

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

Date of decision: 29.1.2018

1.

FAO No.5647 of 2012(O&M)

Baljeet Singh

....Appellant

VERSUS

Hansa Ram and others

.....Respondents

Present: Mr. Rajinder Goyal, Advocate for the appellant.

Mr. Deepak Aggarwal, Advocate for respondent No.1.

Respondent No.2 ex parte.

2.

FAO No.5651 of 2012(O&M)

Baljeet Singh

....Appellant

VERSUS

Vidya Devi and others

.....Respondents

Present: Mr. Rajinder Goyal, Advocate for the appellant.

Mr. Deepak Aggarwal, Advocate for respondent Nos.1 to 5.

Respondent No.6 ex parte.

3.

FAO No.5652 of 2012(O&M)

Baljeet Singh

....Appellant

VERSUS

Hansa Ram and another

.....Respondents

Present: Mr. Rajinder Goyal, Advocate for the appellant.

Mr. Deepak Aggarwal, Advocate for respondent No.1.

Respondent No.2 ex parte.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J.

CM No.723-CII of 2018 in
FAO No.5647 of 2012

Heard.

Allowed as prayed for.

Annexure A-1 is taken on record subject to just exceptions.

Disposed of accordingly.

FAO Nos.5647, 5651 and 5652 of 2012

This order shall dispose of FAO Nos.5647, 5651 and 5652 of 2012 as identical questions of law and fact are involved for adjudication. For brevity, facts are taken from FAO No.5647 of 2012.

A brief backdrop of the case is that in a motor vehicular accident that took place on 10.12.2009, Pony Cart of Hansa Ram @ Hans Raj got damaged, Hansa Ram sustained injuries and Sadhu Ram sitting on the cart also sustained injuries which proved fatal. FIR No.147 dated 10.12.2009 under Sections 304-A, 279, 337, 338, 427 IPC was registered against Sukhdeep Singh (performa respondent), driver of offending vehicle i.e. Esteem Car No.DL-2C-2914.

Counsel for the appellant (registered owner of the aforesaid Esteem Car) has assailed his liability to pay compensation primarily on two counts. The first submission made by counsel is that the criminal trial on the basis of aforesaid FIR resulted in acquittal of Sukhdeep Singh, driver of the offending vehicle. It is urged that the trial Court in para 10a of the judgment dated 28.09.2016 passed by the Judicial Magistrate Ist Class, Bathinda has held that Hansa Ram PW failed to establish identity of the accused and naming of the accused is the result of mere hearsay,

therefore, Sukhdeep Singh cannot be convicted of the offence. It is argued with vehemence that in view of testimony of Hansa Ram recorded in the criminal proceedings, findings of the Motor Accidents Claims Tribunal, Bathinda (in short 'the Tribunal') qua involvement of the vehicle in question much less accident being the result of rash and negligent driving of alleged offending vehicle by Sukhdeep Singh are liable to be set aside and application for compensation may be dismissed.

The second submission made by counsel is that the appellant raised a categorical plea in his written statement that he had already sold the car in question to Mangtu Ram son of Bhana Ram on 16.10.2009 and in this regard affidavits were executed by him and purchaser of the car, therefore, liability to pay compensation cannot be fastened against the appellant and Mangtu Ram may be held liable to pay compensation after impleading him as a party. According to counsel, as the vehicle in question stood sold by the appellant prior to the occurrence in question, findings of the Tribunal directing the appellant to pay compensation cannot be allowed to sustain and liable to be set aside. In support of his contention, he has relied upon judgment of this Court **J.S. Choudhary Proprietor of Ambala Finlease Crops Vs. Ritu Devi and others, 2011(2) PLR 397.**

Counsel representing the claimant has supported the award with the submission that findings recorded by the Tribunal on issue No.1 are based upon detailed and meticulous appreciation of evidence adduced by the claimants to establish their plea that Sukhdeep Singh is the author of accident due to rash and negligent driving of car in question. It is strenuously argued that acquittal of the accused in criminal trial is of no consequence for deciding the case by the Tribunal as proceedings before

the Tribunal are summary in nature and do not admit strict principles of law of evidence. It is further argued that civil proceedings are to be decided on the basis of balance of probabilities whereas in a criminal trial, prosecution has to prove culpability of the accused beyond shadow of reasonable doubt, therefore, standard of proof in the two proceedings is entirely different.

With regard to plea of the appellant that vehicle stood sold by him to Mangtu prior to the occurrence in question, counsel has two-fold submissions to make. The first submission made by counsel is that as the appellant continued to be the registered owner of the vehicle in question, he cannot escape his liability to pay compensation. Another submission made by counsel is that as Mangtu was not a party before the Tribunal, the appellant cannot derive any advantage to his contention from the judgment in **J.S. Choudhary's case** (supra).

I have heard counsel for the parties, perused the paper-book and the records.

Perusal of findings of the Tribunal on issue No.1 would make it evident that the Tribunal, on a detailed consideration of the materials on record has arrived at the conclusion that accident was caused due to rash and negligent driving of car in question by Sukhdeep Singh. In para 11 of the award, it has been noticed that no evidence was led by the respondent therein to rebut the evidence adduced by the petitioner consisting of statements of Hansa Ram CW-1, Gurcharan Ram, an eye-witness to the occurrence CW-2, information given to the police by Gurcharan Ram CW-2 on the basis whereof FIR No.147 dated 10.12.2009 was registered against Sukhdeep Singh against whom Judicial Magistrate Ist Class, Bathinda framed charge for having committed offence punishable under

Section 304-A and 337 IPC. Counsel for the appellant has failed to point out any fact elicited in cross examination of Hansa Ram and Gurcharan Ram to convince this Court that findings recorded by the Tribunal are the result of misreading/mis-appreciation of evidence. He has failed to advance any argument to justify failure of Sukhdeep Singh to appear in the witness-box to counter testimonies of Hansa Ram and Gurcharan Ram. The mere fact that the criminal Court refused to rely upon testimony of the witnesses qua establishing identity of the accused is not at all sufficient to interfere in the well-reasoned and thoughtful findings recorded by the Tribunal. In this view of the matter, contention raised by counsel for the appellant to assail findings of the Tribunal on issue No.1 in regard to rash and negligent driving of the offending vehicle by Sukhdeep Singh is devoid of merit and liable to be rejected.

This brings the Court to the plea that appellant is not liable to pay compensation as he had already sold the vehicle in question to Mangtu Ram. As has been rightly argued by counsel for the respondent, Mangtu Ram was not a party to the proceedings before the Tribunal. The appellant did not file an application for his impleadment as a party. As registered owner of the vehicle was impleaded as one of the respondents, claimants were not obliged in law to implead the alleged transferee of the vehicle in question. No doubt, even the Tribunal could exercise its discretion to implead a party, if found necessary but even if the Tribunal has not impleaded the alleged transferee as a party, it does not adversely affect the award as application for compensation can be decided in the presence of driver and registered owner of the vehicle in question. In absence of Mangtu being a party, no such plea of the appellant that the vehicle in question already stood sold by him in favour of Mangtu can either be

entertained much less accepted. This apart, appellant being the registered owner of the vehicle in question cannot escape his liability to pay compensation. In this context, reference can be made to judgment of Hon'ble the Supreme Court of India **Pushpa @ Leela and others Vs. Shakuntala and others, 2011(2) RCR (Civil) 616.** In the referred authority, Hon'ble the Supreme Court on a detailed consideration of the provisions of Section 2(30) and 50 of the Motor Vehicles Act, 1988 (in short 'the Act') and its earlier judgments in **Dr. T.V. Jose Vs. Chacko P.M., 2002(1) RCR (Civil) 120** and **P.P. Mohammad Vs. K. Rajappan, (2008) 17 SCC 624** has held that decision in **Dr. T.V. Jose's case** (supra) was rendered under the Motor Vehicles Act, 1939 but having referred to the provisions of Section 2(30) and 50 of the Act, the ratio of decision shall apply with equal force to the facts of the case arising under the Act. On the basis of these decisions, the inescapable conclusion is that Jitender Gupta, whose name continued in the record of the registering authority as owner of the truck was equally liable for payment of compensation amount. When the facts and circumstances of the present case are examined in the light of ratio laid down in **Pushpa @ Leela and others case** (supra), I find myself unable to accept contention of the appellant that he can take refuge under the judgment of this Court in **J.S. Choudhary's case** (supra) to escape his liability to pay compensation.

No other point has been raised.

For the foregoing reasons, the appeals fail and accordingly dismissed leaving the parties to bear their own costs.

JANUARY 29, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no