

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

FAO No.3737 of 2012 (O&M)

Date of Decision: January 23, 2018

Gurvinder Singh and another

..... Appellants

Versus

Mohinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Arora, Advocate
for the appellants.

Mr. G. D. Gupta, Advocate
for respondent No.3.

AMIT RAWAL J. (ORAL)

The appellants-claimants are in appeal against the dismissal of the claim petition claiming compensation on account of the death of Charanjit Kaur, who unfortunately died in a vehicular accident occurred on 27.06.2010 by a motorcycle bearing registration No. PB-24A-7923 allegedly driven by Mohinder Singh and insured with National Insurance Company Limited.

Learned counsel appearing on behalf of the appellants submits that learned MACT has committed illegality and perversity in not appreciating the statement of Tarsem Singh AW3, who unequivocally stated that he had seen the accident occurred on 27.06.2010 at 6.30 p.m. whereby Charanjit Kaur (since deceased) wife of Gurvinder Singh while driving a Scooty bearing registration No. PB-24-A-7672 was hit by the motorcyclist which was driving by Mohinder Singh in a very rash and negligent manner.

An FIR bearing No.118 dated 29.07.2010 under Sections 279, 304-A, 427 IPC, was registered in Police Station Garhshankar District Hoshiarpur on the basis of the complaint made by husband-Gurvinder Singh. Despite extensive cross-examination, nothing surfaced of non-involvement of the motorcyclist, even the motorcycle had met with an accident, but yet the Tribunal did not appreciate the aforementioned evidence. The deceased was hospitalized from 27.06.2010 to 04.07.2010 and succumbed to death due to her injuries. The Tribunal swayed away with the contents of the DDR dated 04.07.2010, registered by the husband, when it was reflected that the deceased Charanjit Kaur, had met with an accident on account of fact that the Scooty, which she was driving had slipped. It is only Tarsem Singh, who had after seen the accident, left the village and when came back reported the accident after one month and five days resulting into the registration of the abovementioned FIR. All these factor, if read, in cumulative, it would lead to an irresistible conclusion that the appellants-claimants had proved the involvement of the vehicle, thus, entitled to compensation as the deceased, at the time of death, was 42 years of age. He has drawn attention of the Court to the statement of Tarsem Singh which is read by learned counsel for the appellants during the course of the arguments.

Per contra Mr. G. D. Gupta, learned counsel appearing on behalf of the Insurance Company submits that the award of the learned MACT is perfectly legal and justified and based upon the preponderance of the evidence as the claimants miserably failed to prove the accident. No mechanical report of both the vehicles have been shown that actually the

accident had been taken place. Eye witness on the accident cannot be excepted to remain idle in not informing the husband of the deceased, that he was the witness of the accident. All the facts have been taken into consideration, thus, urges this Court for dismissal of the appeal.

In rebuttal, Mr. Sandeep Arora, Advocate submits that an application under Order 41 Rule 27 CPC read with Section 173 of the Motor Vehicle Act has been filed to place on record the report of the investigator, was appointed to ascertain whether the vehicle had met with an accident and the report (Annexure A-1) revealed that the accident had taken place. Keeping in view the facts, the same may be allowed and Annexure A-1, be taken on record by way of additional evidence, for the facts and proper adjudication of the appeal.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Sandeep Arora, Advocate, for, nothing prevented the claimants to summon file from the criminal court i.e. a challan purported to have been filed in pursuance to the registration of the FIR, containing the mechanical report which would have established the involvement of the motorcycle insured with the Insurance Company. Concededly, Tarsem Singh was immediate neighbour. It is strange that the immediate neighbour, after witnessing the accident, did not inform the husband of the deceased but only after one month and five days coined the story of the involvement of the motorcycle, in question.

It is a common practice amongst the claimants that where a deceased or a person, succumbing to death in an accident owing to the slip

or other natural acts, for claiming compensation involved the other person claiming the compensation on account of third party and thereafter, relies in the criminal case. The Insurance Company collect money for the payment of the same to the actual aggrieved and affected parties, involved in the accident, but not for distribution as largesse. DDR of 04.07.2014 is the testimony of the actual fact, which reflected that Charanjit Kaur had sustained injuries on account of Scooty, which she was driving, had slipped. The statement of Tarsem Singh has been coined after one month and five days, is an after thought.

I find no ground for interference in the well reasoned award rendered by the Tribunal on the apprehension of the aforementioned witness. Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

January 23, 2018

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