

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

FAO-224-1994 (O&M)
Date of decision: 01.05.2018

GURDEEP KAUR BAJWA AND OTHERS ... Appellants

Versus

RAM LAL SHARMA AND OTHERS ... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Ms. Shifali Goyal, Advocate for the appellants.

Mr. Lalit Garg, Advocate for the insurance company.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 04.08.1993 passed by the Motor Accidents Claims Tribunal, Chandigarh whereby application filed by the appellants/claimants for grant of compensation on account of death of Hardial Singh Bajwa in a motor vehicular accident that took place on 12.07.1991 has been dismissed.

The plea of the claimants is that Hardial Singh Bajwa was going on scooter No.CHS-3260 on left side of the road between Sector 40 and Palsora facing towards Dadu Majra. Moped bearing No.CHG-3010 driven by Ram Lal Sharma came on the road between Sector 40-C and 40-D. While Moped was crossing the road without any indication, it hit scooter of the deceased. Due to impact of the accident, Hardial Singh fell down on the road and sustained multiple injuries and was removed to PGI.

The deceased was a Teacher in Government High School, Tira, earning Rs.3500/- per month. He died at the age of 42 years.

The driver and owner of the alleged offending moped filed joint written statement and controverted plea of the claimants that accident took place due to rash and negligent driving of moped aforesaid by respondent No.1. It is averred that accident occurred when respondent was driving his moped near crossing of Sector 40-C and 40-D when a scooter came from behind at a fast speed and tried to cross the moped. The driver of moped had already given signal of turning the moped towards right to Sector 38 and in the process, the scooter driver lost control, scooter got slipped and scooter driver sustained injuries. The moped driver and his wife on the pillion seat also suffered injuries in the accident.

The claimants filed replication and reasserted the allegations set up in the claim application and controverted the pleas raised in the written statement.

The Tribunal framed following issues for determination:-

- “1. Whether the accident in question took place due to the rash and negligent driving of driver of moped No.CHG-3010?OPP*
- 2. If issue No.1 is proved, to what amount of compensation, the claimants are entitled to and from whom?OPP*
- 3. Relief.”*

The Tribunal permitted the parties to adduce evidence in support of their respective contentions.

After having heard counsel for the parties in the light of materials on record, the Tribunal answered issue No.1 against the claimants and consequently, application for compensation was dismissed.

The Tribunal in para 10 of the award has held, extracted thus:-

“Having heard the submissions of the learned counsel for the parties, this Court is of the view that the testimony of PW Naresh Kumar is not helpful to the claimant for the reasons that he is not the eye witness of the accident. He has been procured by the claimant as he has been her student and the most convenient witness for the claimant and such type of witness could be arranged by any person. This witness has not disclosed any reason of his being present on the date and site of accident. This witness did not know Hardial Singh deceased prior to the date of accident. Hence, he could not identify Hardial Singh after the accident, but there is an averment in the copy of the DDR Ex.R5 where respondent No.1 has admitted the factum of the chance accident and no case was registered against the moped driver. In case the accident had taken place in the manner as mentioned in the claim petition, the claimant would have agitated the matter before the SSP, Chandigarh against the driver of the moped for the registration of the case, but no such step had been taken by the claimant upon this date. Hence, I hold that the present accident to be a chance accident. Issue No.1 is disposed of accordingly.”

Counsel for the appellants has failed to point out any materials on record particularly testimony of Naresh Kumar PW examined to prove

the accident that the claimants have successfully discharged onus of issue No.1 that accident was the result of rash and negligent driving of moped by its driver Ram Lal or findings of the Tribunal that the present is a case of chance accident are factually incorrect or the result of misreading of evidence on record. In this view of the matter, the appellants have failed to substantiate their plea that findings on issue No.1 suffer from error and liable to be set aside. That being so, findings of the Tribunal on issue No.1 are ordered to be affirmed.

For the foregoing reasons, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

01.05.2018
ashok

(REKHA MITTAL)
JUDGE

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