

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2860 of 2007 (O&M)
Date of Decision : 27.04.2018

Sunita and another

....Appellants

Versus

Suresh @ Laddu and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Bhuvnesh Lakhera, Advocate
for Mr. Sanjay Mittal, Advocate
for the appellants.

Mr. S.P. Chahar, Advocate
for respondents no. 1 and 2.

Mr. Vinod Chaudhri, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal by claimants, Sunita and another against award dated 24.04.2007 passed by Motor Accident Claims Tribunal, Jhajjar (later referred to as 'the Tribunal') whereby claim petition seeking compensation for death of Jyoti, daughter of claimants was dismissed.

2. Brief facts giving rise to claim petition as incorporated in para 2 of the award are reproduced as follows:-

“That on 18.04.2006, at about 06.00 p.m., Jyoti (since deceased) was going for natural call from residential house to village pond side; that she was walking on the left hand side of the road and when she reached near the house of Mahender son of Mehar Singh, then the offending jeep Mahendra Max bearing registration no. HR-56/1809 being driven by its driver respondent no. 1 came from village pond side at a very high speed and in a rash and negligent manner and without blowing

any horn and it struck against Jyoti (since deceased), due to which impact, Jyoti sustained multiple and grievous injuries; that this occurrence was witnessed by Bijender son of Jeet Ram and Mahender son of Mehar Singh and when Bijender and Mahender were busy in attending the victim Jyoti , respondent no. 1 fled away from the spot alongwith his jeep. Then Jyoti was taken to civil hospital, Dighal, where she was declared dead after medical examination. Then Bijender reported the occurrence to the police, on the basis of which FIR No. 49 dated 18.4.2006, under section 278, 304-A of IPC was registered in police station Beri. Then investigation was started. Autopsy on the dead body of Jyoti was got conducted. Then respondent no. 1 was arrested and challaned and put to trial and he is facing trial.”

3. Respondents contested the claim petition and pleadings of parties led to framing of the issues as follows:-

- (1) Whether Jyoti daughter of Devender died in a road side accident allegedly caused due to rash and negligent driving of jeep no. HR-56/1809 by its driver respondent no. 1, as alleged? OPP.
- (2) If issue no. 1 is proved in affirmative, then to what amount of compensation the claimants are entitled to and from whom and in what ratio? OPP
- (3) Whether the respondent no. 1 was not holding a valid and effective driving licence at the time of alleged accident?

OPR-3

- (4) Relief.

4. The Tribunal recorded finding on issue no. 1 against claimants with observation that the accident in question was caused due to rash and negligent driving of the vehicle i.e. Jeep bearing registration no. HR-46/1809. The main reason for reaching this conclusion by the Tribunal is the fact that in FIR, number of the offending vehicle, which caused the accident was recorded as HR-46-1809, while in claim petition it is described as HR-56-1809.

5. Learned counsel for appellants has argued that there was mistake in recording number of the offending vehicle in the FIR. The witnesses examined by claimants have proved that the accident took place with the offending vehicle bearing registration no. HR-56-1809. The police also presented challan after investigation against respondent no. 1 for causing death of Jyoti due to his driving of the offending vehicle in a rash and negligent manner. The witnesses have specifically stated that respondent no. 1 belongs to their village, as such, they identified him at the spot. They have no reason to falsely implicate their co-villager in a false criminal case. FIR in this case was registered within four hours of the accident and the mistake of registration number of the vehicle as recorded in the FIR being minor discrepancy is not material. The Tribunal has committed grave error while discarding statement of eye-witnesses that the accident was caused by the offending vehicle. The finding of the Tribunal on issue no. 1 is not sustainable in the eyes of law.

6. Learned counsel for respondent no. 3-Insurance Company has argued that the Tribunal has relied on registration number of the offending vehicle as recorded in the FIR and has committed no error while discarding plea of claimants that the accident is not proved to have been caused by the

7. Record of the appeal file as well as record of the Tribunal got burnt in a fire incident, as such, I have to rely on observation regarding the evidence as made by the Tribunal in the impugned award and have also tried to take assistance from the extricated record of the file, which is half burnt.

8. FIR in this case was registered on the statement of Bijender Singh. The Tribunal has discussed his statement in para 11 of the award, which is reproduced as follows:-

“11.To prove the same, the claimants have examined Bijender Singh as PW1, who is none else but the eye witness of the occurrence and he is also the lodger of the FIR of this accident and when he stepped in the witness box deposed that on 18.4.2006 at about 6.00 p.m., he was present in front of the house of Mahender Singh and was talking with him; that in the meantime, Jyoti daughter of Devender was going outside of her house and when she reached in front of house of Mahender and was talking with him; that in the meantime, Jyoti daughter of Devender was going outside of her house and when she reached in front of the house of Mahender, then a Maxi cab Jeep came towards street from pond being driven by Laddu @ Suresh at a high speed and rash and negligent manner; that the registration number of the said jeep was no. HR-56-1809; that this jeep hit Jyoti (since deceased), due to which she sustained injuries and then she was taken to CHC, Dighal where she was declared brought dead by the doctors; that the respondent no. 1 fled away from the spot after causing this accident; that the respondent no. 1

driver of the jeep also belongs to his village and was previously known to him; that this accident was caused due to sole rash and negligent driving of respondent no. 1; that his statement was recorded by the police, on the basis of which FIR Ex. P1 was registered.....”

9. PW-2 Mahender other eye-witness has also corroborated the statement of PW-1 Bijender Singh and has stated that the accident was caused due to rash and negligent driving of the offending vehicle (HR-56-1809) by respondent no.1. Testimonies of both the witnesses show that the accident was caused by the offending vehicle. This fact is not disputed that the police has presented the challan against driver of the offending vehicle in case bearing FIR No. 49 dated 18.04.2006, registered at Police Station Beri for offence punishable under Sections 278 and 304-A IPC.

10. It appears from the evidence that there was some mistake in recording number of the vehicle as in place of word “56” it was written as “46” in the FIR to make the vehicle number of the jeep as “HR-46-1809” in place of “HR-56-1809”. It is not disputed that the description of type of the vehicle in FIR was given as Jeep and vehicle “HR-56-1809” is also a Jeep. I find merit in the submissions of learned counsel for appellants that claimants have no reason to falsely implicate their co-villager by nominating him in the FIR as accused for causing the accident. Instead of looking into the reasons for such mistake, the Tribunal has discarded the entire version of claimants and testimonies of eye-witness on this mere ground that vehicle number as mentioned in the FIR and as stated in the claim petition and by the witnesses are having minor discrepancy. This fact is to be kept in mind that FIR was recorded after about four hours of the accident. After such a great trauma and

accident, which has resulted in death of a young girl, it is quite possible that

witnesses erroneously stated number of the vehicle as “HR-46” in place of “HR-56”. It is also possible that the person, who recorded the FIR may have wrongly understood number as “HR-46” in place of “HR-56”. However, such minor error in recording the vehicle number is not sufficient ground to infer false implication of offending vehicle

11. Keeping in view above facts, I am of the opinion that findings recorded by the Tribunal on issue no. 1 are perverse and not based on proper appreciation of evidence on record, as such, are set aside. It is held that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent no. 1.

12. The Tribunal has not recorded any finding of issues no. 2 and 3. Accordingly, the instant appeal is accepted and the case is remanded to Motor Accident Claims Tribunal, Jhajjar to record findings on issues no. 2 and 3. The record of file of the Tribunal is partially burnt. The same be sent to the Tribunal. If it is required, the Tribunal will reconstruct the file and give opportunities of parties to produce further evidence on these issues.

13. Parties are directed to appear before the Tribunal on 21.05.2018.

April 27, 2018

jk

(SURINDER GUPTA)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No