

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

**FAO No.2151 of 2005 (O&M)
Date of decision: 01.03.2018**

Smt. Murti Devi and others

....Appellants

Versus

Suresh alias Kala and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Manjeet Singh, Advocate,
for Mr. Jasbir Mor, Advocate,
for the appellants.

Mr. Satpal Dhamija, Advocate,
for respondent No.7-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimant-appellants seeking enhancement of compensation awarded by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') vide award dated 25.02.2005, on account of death of Karambir in a motor vehicular accident which took place on 02.12.2001. Appellant No.1 is widow, appellant Nos.2 to 4 are children and proforma respondent Nos.1 and 2 are parents of deceased Karambir.

Brief facts of the case are that on 02.12.2001, Karambir (since deceased) along with his family, had gone to the house of his in-laws in village Dhamtan Sahab. After leaving his wife and children there, he started return journey for Jind on his scooter. When he reached in the area of village Safa Kheri, a tractor trolley, being driven by respondent No.1-Suresh

in a rash and negligent manner, came and struck against the scooter, as a result of which, Karambir fell down on the road and suffered grievous injuries. He was taken to Govt. Hospital, Uchana, but, no doctor was present there. Therefore, he was taken to General Hospital, Narwana. However, the doctor on duty declared him dead. As per claimants, initially the police, in collusion with respondent No.1, registered a report in Daily Dairy Register only with false averments. Subsequently, FIR was registered after Ram Niwas (father of deceased) instituted a complaint in the Court of Judicial Magistrate Ist Class, Narwana, who sent the same to the police under Section 156 (3) Cr.P.C. Consequently, the claimant-appellants filed a claim petition before the Tribunal.

COMPENSATION ASSESSED BY THE MACT

On the basis of evidence led by the parties, the Tribunal came to a conclusion that Karambir son of Ram Niwas had died in a road accident, which took place on 09.12.2001 involving the tractor trolley owned by respondent Nos.2 to 6, but the petitioners had failed to prove rashness or negligence on the part of tractor driver. This finding was given on the basis of deposition of Sastta (PW-2), who was eye witness of the accident. Further, the claimants have proved on record copy of postmortem report Ex.P1 and copy of FIR Ex.P3. With these observations, the petitioners were not held entitled to get compensation under Section 166 of the Motor Vehicle Act. However, involvement of the tractor trolley (owned by respondent Nos. 2 to 6) stood proved beyond doubt. Therefore, the claimants were held entitled to get compensation to the tune of Rs.50,000/- on account of death of Karambir under “no fault liability principle” in view of the provisions contained under Section 140 of the Act. This amount was

awarded along with interest @ 9% per annum from the date of filing of the petition till realization. Feeling dissatisfied with the impugned award, the claimant-appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the case file.

The fact of accident is admitted and proved. It stands established that the deceased has died as a result of the accident. As per deposition of Satta, eye witness (PW-2), accident between the tractor trolley and scooter of the deceased had taken place on 09.12.2001. It was stated that the tractor-trolley was proceeding towards Narwana while the scooterist was on his way towards Jind. This witness has stated that the accident had taken place due to rash and negligent driving on the part of tractor driver, who turned/steered the tractor all of a sudden. Consequently, mudguard of the tractor hit the scooterist, who fell down and received injuries.

After the accident, DDR was registered. Father of deceased namely Ram Niwas (PW-3) stated that he came to know in the month of January, 2002 that the accident had been caused by respondent No.1 while driving the tractor, which was the ownership of respondent Nos. 2 to 6. He made a complaint under Sections 279/304-A IPC in a Court at Narwana. Thereafter, FIR No.94 dated 18.05.2002 Ex.P3 was registered. The Tribunal has further observed that in the Criminal Misc. Register for the period from 29.04.1997 to 20.12.2004, there were entries regarding untraced challans and cancellation reports. As per the said record, untraced challan was received in the Court with regard to FIR No.94 dated 18.05.2002, registered at Police Station, Uchana.

ASI Baseshar Dutt (RW-1) had brought the relevant Daily

Diary Register and proved copy of DDR No.28 dated 10.12.2001 as Ex.R1. Ex.R2 is the copy of report under Section 173 Cr.P.C. He had deposed that according to entries in the relevant FIR register, FIR No.94 dated 18.05.2002 had been cancelled.

After going through the impugned Award, this Court is of the view that before the Tribunal, claimant-appellants had failed to prove that the accident in question had taken place due to rash and negligent driving of the offending tractor trolley by its driver-respondent No.1. Accordingly, the Tribunal has rightly not held them entitled to get compensation under Section 166 of the Act. However, since it has been proved that the deceased has died as a result of a motor vehicle accident involving the aforesaid tractor trolley, compensation to the tune of Rs.50,000/- has been rightly awarded by the Tribunal and no ground is made out to interfere therein.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

01.03.2018
ajp

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