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

FAO No.6463 of 2011 (O&M)

Date of decision: August 24, 2018

Smt. Sunita and others

.....Appellants

Versus

Ram Phal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Sushil Jain, Advocate for the appellants.

Mr. Surender Saini, Advocate for respondents No.1 and 2.

None for respondent No.3-Insurance Company.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment dated 05.08.2011 passed by the learned Motor Accidents Claims Tribunal (for short 'Tribunal'), by which the learned Tribunal dismissed, in toto, the claim petition filed by the original petitioners, the legal heirs of the deceased, the present appeal was filed by them in this Court.

In support of the appeal, learned counsel for the appellants/claimants vehemently argued that the learned Tribunal has dismissed the entire claim petition not on merits, but on the ground that the claim petition itself was bogus and no accident, as such, had taken place.

Learned counsel for respondents No.1 and 2 opposed the present appeal and supported the reasons recorded by the learned Tribunal dismissing the claim petition.

None appears for respondent No.3-Insurance company.

With the assistance of learned counsel for the rival parties, I have perused the record, namely, written statements of Insurance company as well as the driver and owner of the New Holland Tractor No.HR-10K-4077. I have also perused the evidence of PW7-Surender, eye witness, examined by the claimants. I have also seen the cross-examination of this eye witness. The evidence of this eye witness is as clear as it could be that he himself saw the accident. He even chased the Tractor which was the offending vehicle. It is better to quote the following portion of his evidence, which reads thus:-

“On 23.08.2009 I was coming on motorcycle No.DL-9S-4682 from Delhi towards Sonipat. After finishing my work I was going to Delhi. At about 8:15 p.m. when I reached near Gupta Banquet Hall on Rathdhana Road, I saw that one motorcyclist was going ahead of me and a tractor came from the front side which was being driven in a zigzag manner and in a rash and negligent manner and it was bearing No.HR-10K-4077. The tractor rammed into the motorcycle going ahead of me. The motorcyclist fell down on the road and sustained injuries on his head. I chased the tractor and caught him at a distance of 100 meters. The tractor driver disclosed his name as Ram Phal son of Kirpa Ram, resident of Pehladpur Kidoli. I came to the place of accident and saw a crowd gathered there. I telephonically informed the police at No.100. Then I went towards Delhi. On the next day, I received a phone call from Police Station, Sadar Sonipat and the police asked me to whether I had telephoned at No.100. On the next day, the police PS Sadar called me and I led the police to the place of accident. On 24.08.2009 police recorded my statement at the spot. This accident took place due to the fault of the driver of tractor. I witnessed the accident in question.”

The cross-examination of this witness does not show any dent to his version or testimony. The Tribunal should not have, therefore, ignored the account given by this eye witness regarding the accident. Perusal of the written statement of contesting respondents also does not show any specific stand taken about the absence of accident. The Tribunal has, however, on its own, in the absence of any stand taken in the written statement, narrated the circumstances which led him to draw an inference that the claim petition filed by the appellants was bogus. This Court cannot countenance such a finding. It is for the parties to properly demonstrate, in the pleadings and the evidence, about the validity of the claim and the Court cannot go tangent. The Court cannot become a witness and draw inferences on figment of imagination. In the wake of evidence of PW7-Surender, I do not think the Tribunal was justified in drawing such inference.

Not only that, there is finding recorded by the Tribunal itself that the challan was filed against the driver and criminal case was also filed and is pending in respect of the same accident. Therefore, it was wholly wrong and illegal on the part of the Tribunal to defeat the claim of the claimants in such a manner.

The Tribunal then went ahead to decide the claim on merits also and declined it. In my opinion, when the Tribunal found that the claim petition itself was bogus and had dismissed the same, there was no occasion for it to enter upon the merits. Obviously, such an approach is self-contradictory and inconsistent.

Upon perusal of the finding recorded by the Tribunal, it

appears that the Tribunal was well aware with the fact that the Government of Haryana had provided compassionate allowance under its policy to the victims of the accident. The Tribunal thought that since the Government of Haryana was bound to pay compassionate allowance, there was no need to allow compensation by way of additional award in the case at hand. The approach of the Tribunal is wholly misconceived and misplaced. The making of an award under the claim petition is under the provisions of the Motor Vehicles Act, 1988 (for short 'Act of 1988'), which is a central legislation for providing compensation to the victims. The Government of Haryana while framing its policy as aforesaid was aware about the fact that the victims could get compensation under the Act of 1988. The Tribunal ought to have kept in mind that providing for award for compensation in accident cases is a matter of welfare legislation. Therefore, to buttress the argument that there was no need to make award for compensation because the Government of Haryana was providing compassionate allowance is to make the miscarriage of justice to the victims. The Will of the Parliament to provide for compensation stood thus, defeated, which cannot be allowed. To say the least, the impugned judgment of the Tribunal is completely misdirected and will have to be set aside.

Since the Tribunal did not at all discuss the issue regarding quantum of compensation on evidence oral as well as documentary, the only way out now for this Court, is to send the matter back to the Tribunal to decide the question of quantum of compensation, after hearing both the sides on the evidence available on record. Liberty is

also reserved in favour of the appellants and respondents to lead additional evidence, if any, after remand of this matter. In the result, following order is passed:-

ORDER

- (i) **FAO No.6463 of 2011** is partly allowed;
- (ii) The impugned judgment dated 05.08.2011 passed by the learned Tribunal is set aside;
- (iii) Proceedings of MACT Case No.65 of 2009 are sent back to the Tribunal concerned for fresh hearing and disposal in accordance with law;
- (iv) The appellants and respondents will be at liberty to lead additional evidence, if so advised, in respect of the claim of compensation only;
- (v) The Tribunal shall ignore the findings recorded by the Tribunal earlier in Para 28 of the impugned judgment, regarding payment of compensation by the State of Haryana;
- (vi) The parties shall appear before the Tribunal on 11.09.2018. The appellants shall make statement on the same date or on the next date as to the additional evidence, if any;
- (vii) The Tribunal concerned, shall thereafter, decide the issue regarding quantum of compensation, within a period of 4 months from the date of appearance appointed by this Court;
- (viii) No adjournment should be granted to either the parties.

(A.B. CHAUDHARI)
JUDGE

August 24, 2018

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Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**