

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

FAO no.243 of 1993

Date of Decision: 01.10.2018

Baljinder Kaur and others

...Appellants

Vs.

Shamsher Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ankur Gupta, Advocate, for the appellants.

Mr. Sanjiv Pabbi, Advocate, for respondent no.3-Insurance Co.

Amol Rattan Singh, J (Oral)

This appeal has been filed by the claimants assailing the Award dated 17.10.1992 passed by the learned Motor Accident Claims Tribunal, Ludhiana (hereinafter to be referred to as “the Tribunal”).

In brief, the facts as taken from the impugned Award, are that the appellants are the widow, minor children and parents of the deceased, Kuldeep Singh, who died on 16.03.1991, on account of a motor vehicle accident. It is stated that on 15.03.1991 Kuldeep Singh was on his way from Village Tugal to Village Sherpur Kalan, on his moped bearing registration no.PB-10B-2037. When he was stated to be between the area of Village Chauki Maan and Dishwan Kalan on the Ludhiana-Ferozepur Highway, near the bus-stop of Village Sidhwan Kalan, a truck bearing registration no.PB-10B-9702, stated to be driven by Shamsher Singh rashly and negligently, hit the moped of Kuldeep Singh from behind, as a result of which he fell on the road and received multiple injuries. He was taken to the Civil

Hospital, Jagraon, by the police personnel of Police Post Chauki Maan, where he succumbed to his injuries at about 8.15 a.m. on 16.03.1991. the appellants being the legal representatives of the deceased, filed a claim petition before the Tribunal seeking compensation from the driver of the truck, Shamsher Singh, the owner of the truck, Gurcharan Singh and the insurer of the truck, M/s Oriental Insurance Co. Ltd.

The driver and the owner of the truck controverted the allegations made in the claim petition by filing a written statement firstly contending that the petition was barred by limitation and that the accident actually took place on account of the rash and negligent driving of the deceased who was proceeding in a zig-zag manner, with respondent no. 1 herein having overtaken the Moped with his truck very slowly, but with the Moped possibly having hit the rear side of the truck.

The insurance company with which the truck was insured, i.e. respondent no. 3 herein, had denied the contents of the claim petition, along with the liability of the company to pay any compensation awarded.

Upon the aforesaid pleadings, the learned Tribunal framed the following issues:-

- “1. Whether Kuldip Singh died in a motor vehicle accident in the area of Sidhwan Kalan on Ferozepur-Jagraon Road on 15.03.1991 on account of the rash and negligent driving of the truck bearing registration No. PB-10-B-9702 by Sham Singh respondent? OPA
2. To what amount of compensation the claimants are entitled to recover and from whom? OPA
3. Whether there are sufficient grounds for the condonation of delay in filing the claim application? OPA
4. Relief.”

After framing the issues and going through the pleadings of the parties on both sides, the learned Tribunal held that the accident itself having taken place on account of the rash and negligent driving of Shamsher Singh, was not proved.

However, it went on to decide the compensation that could have been payable to the claimants and assessed the loss of dependency to be Rs.800 per month which worked out to be $800 \times 12 = \text{Rs.}9600/-$ and applied a multiplier of 18 which comes to $\text{Rs.}9600 \times 18 = \text{Rs.}1,72,800/-$, less the amount received/receivable on account of no fault liability, if any.

Hence the present appeal.

Pursuant to the order dated 25.09.2018, Mr. Sanjiv Pabbi, Advocate, for the respondent-insurance company, is present in Court.

Learned counsel for the appellants submits that with the driver of the vehicle (truck) stated to have hit the moped of the deceased, Kuldip Singh, from behind, himself having admitted in his written statement that an accident did take place, the Tribunal wholly erred in holding that the factum of the accident with the vehicle in question was not proved, especially even the medical report was that the deceased had died due to a roadside accident. He relies upon a judgment of a coordinate Bench of this Court in **Reliance General Insurance Co. Ltd. v. Renu and others**, 2016 (4) PLR 498, to submit that non-registration of an FIR is not fatal to a claim petition filed under the Motor Vehicles Act, 1988, such proceedings being summary proceedings.

Mr. Pabbi, learned counsel appearing for the insurance company, on the other hand, points to paragraph 4 of the Award, wherein it is recorded by the Tribunal that Surjit Singh (AW-1), who was one of the claimants and the father of the deceased, admitted that he came to know of about the registration number of the truck only when he contacted his counsel.

He further submits that for 3-4 months no report having been lodged, with even the claim petition not instituted till that time, suddenly somebody come to know of the registration of the truck, when it was a case of hit and run in the middle of the night, with none of the CRPF personnel also examined, with whom “an informal complaint” is stated to have been lodged by the person who claimed to have seen the accident, i.e. Hartej Singh (PW-2).

Hence, he submits that the conclusion drawn by the Tribunal is not erroneous in any manner, the specific stand of the respondent-insurance company being that the claim petition was filed in collusion with the driver and owner of the vehicle, which is obvious also from the fact that in the written statement filed by them, they had admitted the factum of the accident.

Having considered the aforesaid arguments, though admission of the accident per se may not point to collusion, however, seeing the fact that for about 3-4 months thereafter also no follow up action was taken by the claimants, by way of either lodging any complaint with the police or any higher authority, with even none of the CRPF personnel also sought to be

examined, in front of whom the accident was stated to have taken place, near a CRPF post, and the driver and owner of the vehicle in any case possibly not eventually liable to pay compensation, as the truck was stated to have been insured, I see no reason to interfere with the impugned Award.

Consequently, finding no merit in the appeal, it is dismissed.

01.10.2018

vcgarg

(Amol Rattan Singh)

Judge

Whether speaking/reasoned : Yes

Whether reportable : No