

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

FAO No.2359 of 2005(O&M)

Date of decision: 4.12.2018

National Insurance Co. Ltd.

.....Appellant

VERSUS

Amarjit Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. D.P. Gupta, Advocate for the appellant.

Ms. Divya Godara, Advocate for respondents No.1 to 5.

REKHA MITTAL, J.

The present appeal directs challenge against award dated 17.02.2005 passed by the Motor Accidents Claims Tribunal, Sirsa (in short 'the Tribunal') whereby application for grant of compensation on account of death of Surinder Singh in a motor vehicular accident that took place on 15.04.2003 was allowed and claimants were awarded compensation to the tune of Rs.5,44,600/- payable with interest, by the registered owner and insurer of offending vehicle i.e. Truck No.HR-38-E/7837.

The facts relevant for disposal of present appeal are that as per case set up by the respondents/claimants, on 15.04.2003, Surinder Singh was travelling on scooter. When he reached at Sirsa - Hisar road, his scooter was knocked down by aforesaid truck. Surinder Singh sustained multiple grievous injuries that proved fatal. The respondents claimed compensation to the tune of Rs.10,00,000/- along with interest.

Gurdeep Singh – respondent No.1 admitted the accident but denied that he was at fault. Respondent No.2/appellant-insurance company claimed that accident was caused by truck bearing No.HRN-8590 but the police had falsely shown Truck No.HR-38-E/7837 as offending vehicle to help the petitioners.

The respondents/claimants filed replication, reiterated their averments raised in the petition and controverted those of the replies.

The Tribunal framed following issues for determination:-

1. Whether accident in question took place due to rash and negligent driving of respondent No.1? OPP
2. Whether petitioners are entitled to recover any compensation from respondents? If so, to what extent?
OPP
3. Whether respondent No.1 did not hold a valid and effective driving licence at the time of accident in question? OPR
4. Whether petition of petitioner is not maintainable? OPR
5. Relief.

To prove their case, one of the claimants Amarjit Kaur appeared in the witness box and they examined Dharam Singh – PW-2, Ram Pal PW-3 and Ved Parkash PW-4. To rebut evidence of the claimants, insurance company examined Sunehra Singh ASI RW-1 and relied upon documents Ex.RW1/A to RW1/D and Ex.R1.

Having heard counsel for the parties in the light of materials on record, Tribunal answered issues No.1 to 4 taken up jointly in favour of

the claimants and against the respondents and eventually compensation was assessed, noticed hereinbefore.

Counsel for the appellant, in line with the allegations raised in reply to claim application, would argue that accident was caused by truck No.HRN-8590 but later Truck No.HR-38-E/7837 was implicated in order to extract compensation from the appellant – insurance company with whom truck owned by Gurdeep Singh son of Balwant Singh was insured, therefore, findings of the Tribunal on issues No.1 and 2 cannot be allowed to sustain rather liable to be set aside. To bring home his contention, it is argued that FIR in this case was lodged at the behest of Dharam Singh, one of the relatives of deceased Surinder Singh who was an employee of the Police Department. In the First Information Report lodged at the behest of Dharam Singh PW-2, there is a specific reference to registration particulars of the offending vehicle i.e. HRN-8590. Few days after the accident, Dharam Singh recorded another statement under Section 161 Cr.P.C. and changed registration particulars of the offending vehicle from HRN-8590 to HR-38-E/7837. It is further argued that Dharam Singh appeared in the witness box and the facts elicited in his cross examination would substantiate plea of the insurance company that truck in question was falsely planted in the case, may be for the reason that truck bearing No.HRN-8590 was not insured. It has further been argued that ASI Sunehra Singh – RW1 and the documents marked as exhibits in his testimony have not been taken into consideration while recording findings on issue No.1 which are sketchy and bereft of reasoning, soul of a judicial order.

Counsel representing the claimants has supported findings of the Tribunal on issue No.1 with the submissions that an inadvertent error committed by Dharam Singh while recording particulars of offending truck in the First Information Report was corrected while making supplementary statement by Dharam Singh few days after the occurrence. It is further argued that ASI Sunehra Singh in his cross examination has admitted that before issuing instructions by SHO, he had verified the facts from 11 persons whose names have been mentioned by the witness in his cross examination. ASI Sunehra Singh had further admitted that on independent investigation, it came into light that offending vehicle was truck No.HR-38-E/7837.

I have heard counsel for the parties, perused the paper-book, copies of documents supplied by counsel for the parties, part of records of Tribunal, correctness whereof has been vouched by counsel for the parties and records of criminal case pertaining to FIR 334 dated 15.04.2003 lodged by Dharam Singh son of Tara Singh.

Perusal of findings of the Tribunal on issue No.1 taken up jointly with issues No.2 to 4 would reveal that the Tribunal has not at all adverted to cross examination of Dharam Singh PW-2 and testimony of ASI Sunehra Singh while recording its conclusion in para 13 of the award that evidence clearly proves that Surinder Singh died in an accident caused by respondent No.1 while driving truck No. HR-38-E/7837 rashly and negligently on 15.04.2003. The evidence has been discussed by the Tribunal in paras 10 to 12 and all these paras have total 8 lines that refers to testimony of Dharam Singh PW-2, copy of police report under Section 173 Cr.P.C. Ex.PW4/B and copy of post-mortem report Ex.P1. The

manner in which the Tribunal has proceeded to decide issue No.1 particularly in the circumstances that the insurance company has raised a serious issue with regard to false implication of truck No.HR-38-E/7837 reflects that the Tribunal either intentionally or otherwise avoided to take note of evidence on record.

The question for consideration is ‘whether the first version of Dharam Singh implicating truck No.HRN-8590 invites primacy viz-a-viz his second version that accident was caused by Gurdeep Singh while driving truck No. HR-38-E/7837. Indisputably, Dharam Singh is one of the close relatives of deceased Surinder Singh, as he is the first cousin (Taya’s son) of Surinder. Surinder Singh was an employee of the Police Department. Dharam Singh tendered into evidence his affidavit by way of examination in chief attributing rash and negligent driving to Gurdeep Singh, driver of truck No.HR-38-E/7837. A relevant extract from his cross examination, highlighted by counsel for the insurance company, reads thus:-

“I have studied upto 5th standard. We along with my son and Gurcharan Singh reached the spot after the accident had taken place. At that time Surinder Singh was alive and was shifted to General Hospital, Sirsa in an injured condition. We first took the injured to hospital and thereafter we brought the police at the spot. The truck which caused the accident remained parked at the spot upto the time of arrival of police. My statement was recorded by police at General Hospital Sirsa. Police never met me again after my statement had been recorded by police on 15.04.2003. My statement had been

read over and explained to me by the police. I signed my statement after understanding the contents thereof. The driver of the truck that caused the accident had already absconded when I reached the spot. I had got recorded in my statement made to police that the registration number of truck causing the accident in question was HRN 8590. Witness again said that registration number of truck causing the truck (sic) was HRE-38-7837. I got recorded the registration no. of offending truck as HRE-38/7837. Any other number of some other truck might have been got recorded by some other person in the FIR. I cannot say as to whether truck No.HRN-8590 was not insured with any insurance company. Deceased Surinder was employed as a mason in police department and was a regular employee.”

A plain and careful reading of the aforesaid extract leaves no manner of doubt that Dharam Singh recorded only one statement with the police and that is on 15.04.2003, the date on which the accident took place. Statement made by Dharam Singh to the police was read over and explained to him and he signed the statement after understanding contents thereof. At the first blush, he admitted that in his statement made to the police, he got recorded registration number of the truck that caused the accident as HRN-8590 though later he tried to change his stance by mentioning it as truck No.HR-38-E/7837.

As has been rightly said that man may tell lie but not the circumstances.

From testimony of Dharam Singh PW-2, it can safely be held that Dharam Singh had given correct particulars of the offending vehicle in his first version recorded with the police but later number of the vehicle has been changed at the instance of certain persons who never appeared before the Tribunal to disclose their source of offending vehicle being truck No. HR-38-E/7837. This apart, as offending vehicle was available at the spot when the police reached there, possibility of any confusion regarding its registration particulars is otherwise ruled out. Moreover, the statement of Dharam Singh that he got recorded particulars of truck as HR-38-E/7837 in his statement recorded on 15.04.2003 gets falsified and belied from supplementary statement dated 22.04.2003 Ex.RW1/C of Dharam Singh proved by ASI Sunehra Singh. In the supplementary statement, Dharam Singh got recorded that on 15.04.2003 he had recorded his statement under some inducement (behkawa) and now he made inquiries at his own level that accident was not caused by truck No.HRN-8590 and accident was caused by truck No. HR-38-E/7837 which was driven by Gurdeep Singh son of Balwant Singh, Rai Sikh, resident of Sardulgarh. ASI Sunehra Singh also produced statement of Sher Singh son of Dharam Singh dated 15.04.2003 Ex.RW1/B and his supplementary statement dated 22.04.2003 Ex.RW1/D. As per testimony of Dharam Singh, Sher Singh, his son was also present near the place of occurrence and had seen the accident. In statement recorded on 15.04.2003, Sher Singh has given number of offending truck as HRN-8590. However, in supplementary statement recorded on 22.04.2003, he has stated that on 15.04.2003, he got recorded his statement that accident with Scooter No.PCI-1189 was not caused with truck No.HRN-8590 but the same was

caused with truck No. HR-38-E/7837 and name of driver was Gurdeep Singh son of Balwant Singh, Rai Sikh, resident of Sardulgarh (Punjab).

The supplementary statement of Dharam Singh Ex.RW1/C falsifies and belies his statement to the effect that on 15.04.2003 he had recorded the number of offending truck as HR-38-E/7837 or the same was not got recorded as HRN-8590. Further, his testimony that he did not record any other statement with the police except on 15.04.2003 also gets demolished in view of supplementary statement dated 22.04.2003 Ex.RW1/C. On the other hand, facts stated by Dharam Singh in his supplementary statement Ex.RW1/C, noticed hereinbefore, rather creates suspicion in his testimony that he was present near the place of accident and had actually seen the occurrence. Had it been so where was the occasion for Dharam Singh to make a supplementary statement that now he had made inquiries and found that accident was not caused by truck No.HRN-8590 and the same was caused by truck No. HR-38-E/7837 driven by Gurdeep Singh son of Balwant, resident of Sardulgarh. On conjoint reading of statements of Dharam Singh PW-2, ASI Sunehra Singh RW1 and the documents Ex.RW1/A to RW1/D produced by ASI Sunehra Singh, it leads to an irresistible conclusion that the alleged offending vehicle has later been planted in the case for the reasons best known to the claimants and their relatives namely Dharam Singh and Sher Singh. Another possibility is that actually Dharam Singh and Sher Singh were not present at the spot and for that reason in their first version before the police they had stated the offending vehicle to be truck No.HRN-8590 but later it was revealed to them that accident was actually caused by truck No. HR-38-E/7837. Analyzed from any angle, testimony of Dharam Singh is not

worthy of credence and reliance. If testimony of Dharam Singh is taken out of consideration, there is no other evidence to establish plea of the claimants that accident took place due to rash and negligent driving of truck No.HR-38-E/7837 by Gurdeep Singh respondent No.1 before the Tribunal.

The matter does not end here. I have perused the records of criminal trial case No.366-1 of the year 2003 decided on 25.02.2010. At the outset, it is pertinent to note that the criminal trial culminated in judgment of acquittal as the prosecution examined only two witnesses namely Dr. Joginder Singh PW-1 and Dr. Jagdish Chaudhary PW-2 despite the case having remained pending for a period of approximately 7 years. Perusal of the zimini orders would reveal that Dharam Singh PW appeared before the Court on 19.05.2004 but on that day he was discharged for that day. PW Sher Singh did not cause appearance despite service and was ordered to be summoned throughailable warrants. Later, Dharam Singh was served again but he did not cause appearance and ordered to be summoned throughailable warrants. PW- Dharam Singh appeared on 06.07.2009 but on that date, accused became absent for the first time since his appearance in the case on 11.07.2003 and in absence of accused, Dharam Singh could not be examined. Gurdeep Singh surrendered before the Court before the next date fixed for his service through NBWs and was released on bail. Thereafter, Dharam Singh did not appear despite certain opportunities allowed to the prosecution for examination of witnesses. The aforesaid facts certainly gives an inkling that Dharam Singh and Gurdeep Singh played hide and seek with a clear intent that Dharam Singh does not depose against Gurdeep Singh, may be for the reason that there was

collusion between Dharam Singh and Gurdeep Singh. This fact also fortifies the observations made hereinbefore that truck in question was implicated later. It further appears that since the deceased happened to be an employee of the police, the police also tried to help the claimants by implicating truck No. HR-38-E/7837 which was duly insured. In this view of the matter, sketchy findings of the Tribunal on issue No.1 cannot be allowed to sustain and accordingly set aside. As a natural corollary, claimants cannot maintain their case for grant of compensation by the respondents before the Tribunal.

For the foregoing reasons, the appeal is allowed. Award dated 17.02.2005 passed by the Tribunal is set aside. As a natural consequence, application for grant of compensation is dismissed leaving the parties to bear their own costs.

DECEMBER 4, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no