

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

864

FAO No.1074 of 2011 (O&M)

Date of decision: 27.07.2018

Mukhtiar Singh and others

..... Appellants

Versus

Hakam Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Swaich, Advocate
for the appellants.

Mr. Yash Pal, Advocate
for respondent No.1.

Mr. M.B. Jain, Advocate
for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

This appeal has been preferred against the Award passed by the learned Motor Accident Claim Tribunal dismissing the claim petition on the ground that accident in the manner claimed by the claimants has not taken place. Jaswant Singh, a young boy, aged about 22-23 years had died on 18.07.2007 at about 3.00 PM. As per the case of the claimants, late Sh. Jaswant Singh died due to rash and negligent driving of the tractor-trolley coming from opposite side whereas it is the case of the defendant-respondent that in fact Jaswant Singh and Shamsher Singh who were travelling on a motor-cycle in a rash and negligent manner had hit against buffalo crossing the road and therefore, he died after his head has hit the road. In order to prove the case, the claimants examined Bhagwant Singh,

the alleged eye-witness who was also author of the FIR. It will be noted that the accident took place at about 3.00 PM whereas the statement was recorded at 4.30 PM i.e. after one and half hour and DDR was registered at 4.40 PM. Hence, there was no delay. Learned Motor Accident Claim Tribunal without referring to the post-mortem report dismissed the claim petition. The Court noticed that Shamsher Singh, the alleged pillion rider on the motor-cycle which late Sh. Jaswant Singh was driving has not been examined and the evidence of Bhagwant Singh, the another eye-witness was not believed. It is the further case of the respondent that tyre of the tractor had just touched the head of the deceased Jaswant Singh and in fact, the accident had already taken place with the buffalo. At this stage, it would be appropriate to re-produce the injuries suffered by the deceased at the time of accident. These injuries are part of the post-mortem report which is exhibited as Ex.C-2. Apart from the list of injuries, it is further recorded under the head thorax, ribs above the nipple and below nipple of both sides are having fractures. Other injuries as noticed in the report are extracted as under:-

“1. 8 cm x 4 cm x ½ finger deep lacerated wound on the Rt. Parietal region of head above 4 cm above the upper part of Pinna of Rt. Ear. Underlying Bone is fractured.

Brain matter exposed. Blood present in the Cranial Cavity.

2. About 15 cm into 3 cm lacerated wound on the Parieto-Occipito region on Lt. side of head. Brain matter is exposed. Underlying Bone is fractured. About 50 cc blood is present in the Cranial Cavity.

3. Lt. Ear Pinna is lacerated and Post aspect is detached. Blood from the ear is present. Surrounding area around the Lt. Ear including neck and below the angle of mandible is contused & dep. underlying done, Blood vessel and nerves are torn.

4. Whole of the lateral side of Rt. Chest is Abraised measuring 18

cm x 15 cm. It is red in color.

5. On the Medial side of Rt. Arm 25 cm x 5 cm Abrasion is present extending from center of arm to the center of forearm.

6. On the chest irregular contused markings present which are red in color with depressed marks at places.

7. Rt. Clavicle is fractured.

8. Blood in the chest cavity.”

Learned counsel for the appellant has submitted that the learned Motor Accident Claim Tribunal was much impressed with the fact that during police investigation, an FIR was cancelled. He further submitted that report submitted by the police cannot be taken as a conclusive evidence of the accident did not happen. He submitted that the Motor Accident Claim Tribunal was required to analyze the evidence produced before it and thereafter, arrived at a finding. On the other hand, learned counsel for the respondent has submitted that the view taken by the learned Motor Accident Claim Tribunal is correct and need no interference.

On careful examination of the statement of Bhagwant Singh, it is apparent that the suggestions were given to Bhagwant Singh (the eye-witness who appeared as CW-2) that Jaswant Singh deceased and Shamsher Singh were coming from liquor vend and therefore, they were in drunkard condition. However, on careful examination of the post-mortem report, it is apparent that no liquor or traces of alcohol were found by the Doctors. Still further, the Court has drawn adverse inference on non-examination of Shamsher Singh, the pillion rider. Shamsher Singh is alleged to have died three months before the evidence of Bhagwant Singh was recorded. In these circumstances, the learned Motor Accident Claim Tribunal clearly erred in drawing adverse inference for non-examination of Shamsher Singh.

Still further, if one reads the evidence of Hakam Singh, the alleged driver

and owner of the tractor-trolley, he only states that the tractor-trolley had passed on the road immediately after the accident. He is not even stated that after the accident had taken place, the tyre/wheel of his vehicle had passed over the deceased.

The Motor Accident Claim Tribunal is expected to examine the evidence produced before it. The post-mortem report was an important piece of evidence which should have been examined by the learned Motor Accident Claim Tribunal carefully. On careful reading of the post-mortem report, it is apparent that the deceased Jaswant Singh suffered multiple injuries including crush injury on the head and fractured on both the ribs. Chances of deceased suffering these injuries merely on fall on the road from the motor-cycle are not possible after hitting his vehicle with a buffalo.

In view of the above, the order under challenge is set aside and the case is remanded back to the learned Motor Accident Claim Tribunal to proceed with the assessment of the compensation and adjudicate upon as to who is liable to pay the compensation.

Appeal is disposed of.

27.07.2018
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No