deferring cross examination of the witness with a direction to him to bring proof of his atta chakki. The respondents did not lead any evidence to rebut statement of Sohan Singh with regard to his running atta chakki in the area of Sante Majra near the place of occurrence. Counsel for the insurance company has failed to point out any tangible and material facts elicited in cross examination of Sohan Singh to shake his veracity or establish plea that he is a procured witness. In this view of the matter, I find merit in contention of the appellants that findings recorded by the Tribunal for discarding and disbelieving testimony of Sohan Singh are not well founded and liable to be set aside. The Tribunal has failed to take into consideration that the incident was reported to the police giving detailed description of the vehicle as well as driver of the offending vehicle without any loss of time and on due investigation, challan was presented against Karnail Singh for committing offence under Sections 279, 304-A

IPC.

There cannot be any dispute about the settled position in law that acquittal of the driver in criminal proceedings has no relevance for deciding the proceedings qua compensation. This apart, reason for failure of Surinder Singh, author of the FIR to support cause of the prosecution in the criminal proceedings is apparent because of property dispute between the claimants and said Surinder Singh. In view of the above, testimony of Sohan Singh coupled with the police investigation conducted in the matter is more than sufficient to establish plea of the claimants that accident was caused due to rash and negligent driving of truck No.HR-37B-8253 by Karnail Singh respondent No. 1. The contention of the insurance company that in the claim application it has been averred that the truck hit the motor cycle by coming on wrong side does not assume relevance and significance because none of the claimants was present at the spot and they had been relying upon information derived from others. However, no such fact has been elicited in statement of Sohan Singh PW3.

In view of what has been discussed hereinabove, findings recorded by the Tribunal on issue No. 1 are the result of mis-appreciation of evidence and analysis of legal aspects in right perspective. As a result, findings recorded by the Tribunal on issue No. 1 are set aside and issue No. 1 is answered against the respondents and in favour of the claimants. As has been already noticed hereinbefore, the Tribunal has not recorded any findings on issue Nos. 2 and 3. As findings of the Tribunal on issue No. 1 have been set aside, the matter needs to be remitted to the Tribunal for decision of other issues on the basis of materials on record or additional

evidence, if any, permitted to be adduced by the parties.

For the foregoing reasons, the appeal is allowed. Award dated 5.10.2013 is set aside. The matter is remitted to the Tribunal for recordings findings on issue Nos. 2 and 3. The parties through their counsel are directed to appear before the Tribunal on 17.1.2018. The Tribunal shall put its best efforts to dispose of the matter within a period of two months from the parties putting in appearance. No order as to costs.

(Rekha Mittal)
Judge

12.12.2017
paramjit

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