

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

Sr. No.558

FAO No.3214 of 2006 (O&M)
DECIDED ON: October 23, 2018

PARAMJIT KAUR AND OTHERS

..APPELLANTS

VERSUS

GURMIT SINGH AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. P.S. Sullar, Advocate, for the appellants.

Mr. Lalit Garg, Advocate, for respondent No.5.

AJAY TEWARI, J. (ORAL)

This appeal has been filed against the Award dated 02.11.2004, whereby appellants were awarded a sum of Rs.50,000/- for the death of Kishori Lal, in an accident, which had taken place on 03.05.2003 at 8.30 P.M. by holding that presence of eye-witness was not established at the spot. Since a very limited point has been raised further detailed reference to the facts is not be required. The Tribunal disbelieved the eye-witness on account of following reasons:

1. The Tribunal found it difficult to believe that once the two brothers were going from Kakru to Baldev Nagar, Ambala, there was no

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reason for them to travel on two scooters. In my opinion, this is purely a speculative finding.

2. The second ground which weighed with the Tribunal was that in his testimony, the eye-witness stated that the offending tractor was brand new but actually from the registration certificate which was placed on record, it was clear that the tractor was four years old. In my view, the testimony of eye-witness was only an opinion, and it is well known that one person may keep a one year old vehicle in such a way that it looks five years old and another person may keep a five year old vehicle in a spic and span condition. In the circumstances this ground is also rejected.

3. The third reason which found favour with the Tribunal was that eye-witness had stated that he had seen the number of the tractor from the number plate affixed on the rear but the driver had stated that there was no number plate on the rear of the tractor. Counsel for the appellant has argued that at that time the driver was an accused in a criminal case and consequently could go to any length to exculpate himself, but the fact that he was challaned by the police, coupled with the eye-witness account was sufficient in the normal course to return the finding that it was the tractor he was driving which was the offending vehicle. I find favour in this argument also.

4. The next ground taken by the Tribunal was that in his testimony the eye-witness had stated that after accident the driver had fled away from the place with tractor, but as per police report, tractor was found abandoned at the spot. Counsel has argued that in the FIR, the eye-witness had correctly mentioned that the driver had fled away after leaving the tractor at the spot but this small mistake in the testimony could not completely erode

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his credibility. Moreover, the very presence of the tractor at the spot gave credence to the probability that it had been involved in the accident. I accept this condition also.

Counsel for the Insurance Company has tried to defend the findings, but to my mind the arguments of counsel for the appellant carry more weight. The eye-witness had unequivocally stated that the accident had taken place due to rash and negligent driving of the ensured vehicle and this essential part of his testimony would not be shaken in the cross-examination. The small inconsistencies and anomalies pointed out by the Tribunal cannot erode the complete testimony. However, I notice that after giving these findings, the Tribunal did not discuss compensation which had to be awarded and contented itself merely by awarding Rs.50,000/-. These findings are set aside and after holding that accident was caused as a result of rash and negligent driving of the ensured vehicle, the matter is remitted back to the Tribunal to decide the quantum of compensation and other issues.

It may be mentioned here that this is one of those files which was burnt and reconstructed. Learned counsel themselves are not aware whether the original record was sent to this court and was burnt or whether it is still lying in the Tribunal. In case the original record has also been destroyed, both parties would be at liberty to lead fresh evidence. It may also be mentioned here that respondents No.1 to 4 have been duly served but have not entered appearance. It would not be necessary for the Tribunal to now again serve them.

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This appeal is allowed. The case is remanded to the District and Sessions Judge, Ambala either to hear it himself or assign it to any other competent Court.

Parties through counsel are directed to appear before the District and Sessions Judge, Ambala on 30.11.2018.

October 23, 2018

Ankur

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No

**(AJAY TEWARI)
JUDGE**