

FAO No.3576 of 2009

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

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Date of decision: 08.05.2018

Chand Singh

.....Appellant

versus

Rajinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Harkesh Manuja, Advocate, for the appellant.
Mr. A.S. Sidhu, Advocate, for respondent No.4.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, claimant has laid challenge to impugned award dated 30.01.2009 of Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as the 'Tribunal'), dismissing his petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act').

Put pithily, in the evening of 21.11.2006, deceased Dalbir Singh, when was waiting for a transport at Village Kheri Damkan to go to his Village, he was knocked down by an unknown vehicle. Hukam Chand, Chowkidar of Village Kheri Damkan, reported the matter to the police. On the basis of his statement duly signed by him, FIR (Ex.P4) was registered against an unknown vehicle around 10:30 p.m. on the same day. Police started investigation, but did not find any clue as to who had caused the accident. However, all of a sudden, after one month one Satyawar (PW3), resident of Murthal, appeared in the police station and made a statement that

around one month back on 21.11.2006, he had witnessed the accident caused by a Haryana Roadways Bus bearing registration No.HR-69-0474,

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driven by respondent No.1, namely, Rajinder Singh, as a result of which Dalbir Singh had died. On the basis of his statement, respondent No.1 was challaned by the police, filing final report under Section 173 Cr.P.C. against him in the Court to face trial.

Dalbir Singh at the time of his death was aged around 35 years and unmarried. His elder brother Chand Singh, aged above 50 years, filed a claim petition under Section 166 of the Act before the Tribunal, claiming himself as legal heir of his deceased younger brother Dalbir Singh, to award him compensation of ₹15 lakhs. The Tribunal after holding trial, dismissed the claim petition mainly on following two grounds: -

- (i) Involvement of Haryana Roadways bus being driven by respondent No.1 could not be proved by the appellant-claimant beyond reasonable doubt. In fact, it was a hit and run case.
- (ii) PW3 Satyawar, who had disclosed the name of respondent No.1 as offending driver before the police, was not cited as a prosecution witness while submitting report under Section 173 Cr.P.C. Therefore, his statement was beyond the scope of consideration being a procured witness.

Learned counsel for the appellant contends that PW3 Satyawar before the Tribunal has specifically testified that he had seen respondent No.1 knocking down deceased Dalbir Singh, while driving bus No.HR-69-0474. Despite lengthy cross-examination, his testimony could not be shaken. The Tribunal, relying upon his testimony, ought to have granted compensation to the appellant-claimant while accepting his claim petition.

PW5 ASI Mohinder Singh had also deposed before the Tribunal about involvement of respondent No.1 and Haryana Roadways bus aforesaid. The

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Tribunal has failed to appreciate the evidence of aforesaid witnesses coupled with the statement of Balwan Singh PW3, before whom respondent No.1 had made extra-judicial confession of causing accident and knocking down deceased Dalbir Singh. The Tribunal has also failed to appreciate that police after thorough investigation has found involvement of respondent No.1 in the accident in question, in which Dalbir Singh died.

On the other hand, learned counsel for respondent No.4-insurance company, vehemently opposing the above submissions of learned counsel for the appellant, contends that statement of Satyawar PW3, considering his unnatural conduct, has rightly been ignored by the Tribunal, giving specific finding that he was a procured witness.

Having given considerable thought to the submissions made by both the sides, I find that this appeal is completely devoid of any merit for the reasons to follow.

PW3 Satyawar, alleged eyewitness, was introduced by the appellant-claimant after one month of the accident, who disclosed to the police about the alleged involvement of respondent No.1 while driving bus bearing registration No.HR-69-0474. Man may speak lie, but the circumstances not. His throughout conduct after the accident and making statement before the police after one month, naming respondent No.1 as accused for causing accident being quite unnatural, does not appeal to reason inasmuch as according to him he chased the offending bus for a quite long distance, but could not catch it. Thereafter, he straightaway went to his home without informing the police, despite the fact that two police stations had fallen on the way while he was allegedly chasing the offending bus and

then kept mum for around one month.

Accident took place in the year 2006. Judicial note of the fact can

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be taken that by that year almost every person had started using mobile phone. This witness too, though was having mobile phone, but even did not inform the police through his mobile phone about the offending bus, which he had chased. Even thereafter he did not approach police, rather on his own went to the spot of accident and enquired about the person, who was knocked down by the alleged offending bus. From local enquiries made by him at the spot, he came to know about the person as Dalbir Singh, who was knocked down by the offending bus. Thereafter, he thought it proper to inform the police about the involvement of respondent No.1 and bus in question.

His testimony is completely silent before the Investigating Officer or before the Tribunal that from where he came to know about registration number of the bus after one month and name of its driver who was driving the same at the relevant time. Had he been knowing the registration number of the alleged offending bus and the name of the driver, he would have been the last person to inform the police promptly about the accident and the manner in which it had occurred and about the bus chased by him. His silence for one month and thereafter in not disclosing the source from where he came to know about the registration number of the offending bus and name of respondent No.1, in itself is sufficient to draw an adverse inference that he was a procured witness and was introduced to get compensation falsely and illegally by committing cheating and fraud with the Tribunal. Though this witness claimed himself to be eyewitness of the accident, but could not tell the colour or type of cloths, the deceased was wearing at the time of accident, which also proves that he was not an eyewitness, rather

was a procured and interested witness.

Conduct of PW5 ASI Mohinder Singh is also quite unnatural

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rather is condemnable too. He must be hand in glove with the appellant-claimant. He is not fit to be posted as an Investigating Officer for the simple reason that after registration of the case on the same day, as per his own admission, he never visited the spot and never made any enquiry from the shopkeepers available at the site of the accident to know the whereabouts of the offending vehicle and its driver or the manner of accident. No steps were taken by him what to talk of any effective step to investigate and find out the whereabouts of the unknown vehicle, which had caused accident. He simply kept sitting in the police station throughout. In his cross-examination, he has admitted that place of accident falls within densely populated area having number of shops and houses, but he did not record the statement of any person living in that area. However, all of a sudden PW3 Satyawar appeared before him and made statement about involvement of respondent No.1 driver of the offending bus aforesaid. Even thereafter, he did not ever make any effort to check the veracity of statement of PW3 Satyawar by visiting the spot or making local enquiries to extract the truth, but simply on the basis of statement of PW3 Satyawar filed final report under Section 173 Cr.P.C. in the Court against respondent No.1 to face trial, who has been acquitted after trial by the criminal Court.

According to Hukam Chand, author of the FIR, accident took place around 6:30 p.m. whereas from the certificate mark 'A' collected by PW5 ASI Mohinder Singh, Investigating Officer, from the Haryana Roadways Depot, Gohana, the offending bus had started its journey on the date of accident at 7:30 p.m. Therefore, causing any accident by the alleged offending bus one hour prior to its starting journey is impossible. From the

above facts, one thing is clear on the record that sequence of events did not happen in the manner in which these have been narrated by the appellant-

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claimant.

That apart, author of the FIR has not been examined by the appellant for the reasons best known to him, though he was the most important witness who had set the criminal law in motion against the unknown person, who had knocked down deceased Dalbir Singh. Therefore, an adverse inference can be drawn against the appellant that he did not intentionally and deliberately examine Hukam Chand, aforesaid author of the FIR, for the reason that he would belie his version taken by him in the claim petition that accident took place at 7:30 p.m. The Tribunal has reproduced the statement of author of the FIR showing the time of accident 6:30 p.m.

The evidence led by the appellant-claimant was successfully rebutted by respondent No.1, who, appearing as RW1, categorically deposed that he did not cause any accident and his bus, on the relevant date, did not meet with any accident. He was falsely implicated in the case.

As far as statement of PW2 Balwan Singh is concerned, the same is unworthy of any credence for the reason that no accused would admit his guilt or make extra-judicial confession before an ordinary man, knowing that he would invite trouble for himself. PW2 Balwan Singh is simply an inhabitant of the Village and never remained as Sarpanch or Nambardar of the Village. Therefore, no question of making extra-judicial confession by Rajinder Singh, alleged offending driver, before him arises. His statement has rightly been disbelieved by the Tribunal.

After registration of FIR, appellant-claimant with mala fide intention to get compensation in an illegal manner, procured witnesses, for

leading false evidence to prove the involvement of respondent No.1 and the offending bus aforesaid, but failed in his mission.

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I have gone through the impugned award and find no illegality or perversity in the same rather the same is well-reasoned based on appreciation of evidence.

In view of the above discussion, this appeal fails and the same is dismissed.

(Ramendra Jain)
Judge

May 08, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No