

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

FAO No. 4709 of 2011 (O&M)

Date of decision : November 19, 2018

Swaran

.....Appellant

Versus

Kartaro Devi and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Onkar Singh, Advocate
for the appellant.

Mr. H.K. Aurora, Advocate
for respondents No. 1 to 3.

LISA GILL, J.

Present appeal has been filed by the owner of the offending vehicle challenging award dated 07.04.2011 passed by the learned Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as the 'Tribunal').

The appellant is the owner of tractor trolley bearing registration No. PB-58C-3892, which was held to be involved in the accident which took place on 29.08.2006 resulting in the death of Om Parkash. The claimants filed a petition under Section 166 of the Motor Vehicles Act seeking compensation on account of death of Om Parkash in a motor vehicle accident caused due to driving of the offending vehicle tractor trolley bearing registration No. PB-58C-3892. It was averred that the deceased on 29.08.2006 was going to his village on his scooter. When he reached at the turning of Village Moachpur, near DAV school, offending vehicle tractor trolley bearing registration No. PB-58C-3892 hit his scooter from back side. As a result thereof, Om Parkash fell and received multiple

and fatal injuries. He was taken to Civil Hospital, Mukerian, where he succumbed to his injuries.

Learned Tribunal awarded a sum of ₹3,27,000/- as compensation to the claimants with interest at the rate of 6% per annum from the date of filing of the claim petition till date of actual realisation of the award.

The vehicle in question was admittedly not insured. The sole argument raised in this appellant by learned counsel for the appellant is that amendment of the claim petition was sought on 10.01.2011 at the stage of arguments and after allowing the amendment on 14.02.2011, learned Tribunal should have framed issues afresh and afforded an opportunity to the appellant to lead evidence on account of emergence of new facts. It is submitted that at the first instance, respondent No. 4 - Inderjit was not impleaded as a driver of the offending tractor Sonalika bearing registration No. PB-58C-3892. The claimants had projected one Raj Kumar to be the driver of the offending tractor trolley bearing registration No. PB-07-8826. Driver Inderjit was not projected to be involved in the accident and neither was tractor bearing No. PB-58C-3892 owned by the appellant stated to be involved in the accident. Once prayer for amendment by the claimants in this respect was allowed, it was incumbent upon the learned Tribunal to have framed issues afresh and decide the matter after affording proper opportunity to the parties to lead evidence. Denial of the same has caused manifest injustice and the impugned award deserves to be set aside on this count alone. Learned counsel for the appellant further submits that respondent – Inderjit has since been acquitted by the learned trial Court in the proceedings emanating from FIR No. 128 dated 30.08.2006, under

Sections 379, 304A IPC as he was not identified as the accused in the case.

It is, thus, prayed that this appeal be allowed.

Learned counsel for the respondents, however, points out that Inderjit was very much impleaded in the claim petition as respondent No. 1, at the very outset. Specific averments in regard to the accident being caused by the rash and negligent act of Inderjit while driving the offending Sonalika tractor were made in the claim petition. It is due to an inadvertent and typographical mistake that it was mentioned in the body of the petition that Raj Kumar was driving the vehicle bearing registration No. PB-58-C-3892. It is only in order to correct the typographical error that amendment of the claim petition was sought, which was rightly allowed by the learned tribunal on 14.02.2011. Moreover, said Inderjit filed written statement at the initial stage on 17.09.2009 itself to the original petition. He also filed a written statement to the amended claim petition. Thereafter, the said respondent chose not to step into the witness box. The appellant, who is the owner of the offending vehicle, cannot possibly derive any benefit therefrom. It is, thus, prayed that this appeal be dismissed.

Heard learned counsel for the parties and have perused the record.

Perusal of the record reveals that the argument raised on behalf of the appellant is indeed misconceived. The original unamended claim petition reveals Inderjit son of Sukhdev Singh duly impleaded as respondent No. 1 – driver of the tractor Sonalika bearing registration No. PB-58C-3892. Respondent No. 2 is Swaran son of Sh. Lachhman i.e. the present appellant mentioned as owner of the tractor as mentioned above. In para 14, registration number and the type of the motor vehicle involved in the

accident is mentioned as the tractor owned by the present appellant. It is stated that in the body of the petition in para 24 that tractor trolley bearing registration No. PB-07-8826 driven by Raj Kumar - respondent No. 1 and owned by the appellant hit the scooter from back side. However, towards the end of this para, it is again mentioned that the accident took place due to rash and negligent driving of tractor Sonalika bearing registration No. PB-58C-3892 by respondent No. 1. Inderjit appeared before the learned Tribunal and filed his written statement at the outset. In the reply filed by the present appellant, no such ground has been taken. Inderjit filed a reply to the amended petition as well.

The appellant - Swaran testified before the learned Tribunal as RW1. In his cross examination, RW1 denied that Inderjit son of Sukhdev Singh was working as a driver on the tractor owned by him. He volunteered that it was Raj Kumar who was the driver. Tractor in question was released on superdari by him. Cross examination of RW1 was conducted before the learned Tribunal on 18.11.2010. Application for amendment of the claim petition was made on 10.01.2011 to obviate any kind of technical objections. Perusal of the claim petition clearly reveals that mention of Raj Kumar in para 24 as well as registration number of another tractor is a typographical mistake and the same was allowed to be corrected by the learned Tribunal. Amended claim petition was consequently filed. Therefore, it cannot be said that any kind of prejudice or injustice has been caused to the appellant by the learned Tribunal by not framing issues afresh. In the facts and circumstances of the case, framing of the issues afresh by the learned Tribunal was not called for or required. It is apparent that the appellant himself in his cross examination stated that it was Raj Kumar, who

was driving the said vehicle. Such a plea was never raised by the appellant in the written statement filed by him. Therefore, the argument sought to be raised, at this stage, is clearly misconceived and unacceptable.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity which calls for interference at the instance of the appellant in the impugned award dated 07.04.2011 passed by the learned Tribunal.

Accordingly, the present appeal is dismissed with no order as to costs.

November 19, 2018
rts

(Lisa Gill)
Judge

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