

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2256 of 2013

Date of Decision : 23.01.2018

Mandeep Kaur @ Kahlo and others

....Appellants

Versus

Jarnail Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sanjeev Goyal, Advocate
for the appellants.

Mr. L.S. Sidhu, Advocate
for respondents no. 1 and 2.

Surinder Gupta, J.

This is appeal against award passed by Motor Accident Claims Tribunal, Sangrur (hereinafter referred to as 'the Tribunal'), dismissing claim petition filed by claimants for death of Suraj Singh son of Kamaljit Singh @ Kala in a motor vehicle accident with truck bearing registration no. PB-13-M-9095. Tribunal declined the version of claimants on the grounds that (i) as per case of claimants, accident took place on 20.03.2011 while as per First Information Report (FIR), the accident had taken place on 19.03.2011; (ii) in the postmortem report, dead body is shown to have reached hospital after more than 11 hours of the accident; (iii) Jagsir Singh @ Jaggi, brother of deceased, who had also suffered injuries in that accident, was not examined and his medicolegal report was also not produced on file; (iv) statement of AW-2 Kamaljit Singh @ Kala, who appeared as eye-witness of the occurrence, was not relied and he was held to be a procured witness; and (v) rash and negligent driving of the offending vehicle was not proved.

2. Appellants vide two applications bearing CMs No. 28258-CII of 2014 and 28259-CII of 2014 has sought permission to amend the claim petition and permission to examine Jagsir Singh @ Jaggi as witness by way of additional evidence.

3. In the application (CM-28258-CII-2014) seeking amendment of claim petition, it has been averred that the accident took place on 19.03.2011 and the FIR was lodged on 20.03.2011. Because of this reason, by typographical mistake, the date of accident in claim petition and affidavits of applicants-appellants was mentioned as 20.03.2011. In the application (CM-28259-CII-2014), it has been averred that claimants have sought permission to examine Jagsir Singh @ Jaggi, who had also suffered injuries in that accident in which his brother Suran Singh had suffered injuries resulting in his death.

4. Learned counsel for respondent no. 3-Insurance Company has contested both the applications on the ground that by amending the claim petition and seeking permission to produce additional evidence, claimants want to fill up lacunae. The date of accident was not only mentioned in claim petition but also in the testimonies of witnesses examined by claimants. They have not explained any reason as to why Jagsir Singh @ Jaggi was not examined earlier.

5. On giving a careful thought to submissions of learned counsel for parties, I find that claimants have faulted on two scores. Firstly, the date of accident was wrongly mentioned in claim petition and also in the affidavits submitted by the witnesses as 20.03.2011. However, in the FIR produced on file as Ex. A-1, the date of accident is mentioned

as 19.03.2011. This FIR was registered on the statement of Kala Singh son of Niranjan Singh. Even in his statement before the police he had given the date of accident as 19.03.2011. Secondly, Jagsir, Singh @ Jaggi, who was allegedly with deceased at the time of accident and suffered injuries, has not been examined. However, FIR is a document, which the claimants can not tamper or create at this stage. It was registered immediately after accident and date of accident in FIR is mentioned as 19.03.2011.

6. As per provisions of Section 158 (6) of the Motor Vehicles Act, 1988, officer incharge of the police station is required to forward copy of information regarding any accident involving death or bodily injury to Claim Tribunal having jurisdiction. As per Section 166 (4) of the Motor Vehicles Act, the Motor Accident Claims Tribunal shall treat any report of accident forwarded to it under sub-section (6) of section 158 of the Act as an application for compensation filed under Section 166 of the Act.

7. In view of above provisions, the Tribunal is required to take note of the date of accident as per documents placed on record and in the FIR. In this case there is no evidence as to whether FIR was conveyed by the police to the Tribunal and was treated as claim petition but I find that it is a relevant document to be seen regarding the date of accident. Consequently, the request of claimants-appellants for amendment of claim petition to mention date of accident as 19.03.2011 is allowed.

8. The Tribunal has taken note of the fact that Jagsir Singh @ Jaggi, who got injured in the accident, has not been examined and his

medicolegal report was not produced on file. Though there is lapse on the part of claimants that they did not examine Jagsir Singh @ Jaggi but now they want to examine him in support of their case. He being material witness, is allowed to be examined and application (CM-28259-CII of 2014) of claimants-appellants to this effect is also allowed.

9. The amendment allowed and examination of Jagsir Singh @ Jaggi will require the Tribunal to reassess the entire evidence again and record fresh findings on the issues framed in the petition, as such, judgment dated 06.10.2012 passed by the Tribunal is set aside and the case is remanded to the Motor Accident Claims Tribunal, Sangrur. The Tribunal will take on record the amended copy of claim petition and provide opportunity to respondents to file written reply. Claimants-appellants shall also be allowed to lead additional evidence as directed vide this order. It is, however, clarified that the Tribunal may permit either of the party to produce any evidence, which it feels necessary for proper adjudication of the claim petition. This order or any previous order passed by the Tribunal shall not come in the way of exercise of such discretion by the Tribunal.

10. File of the Tribunal be sent back. Parties are directed to appear before the Motor Accident Claims Tribunal, Sangrur on 15.02.2018.

January 23, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No