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

FAO No. 3528 of 2013 (O&M)

Decided on: 23.08.2017

Smt. Sushma Devi and another **.....Appellants**

versus

Sahab Singh and others **.....Respondents**

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: None for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No. 3-Insurance Company.

Rajbir Sehrawat, J.(Oral)

This is an appeal filed by the claimant challenging the award passed by the learned Motors Accident Claims Tribunal, Karnal whereby the claim petition filed by the appellants-claimants was dismissed on the ground that they have failed to prove the relationship with the deceased.

The facts stated in briefs are that on 31st July, 2012 at about 8.30 P.M., deceased-Mohinder Singh son of Joginder Singh was driving motorcycle. However, the offending vehicle, the bus, bearing registration No. HR 45 5998 driven by respondent No.1 hit the motorcycle of the deceased because of which the deceased sustained injuries. Due to the injuries he was referred to General Hospital, Karnal. However, he

succumbed to injury on the night of 31st July 2010. As per the facts

mentioned in the claim petition, the entire incident of the accident was witnessed by one, Madan Lal who was travelling in the offending bus.

On account of the death of the deceased, the widow, the mother, the brother and one sister of the deceased filed a present claim petition. In the claim petition, the mother of the deceased appeared as PW-1 and owned and proved her case by deposing in the terms of the claim petition. Besides this, the above said Madan Lal who was an eye witness; was produced as PW-2. This PW-2-Madan Lal, deposed before the Court that he was travelling in the offending bus. The bus was being driven in a rash and negligent manner and at a very high speed. The driver of the bus was requested by the passengers, including this witness, PW-2-Madan Lal, to drive the bus carefully and in a moderate speed. However, the driver of the offending bus did not care of the advice of the passengers. This resulted into the accident. Besides the witnesses, the claimants produced on record the documents which are Ex.P1, Copy of the report under Section 173 of CrPC; Ex.P2, Copy of the FIR and Ex.P3, Copy of the postmortem report.

On the other hand, the respondents produced in evidence the copy of the permit of bus as Ex.-R1; copy of the driving license as Ex.R2 and copy of the insurance policy as Ex.R3.

After appreciating the evidence, the learned Motor Accident Claims Tribunal, Karnal dismissed the claim petition on the ground that the

claimants had failed to prove their relationship with the deceased and therefore, the petition on their behalf was not maintainable.

Along with the present appeal, the appellants have moved an application under Order 41 Rule 27 for leading an additional evidence. In the additional evidence, they have sought to produce the Ration Card of the family showing the names of the claimants as recorded in the Ration Card. However, the learned counsel appearing for the Insurance Company has disputed the Ration Card on the ground that it has not been authenticated and proved by examining any witness. It is the contention of the learned counsel for the respondent-Insurance Company that unless an official from the Department; which has issued the said Ration Card; is called as witness, examined and cross-examined the document cannot be deemed to be authenticated and proved in the eyes of law.

A perusal of the award shows that the Motor Accident Claims Tribunal had framed the following issues:-

1. Whether the accident in question resulting into death of Mohinder Singh took place due to rash and negligent driving of Bus bearing registration No. HR 45 5998 by the respondent No. 1?OPP
2. If issue No. 1 is proved, to what amount of compensation the claimants are entitled to receive and from whom?OPR
3. Whether the claim petition is not maintainable in the present form?OPR

4. Whether respondent No. 1 was not holding a valid and effective driving license on date of accident, if so, its effect?OPR-3

5. Relief.

The Motor Accident Claims Tribunal while dealing with the issue No. 1 has held that the accident had taken place in a manner as claim petition. However, while dealing with issue No. 2, the learned Motor Accident Claims Tribunal has held that the claimants had not produced the Ration Card despite being asked to produce by the respondent-Insurance Company and despite the fact that they had availed several opportunities to lead the evidence. Hence, according to the Motor Accident Claims Tribunal, since the relationship is not proved, therefore, the claimants are not entitled to any compensation and the claim petition is not maintainable.

A perusal of the award shows that issue No. 2 did not specifically indicate that the claimants were required to prove their relationship with the deceased. Therefore, it appears that the relationship of the claimants with the deceased was not specifically a fact in issue in the present case. The issue No. 2 was only related to amount of compensation. Even issue No. 3 pertained to the maintainability of the claim petition in the “present form”. Therefore, a perusal of the issues framed shows that none of the issues indicated that relationship between the parties was specifically required to be proved by the claimants. Therefore, the claimants seem to

have been taken by surprised on the question of relationship with the deceased. Although, as recorded by the learned Motor Accident Claims Tribunal, claimants did take several opportunities to produce the Ration Card, yet mere non-production of the Ration Card on the specified dates does not falsifies the relationship between the deceased and the claimants. The non-production of the Ration Card on the specified dates could have been for various reasons which may not be in the control of the claimants. This fact finds strength from the fact that in the appeal they have moved an application for production of the same Ration Card as an additional evidence.

Since the claimants is non-suited for non-production of the Ration Card and with the appeal they have filed an application for production of the same Ration Card by way of additional evidence, therefore, it would be too unjustified to non-suit the claimants only for the reason of their non-producing the Ration Card before the learned Motor Accident Claims Tribunal; on the dates which were availed by them for leading evidence there. The appellants need be granted an opportunity to produce the same in evidence; to grant them a fair opportunity to establish their relationship with the deceased.

Faced with the situation, learned counsel for the respondent-Insurance Company advances two fold arguments. Firstly, it is argued by

the learned counsel for the respondent that the document is not authenticated and for proving the same, a witness from the department, which has issued this Ration Card, would be required to be examined and cross examined before the Court. Secondly, it is the contention of the learned counsel for the respondent-Insurance Company that even if this opportunity is to be granted to the appellants to lead the evidence in the form of Ration Card then the Insurance Company should not be burdened with the interest.

In view of the above, it would be in the fitness of the things that the present award is set aside and matter is remanded to the learned Motor Accident Claims Tribunal, Karnal for fresh decision after taking the evidence regarding the relationship of the deceased with the present claimants. Therefore, the impugned award passed by the learned Motor Accident Claims Tribunal is set aside and the matter is remanded to the learned Motor Accident Claims Tribunal, Karnal for deciding the matter afresh after taking evidence on the point of relationship between the claimants and the deceased. It is made clear that the claimants shall be entitled to lead all kind of evidence of their relationship with the deceased including the oral evidence, documentary evidence or the Ration Card which is sought to be placed on record in the present appeal.

So far as the contention of the learned counsel for the Insurance Company regarding the interest part is concerned, it is made clear that respondent-Insurance Company shall also be entitled to take plea regarding non-liability of payment of interest on the amount of compensation; for the period from the date when the claimants had first sought adjournment for producing the Ration Card and till the date of decision of the claim petition. The plea, if any, so taken by the Insurance Company shall be dealt with by the learned Motor Accident Claims Tribunal in accordance with the law and in view of the facts and circumstances of the case.

The present appeal is disposed of in the above terms.

23rd August, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned -	Yes
Whether reportable -	No