

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.3940 of 2005

Date of Decision : 02.08.2018

Smt. Kusum Devi and ors.

....Appellants

VERSUS

Hari Chand and others

...Respondents

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: None for the appellants.

Mr. R.N. Singal, Advocate for respondent No.3.

B.S. WALIA, JUDGE

1. Challenge in this appeal is to award dated 19.5.2005 passed by the learned Motor Accidents Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal') whereby the claim petition filed by the appellants was dismissed. Prayer is for setting aside of the dismissal of the claim petition.

2. Brief facts of the case leading to the filing of the present appeal are that claim petition was filed by the wife, minor daughter, father and mother of Om Parkash (hereinafter referred to as 'the deceased'), who died in an accident on 8.2.2003 on being hit by truck No.HNA-8195 being driven by respondent No.2- Mam Chand. It was claimed that the deceased was 25-26 years of age at the time of his death and was working as a watchmaker and used to earn ₹10,000/- per month by running the shop of a watchmaker at Kala Amb, (Himachal Pradesh).

3. Respondent Nos.1 and 2 i.e. Owner and driver of the offending

vehicle denied accident having taken place involving truck No. HNA-8195 and took up the plea of false implication of the truck in question after about 5-6 days of the accident in connivance with the police.

4. Respondent No.3-Insurance Company also took up a similar plea. The Insurance Company also took up the stand that compensation claimed was highly excessive and that the truck was being driven by the driver without holding a valid and effective driving licence and in violation of terms and conditions of the insurance policy. It was further stated that the petition had been filed in collusion with respondent No.1 just to extract compensation from the Insurance Company. Parma Nand, one of the brothers of the deceased, appeared as PW-4 and deposed that on 8.2.2003, he and his brother Om Parkash (deceased) were going for work to Kala Amb on separate bicycles and that his brother was ahead of him and when at about 8.15 A.M they reached near 'Guga Mari' a truck came from behind being driven by its driver at a fast speed and hit the bicycle of Om Parkash who fell down and sustained injuries. PW-4 further deposed that the truck stopped at some distance from the place of accident and the driver of the truck alighted from the same and came to the place of accident, many persons were present at that time and they asked the driver to bring his truck back and to take the injured to the hospital. However, the truck driver sped away with the truck from the place of accident. He further deposed that he took his brother in a rickshaw to the hospital where he succumbed to his injuries. PW-4 further deposed that he was informed the name of the driver and number of the truck on the same day in the hospital by Karam Singh of his village. However, in cross-examination, he deposed that Karam Singh reached the place of accident after about 12 to 15 minutes of the accident. He deposed that he had not witnessed the accident and

that the dead body was handed over to him by the police after post-mortem examination. He further deposed that the police had also recorded the statement of Karam Singh and his father in the hospital and he admitted that the police had also inquired the matter from his brother Jaswant and had also recorded his statement and that statement given by his brother before the police was correct.

5. PW-2 Karam Chand deposed that on 8.2.2003 he was going on his motorcycle from his village to Kala Amb and he had gone ahead of Naraingarh when he noticed many persons going towards Kala Amb on their bicycles. He further deposed that in the meantime truck No. HNA-8195 came from behind and hit a cyclist going ahead of him due to which he fell down. He further deposed that on reaching the place of accident he saw the cyclist was Om Parkash of his village, who used to run shop of watch repair at Kala Amb. He further deposed that Parma Nand, brother of Om Parkash, was going behind Om Parkash and that truck was stopped by other persons present there and that after asking the truck driver to carry Om Parkash in his truck to the hospital, he went away on his motorcycle and later on he came to know that the truck driver had fled from the place of accident alongwith the truck. He further deposed that on the asking, the truck driver told his name as well as name of his village at the spot and when he reached the place of accident after about 2 ½ hours, the police was already present at the place of accident and he told the name of driver and number of the truck to the police and his statement was recorded by the police at the place of accident.

6. The appellant-claimants also examined Arun Sharma, Ahlmad in the court of Sh. Y.S. Rathore, Addl. Chief Judicial Magistrate, Ambala, who appeared as PW-1 and deposed that Mam Raj alias Mam Chand, who is the driver of the

truck, was facing a criminal trial for causing the accident and charge had already been framed against him. He also proved copy of charge-sheet Ex.P and copy of report under Section 173 Cr.P.C as Ex.PB. In cross-examination, PW-1 clarified that statement of Jaswant Singh and Ram Chand were recorded by the police during investigation of the case. He also proved copies of their statements as Ex.RA and Ex.RB and further clarified that FIR in the case was registered on the statement of Parma Nand and that copy of the FIR was exhibited as Ex.RC. He also deposed that number of the truck allegedly involved in the accident had not been mentioned in the FIR nor name of the driver had been mentioned. In rebuttal to this evidence of the claimants, Mam Chand-respondent No.2 appeared as RW-1 and deposed that he did not cause any accident by driving truck No. HNA-8195 on 8.2.2003 and that he had been falsely implicated in this case by the police. He further deposed that he had convened the Panchayat of respectables of his village to prove his innocence but nobody listened to him and then he even brought respectable persons of his village to Police Station Naraingarh to prove his plea but the police also did not listen to him.

7. Perusal of copy of FIR Ex.PC shows that the same was got recorded by Parma Nand, brother of the deceased, at about 12.30 pm on 08.02.2003 whereas the accident had taken place at about 8.15 pm. In the FIR Ex.PC, neither number of the truck allegedly involved in the accident nor name of the driver has been mentioned. Rather it has been mentioned by Parma Nand that he could not note down the number of the truck. He further admitted that statement of his brother Jaswant Singh i.e. Ex.RA was also recorded by the police correctly. Perusal of Ex.RA shows that Jaswant Singh, another brother of the deceased had stated before the police during proceedings under Section 173 Cr.PC that he along

with his brother Parma Nand was present at his house when they received a message on the telephone of a neighbour that their brother had succumbed to injuries received in an accident. The statement of Jaswant Singh Ex.RA goes to show that neither he nor his brother Parma Nand were present at the time of accident and that they were informed about the accident by some neighbours. To similar effect is the statement Ex.RB of another neighbor of Jaswant Singh namely, Ram Chander who stated before the police that Jaswant Singh had come to him and informed him that his brother had died on account of the injuries sustained in the accident and that he also accompanied him to the hospital. Perusal of the post mortem report Ex.PB shows that dead body was identified by Ram Chand and Jaswant Singh. Hence, plea of Parma Nand that he was present at the place of accident and that the accident was witnessed by him does not inspire confidence.

8. Karam Chand PW-2 further deposed that he was going on a motor cycle when he noticed that truck driver had hit against Om Parkash of his village. However, it is very strange that when he saw that a resident of his village had met with an accident and had received injuries he would leave the place of the accident by leaving a co-villager in an injured condition at the place of accident. He further deposed that the truck driver had told him his name as well as name of his village to which he belonged at the place. Therefore, if Parma Nand, brother of the deceased, was present at the place of accident, he would have also noted down the number of the truck involved in the accident as also the name of the driver of truck. Moreover, according to Karam Chand, he returned after 2½ - 3 hours and found the police at the place of accident and got recorded his statement whereas Parma Nand had deposed that the police had recorded his statement as also that of

Karam Chand at the hospital. Thus, it shows that Karam Chand is an introduced witness by the claimants as he belongs to the village of the deceased. Mam Chand, driver of the truck who appeared as RW-1, categorically deposed that he did not cause any accident on that day and that he has been falsely involved in the case. The learned Tribunal held that deposition of the brother of the deceased as well as of Karam Chand another villager of the deceased was doubtful whereas the deposition of Mam Chand-respondent no.2 was believable that he did not cause any accident by driving the offending truck and that he and his truck was falsely involved in the case by the claimants in collusion with the police. Even the story as put forth does not inspire confidence for if many people were going on their respective bicycles to work at about 8.00 am, it was beyond comprehension that the driver of the truck after stopping the truck and talking with the persons present at the place of accident, would have fled thereafter along with the truck. The Tribunal further held that there is no plausible explanation as to why the number of the truck was not mentioned in the First Information Report by Parma Nand, brother of the deceased, who claimed to have been present at the time of accident.

9. In the aforementioned background, the Tribunal held that no reliance could be placed on the testimony of Parma Nand, brother of the deceased and Karam Chand, another villager of the deceased, rather deposition of the driver of the alleged truck Mam Chand/respondent no.2 was believable that he had not caused any accident on 08.02.2003 and that the claimants had failed to prove the involvement of truck no. HNA-8195 on 08.02.2003 in the accident.

10. In the light of the aforementioned background, the Tribunal dismissed the claim petition.

11. None has put in appearance on behalf of the appellants despite the

case having been called out twice. None was present for the appellants even on the last date i.e. 13.07.2018. I am not inclined to grant further judgment since the case is of the year 2005.

12. In the light of the position as noted above, I do not find any reason warranting interference with the award passed by the Tribunal. However, since none is appearing on behalf of the appellant, the appeal is dismissed in default.

August 02, 2018
ps

(B.S. WALIA)
JUDGE

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

