

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

FAO-2134-2003 (O&M)

Date of Decision:21.04.2018

Mandeep Singh

.....Appellant

Versus

Punjab Roadways, Pathankot and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Ashish Gupta, Advocate,
for the appellant.

Mr. N.K. Banka, D.A.G., Punjab,
for the respondents.

HARI PAL VERMA, J.(Oral)

CM-4889-CII-2018

Prayer in this application filed under Section 151 CPC is to fix the case for some actual and early date of hearing.

For the reasons stated in the application, same is allowed and the main case which was listed on the regular board at Sr. No. 576, is taken up for hearing today itself.

CM-4890-CII-2018

This is an application under Order 41 Rule 27 read with Section 151 CPC for permission to place on record the judgment passed in criminal case No.744T decided on 10.07.2012 as (Annexure A-1).

Application is allowed, as prayed for. Judgment dated

10.07.2012 (Annexure A-1) is permitted to be placed on record, subject to

all just exceptions.

FAO-2134-2003 (O&M)

Appellant-Mandeep Singh has filed the present appeal impugning the award dated 21.11.2002 passed by learned Motor Accident Claims Tribunal, Patiala (for short “the Tribunal”), whereby the claim petition filed by him under Section 166 of the Motor Vehicles Act, 1988, seeking compensation was dismissed and the appellant was held not entitled to receive any compensation.

Briefly stated, the claimant had filed a claim petition through his father Ranjit Singh, that on 19.09.1999, when he had gone to Shambu for getting a spray pump repaired, he met with an accident with a bus bearing registration No.PB-12C-9731. In the claim petition, it was stated that the driver of the offending bus caused the accident due to rash and negligent driving. The claimant was taken to Civil Hospital, Rajpura from where, he was referred to Rajindra Hospital, Patiala. But considering his nature of injuries being serious, father of the claimant took his son to DMC, Ludhiana. Then, he was shifted to CMC, Ludhiana. Thereafter, again he was shifted to DMC, Ludhiana for treatment, where he remained admitted for a period of 4½ years. When the claimant was admitted in the DMC, Ludhiana, the driver of the offending vehicle along with the members of Panchayat assured the father of the claimant that the accident had taken place suddenly and the driver would pay all the expenses incurred on the treatment of Mandeep Singh. In this manner, the matter was compromised instead of reporting it to the police. The claimant had spent Rs.2.5 lacs on his treatment but was still lying in an unconscious condition.

The respondents-State while filing the written statement has

taken a preliminary objection that written compromise was arrived at between the parties i.e. driver of the bus and the claimant, wherein the claimant had admitted his fault. Further, the injured without caring for the traffic had come before the bus and received injuries. Therefore, there was no negligence on the part of the driver. The driver RW1-Dalbir Singh in his rebuttal evidence deposed that on 19.09.1999, he was driving the bus from Pathankot to Delhi and when he reached near Shambu Barrier, the claimant came on a bicycle from a kacha road on G.T. Road. On seeing the bus, the injured tried to turn the bicycle but in this process, he fell down. Though, the driver was driving the bus at a normal speed but the injured Mandeep Singh had fallen due to his own fault. The driver stopped the bus and took the injured to a nearby nursing home, who advised that the injured be taken to A.P. Jain Hospital, Rajpura, from where he was referred to Rajindra Hospital, Patiala. Thus, the claim petition was dismissed on the premise that the claimant had failed to establish that the accident in question had been caused due to rash and negligent driving of respondent No.2-driver.

While the appeal filed against the aforesaid award was pending consideration before this Court, it has been brought to the notice of this Court that during the pendency of the present appeal, injured claimant-Mandeep Singh had died on 11.03.2004, after remaining on bed for about 4½ years. Since the appeal was filed through Ranjit Singh, father of deceased Mandeep Singh and during the pendency of the appeal, he (Mandeep Singh) had died, parents of the deceased were ordered to be impleaded as claimants on 12.10.2004 in place of Mandeep Singh.

Learned counsel for the appellant has argued that the findings recorded by the Tribunal that the driver was not guilty for rash and

negligent driving run contrary to the findings recorded by the criminal court, wherein in FIR No.87 dated 09.03.2000 under Sections 279, 337 IPC registered at Police Station Sadar, Rajpura, the driver of the offending vehicle was held guilty for the offences punishable under Sections 279, 338 IPC. However, he not being a previous convict, was released on probation on furnishing probation bonds in the sum of Rs.10,000/- with one surety in the like amount for a period of six months. He was also directed to pay Rs.500/- as costs of the proceedings for the offences punishable under Sections 279, 338 IPC. The driver was also directed to keep peace and be of good behaviour for the aforesaid period. Learned counsel for the appellant has further argued that in view of the findings recorded by the criminal court, the claimants are entitled for compensation on account of injuries suffered by Mandeep Singh in the accident and on account of his death. The claimants also be awarded expenses so incurred on the treatment of deceased-Mandeep Singh throughout. He has relied upon a judgment of this Court in **Chhinder Paul Kaur alias Gurjit Kaur and others Versus Shiv Kumar and others**, 2012(1) R.C.R. (Criminal) 904, to contend that once a criminal court has established negligence on the part of the driver of the offending vehicle, the Tribunal should not have dismissed the claim petition by misreading the evidence of star witness. The standard of proof required in a criminal case is much more as the prosecution has to prove its case beyond reasonable doubt, whereas the civil cases are decided on the touchstone of preponderance of probability and therefore, the case is required to be re-visited.

On the other hand, learned State Counsel appearing on behalf of the respondents has argued that the finding recorded by the Tribunal that

the driver is not guilty of rash and negligent driving does not warrant any interference as even father (Ranjit Singh) of injured deceased-Mandeep Singh while appearing as AW1 in his statement (Ex.R1) has stated that though his son Mandeep Singh had met with an accident on 19.09.1999 with bus bearing registration No.PB-12C-9731 and had received injuries but the driver of the bus was not at fault and therefore, he does not want to initiate any proceedings against the driver. Accordingly, compromise (Ex.R2) was effected between the driver and father of injured Mandeep Singh on 22.09.1999. Once the testimony of said Ranjit Singh does not inspire confidence that he had actually witnessed the accident, even the finding recorded by the criminal court holding the driver guilty is against the evidence of Ranjit Singh himself.

I have heard the learned counsel for the parties.

In view of the changed circumstances, the judgment dated 10.07.2012 passed by the Judicial Magistrate 1st Class, Rajpura, whereby the driver was held guilty for the offences punishable under Sections 279, 338 IPC and having regard to the judgment of this Court in **Chhinder Paul Kaur's case (supra)**, without making any observations on the claim so raised by the claimants, this Court finds that the case deserves to be remanded back to the Tribunal for its fresh decision.

Accordingly, this case is remanded back to the Tribunal to pass a fresh award without prejudice to the earlier order/award as well as the order passed by the criminal court. It shall be appreciated if the Tribunal decides the matter preferably within a period of one year.

It is made clear that the Tribunal shall not be prejudiced with the earlier judgment/award as well as the judgment passed by the criminal

court, whereby the driver was held guilty. In case, the Tribunal comes to a conclusion that the accident was caused because of rash and negligent driving of the driver, the Tribunal shall also return a finding that whether death of Mandeep Singh is a direct consequence of the said injuries suffered by him in the accident.

Since the appeal has been disposed of, pending miscellaneous applications, if any, shall also stand disposed of accordingly.

April 21, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No