

In the High Court of Punjab and Haryana at Chandigarh

**FAO-3141 of 2013(O&M)
Date of Decision: 13.8.2018**

Rahisan and others

---Appellants

versus

Aasu and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ashish Gupta, Advocate
for the appellant**

None for respondent No. 1

**Mr. Vinod Gupta, Advocate,
for respondent No. 2**

Rekha Mittal, J.

The present appeal directs challenge against award dated 10.4.2013 passed by the Motor Accidents Claims Tribunal, Nuh (in short “the Tribunal”) whereby application for grant of compensation filed under Section 163-A of the Motor Vehicles Act, 1988 qua death of Shokeen out of use of motor cycle on the fateful day of 10.7.2012 has been dismissed by the Tribunal, on the basis of findings in regard to issue No. 1.

The facts relevant for disposal of present appeal are that as per case set up by the claimants, on 10.7.2012, Shokeen was going to Nuh from his village Salamba on a motor cycle bearing registration No. HR-27D-2505 driven by Aabid Hussain and Shokeen was pillion rider. At about

2.20 p.m., when they reached near Mini Secretariat on Nuh-Palwal road, a tractor going ahead of motor cycle suddenly applied brakes due to which Aabid Hussain also applied brakes. The motor cycle slightly struck behind trolley of the tractor and head of Shokeen struck with the trolley due to which he sustained grievous injuries. The accident took place due to rash and negligent driving of tractor and also out of use of motor cycle. The matter was reported to the police and FIR No. 351 dated 10.7.2012 under Sections 279, 304-A of the Indian Penal Code (in short "IPC") was registered at Police Station, Nuh. The Tribunal framed issues and issue No. 1 reads as follows:-

"Whether the death of Shokeen son of Aasu took place out of the use of vehicle No. HR-27D-2505 ? OPP

The Tribunal in para 17 of the award, has held that contention of counsel for respondent No. 3 noticed in para 15 thereof, carries weight because FIR (Ex. PW1/B) shows that Hero Honda C.D.Delux, A/F is shown to be owned by him (Aabid Hussain) because he has stated that he was going on his motor cycle CD Delux, A/F whereupon Shokeen was the pillion rider. Counsel for respondent No. 1 has tendered in evidence copy of registration certificate of offending vehicle as mark R1, which shows that the motor cycle was got registered on 22.6.2012 whereas the accident took place on 10.7.2012, after the offending vehicle was registered with the Registering Authority. No person can say a vehicle of another person to be his own vehicle. In his cross examination, Aabid Hussain PW1 has also stated that he has borrowed the motor cycle from one Shokeen from his house. There is no reference of borrowing the motor cycle from Shokeen in his statement made to the police on 10.7.2012 as recorded in the copy of

FIR Ex. PW/B. The Court has held that the aforesaid motor cycle has been shown to be involved in the accident just to secure compensation for the petitioners.

Counsel for the appellants would urge that motor cycle bearing registration No. HR-27D-2505 is also CD Delux. It is further submitted that inadvertent mistake on the part of Aabid Hussain by claiming motor cycle to be his own and stating it to be a motor cycle Hero Honda CD Delux, A/F should not be taken prejudicial to the interest of the claimants when admittedly none of the claimants was present at the spot at the time of occurrence.

Counsel representing the insurance company has supported findings of the Tribunal on issue No. 1 on the premise that Aabid Hussain has failed to explain his position with regard to stating the motor cycle involved in the occurrence to be his own with particulars Hero Honda CD Delux, A/F. It is further submitted that Aasu respondent No. 1 before the Tribunal is none else but father of deceased Shokeen.

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

Aabid Hussain appeared in the witness box to support cause of the claimants that accident took place out of use of motor cycle driven by him. Indisputably, Aabid Hussain is the author of FIR No. 351 dated 10.7.2012 registered in Police Station, Nuh for offence under Sections 279, 304-A IPC. In the opening line of the FIR, Aabid Hussain has stated that on the fateful day, he was driving his own motor cycle Hero Honda CD Delux, A/F and shokeen son of Aasu was pillion rider on the said motor cycle. It has also been proved on record that motor cycle now involved in the

occurrence stood registered on 22.6.2012, prior to the occurrence on 10.7.2012. The Tribunal has rightly held that motor cycle bearing registration No. HR-27D-2505 that stood insured with the insurance company has been shown to be involved in the occurrence just to secure compensation for the petitioners. A vital discrepancy in the first version recorded by Aabid Hussain, driver of the motor cycle viz-a-viz the motor cycle now shown to be involved in the occurrence has rightly been taken serious note by the Tribunal to reject plea of the claimants that Shokeen sustained injuries out of use of motor cycle No. HR-27D-2505. In this view of the matter, I do not find an error much less illegality in findings recorded by the Tribunal determining issue No. 1 against the claimants.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

13.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No