

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

FAO-2327-2014 (O&M)
Date of decision: 10.10.2017

GAURAV & ORS

...Appellants

Versus

RAJ KUMAR AND ANR

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. G.C. Shahpuri, Advocate for the appellants.

Mr. C.S. Pasricha, Advocate for
Mr. Chetan Verma, Advocate for respondent No.1.

Mr. R.B. Gupta, Advocate for respondent No.2.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 24.04.2010 and corrected on 09.06.2012 whereby compensation has been awarded in respect of injuries sustained by Raj Kumar (respondent No.1) in a motor vehicular accident due to rash and negligent driving of motorcycle bearing No.HR-29-K-8023 by Shiv Kumar (respondent No.2).

The appeal has been preferred by Gaurav and others, legal representatives of Jeet Ram Kaushik impleaded as respondent No.2 in the application filed under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') to assail findings of the Tribunal fastening liability to pay compensation against Jeet Ram Kaushik as well.

To assail findings of the Tribunal holding Jeet Ram Kaushik

being liable to pay compensation, counsel has two fold submissions to make. The first submission made by counsel is that the accident in question took place on 11.06.2008 but the offending vehicle i.e. motorcycle bearing No.HR-29-K-8023 already stood transferred in the name of Shiv Kumar in the year 2006 as is apparent from the statement of Jawahar Lal, Assistant, DC office, Faridabad as well as registration certificate of the vehicle in question. Another submission made by counsel is that Jeet Ram Kaushik passed away on 04.08.2003 and the application for compensation was filed in the year 2008 by impleading a dead person as a party, therefore, the award against Jeet Ram Kaushik is nullity.

Counsel for the respondents have nothing to say to refute contentions of counsel for the appellants, in view of the documents on record.

I have heard counsel for the parties, perused the paper book particularly various annexures including the impugned award.

Indisputably, accident in question took place on 11.06.2008. The application for compensation under Section 166 of the Act was instituted on 31.10.2008 by injured Raj Kumar wherein Shiv Kumar and Jeet Ram Kaushik were impleaded as respondents No.1 and 2 being driver and owner respectively of offending vehicle. Respondent No.2 was ex-parte before the Tribunal. Perusal of testimony of Jawahar Lal, Assistant, DC office, Faridabad and copy of registration certificate of motorcycle bearing No.HR-29-K-8023 leaves no manner of doubt that the vehicle in question stood transferred in the name of Shiv Kumar in the year 2006. Jawahar Lal

AW-1 has deposed that previously this vehicle was registered in favour of Jeet Ram Kaushik but was transferred in favour of Shiv Kumar son of Murari Lal on 01.09.2006. As Shiv Kumar (respondent No.2) was the driver and owner of the offending vehicle on the day of accident, findings recorded by the learned Tribunal fastening liability upon Jeet Ram Kaushik cannot be allowed to sustain and liable to be set aside. I would hasten to add that in the reply filed by Shiv Kumar to contest claim of the injured victim, he has candidly admitted that he is owner of the vehicle in question.

Counsel for the respondents have not disputed that Jeet Ram Kaushik, respondent No.2 before the Tribunal now represented by his LRs, passed away on 04.08.2003 and his death certificate (Annexure A-1) has been placed on record. Under the circumstances, award passed by the Tribunal against a dead person namely Jeet Ram Kaushik is nullity and liable to be set aside on this score as well.

For the foregoing reasons, the appeal is allowed. The award passed by the Tribunal against Jeet Ram Kaushik is set aside. However, it is clarified that award passed against Shiv Kumar respondent shall remain intact.

10.10.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No