

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:18.12.2017

FAO No. 2777 of 2017(O&M)

Balbir Singh

---Appellant

vs.

Anil Kumar and others

---Respondents

FAO No. 3941 of 2017(O&M)

Anil Kumar

---Appellant

vs.

Sarabjit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Amaninder Preet, Advocate
for the appellant in FAO-2777 of 2017

Mr. Hitesh Mittal, Advocate
for the appellant in FAO-3941 of 2017

Rekha Mittal, J.

This order will dispose of FAO Nos. 2777 and 3941 of 2017 as these have emerged out of the same award dated 24.3.2017 passed by the Motor Accidents Claims Tribunal, Barnala (in short “the Tribunal”) whereby compensation has been awarded in regard to death of Harpreet Singh in a motor vehicular accident that took place on 3.8.2016.

CM No. 9457-CII of 2017 in FAO No. 2777 of 2017

Prayer in this application filed under Order 41 Rule 27 of the Code of Civil Procedure (in short “CPC”) is for permission to adduce additional evidence to prove affidavit dated 28.7.2016 (Annexure A-1).

Counsel for the applicant-appellant has submitted that the applicant had sold the vehicle in question on 14.7.2016 and in this regard affidavit dated 28.7.2016 was executed. Due to inadvertent mistake, affidavit dated 28.7.2016 could not be exhibited, therefore, the applicant may be permitted to prove affidavit dated 28.7.2016 (Annexure A-1) by way of additional evidence.

I have heard counsel for the applicant and perused the document (Annexure A-1).

Application for additional evidence, by no stretch of imagination, falls within the purview and ambit of Order 41 Rule 27 of the CPC. This apart, affidavit Annexure A-1 is not per se admissible in evidence, therefore, the applicant without seeking permission to examine a witness to prove this document, in accordance with law, cannot seek marking of this document as an exhibit by way of additional evidence. In this view of the matter, application for additional evidence is not meritorious and ordered to be dismissed.

CM No. 19457-CII of 2014 in FAO- 3941 of 2017

Prayer in this application is for placing on record Annexure A-1

Allowed as prayed for.

Annexure A-1 is taken on record subject to just exceptions.

Disposed of accordingly.

CM No. 27331-CII of 2014 in FAO- 3941 of 2017

Prayer in this application is for placing on record Annexures A-2 and A-3.

Allowed as prayed for.

Annexures A- 2 and A-3 are taken on record subject to just exceptions.

Disposed of accordingly.

FAO No. 2777 of 2017

FAO No. 3941 of 2017

Counsel for the appellant has assailed the award primarily on two grounds. The first submission made by counsel is that as the alleged offending vehicle stood sold by the appellant on 14.7.2016, few days before the accident on 3.8.2016, the appellant is not liable to pay compensation.

Another submission made by counsel is that story propounded by the claimants that Gurpreet Singh PW1, alleged eye witness to the occurrence was travelling on motor cycle No. PB-10 -EY-1392 gets falsified and belied from the fact that had it been true that Harpreet Since (since deceased) brother of Gurpreet Singh PW1 was suffering from disc problem and had gone to Barnala for medical check up, there was no reason for Harpreet Singh and Gurpreet Singh to travel on separate motor cycles. It is further argued that if Gurpreet Singh was to accompany his brother for his medical check up, in all probability, Harpreet Singh would have travelled as a pillion rider on the motor cycle of Gurpreet Singh.

Counsel representing appellant Anil Kumar, driver of the offending vehicle has echoed the arguments advanced by counsel representing Balbir Singh with regard to testimony of Gurpreet Singh PW1 and so also version of the claimants being not worthy of credence and reliance.

I have heard counsel for the parties, perused the paper book particularly the award passed by the Tribunal.

Balbir Singh appellant has not disputed that on the day of occurrence, offending vehicle stood registered in his name. As the appellant was registered owner of the vehicle, he cannot escape his liability to pay compensation after the alleged sale of vehicle in favour of Anil Kumar. This apart, the appellant has failed to establish his plea that the vehicle in question stood sold to Anil Kumar prior to the occurrence. In this context, reference can be made to judgment of Hon'ble the Supreme Court of India **Pushpa @ Leela and other vs. Shakuntala and others, AIR 2011 (SC) 682**. A relevant extract from para 14 of the judgment is quoted hereunder:-

14. The decision in Dr.T.V.Jose was rendered under the Motor Vehicles Act, 1939. But having regard to the provisions of section 2(3) and Section 50 of the Act, as noted above, the ratio of the decision shall apply with equal force to the facts of the case arising under the 1988 Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the records of the registering authority as the owner of the truck was equally liable for payment of the compensation amount. Further, since an insurance policy in respect of the truck was taken out in his name, he was indemnified and the claim will be shifted to the insurer, Oriental Insurance company Ltd.”

This brings the court to findings of the Tribunal on issue No. 1 based upon testimony of Gurpreet Singh, an eye witness to the occurrence. Gurpreet Singh tendered into evidence his duly sworn affidavit (Annexure A-2) appended with FAO No. 3941 of 2017. Counsel for the appellant has failed to point out any facts elicited in cross examination of Gurpreet Singh to shatter evidential value of his testimony or create doubt regarding his presence at the spot. Gurpreet Singh lodged FIR No. 00037 dated 3.8.2016 giving detailed narration of the occurrence and particulars of the offending vehicle Mahindra Balero Pick Up bearing No. PB-13 U-9086. There is nothing on record suggestive of the fact, if the respondent before the Tribunal sought explanation from Gurpreet Singh as to why Harpreet Singh and Gurpreet Singh used separate motor cycles for going to Barnala despite the fact that Harpreet Singh was suffering from disc problem and had gone for medical care. Under the circumstances, contention of the appellants that Harpreet Singh and Gurpreet Singh were not supposed to travel on separate motor cycles in the given scenario is based upon assumptions and presumptions, thus, liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine.

(Rekha Mittal)
Judge

18.12.2017
paramjit

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