

In the High Court of Punjab and Haryana at Chandigarh

FAO-3193 of 2013

Date of Decision:15.1.2018

Gyani Bai

---Appellant

vs.

Sumer Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ashish Gupta, Advocate
for the appellant

Mr. Vipin Yadav, Advocate
for respondent Nos. 1 and 2

Rekha Mittal, J.

The present appeal directs challenge against award dated 28.2.2013 passed by the Motor Accidents Claims Tribunal, Nuh (in short “the Tribunal”) whereby petitions for grant of compensation under Sections 140 and 166 of the Motor Vehicles Act, 1988 (in short “the Act”) filed by the appellant and Madan Lal were ordered to be dismissed on the basis of findings on issue No. 1.

The facts relevant for disposal of the present appeal are that the appellant was going alongwith other persons from Dharuhera to Rewari in Tata Magic No. HR-47-AT-8949. Rang Rao, driver of the vehicle was driving it in a rash and negligent manner. The appellant and other passengers asked him many a times to drive it carefully but he did not pay

any heed to their advice. At about 2.30/3-00 p.m., when the vehicle reached near Hansaka Shere Wali Mandir, another vehicle which was also being driven in a rash and negligent manner came and both the vehicles struck against each other. As a result, the appellant and other occupants of Tata Magic sustained serious injuries. Since driver, owner of Tata Magic and complainant belonged to the same locality, report was lodged against unknown vehicle in collusion with local police. FIR No. 48/2009 was registered in Police Station Sadar Rewari. The appellant claimed compensation to the tune of Rs. 10,00,000/- alongwith interest.

Madan Lal, another injured in the occurrence also filed application for compensation on the same averments. Both the cases were decided together vide common award passed by the Tribunal.

Counsel for the appellant has submitted that the appellant and Madan Lal appeared in the witness box and reiterated their version that accident took place due to composite negligence of the vehicle in question and another unknown vehicle. It is further argued that driver of the offending vehicle did not appear in the witness box to counter testimonies of the appellant and Madan Lal PW6 and PW5 respectively. It is argued that the mere fact that one Narinder Kumar lodged FIR No. 48 dated 23.4.2009 Mark 'A' only against driver of the other vehicle is not sufficient to discard version of the claimant and testimonies of injured victims. According to counsel, Narinder Kumar was not examined by the respondents to prove allegations contained in the FIR or to counter testimonies of Gyani Bai and Madan Lal.

Counsel representing the respondents has supported findings

of the Tribunal on issue No. 1 with the submission that the first version recorded by Narinder Kumar vide FIR Mark 'A' is a sufficient counter to plea of the claimant raised in the application for compensation, filed more than one year after the occurrence.

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

Counsel for the respondents has not disputed that the accident took place between the vehicle in question and another vehicle Scorpio and in the said accident, occupants of Tata Magic driven by Rang Rao sustained injuries. Gyani Bai tendered into evidence her duly sworn affidavit Ex. PW6/A. A relevant extract from para 1 of the affidavit, narrating the occurrence, reads as follows:-

“That on 23.4.2009 I was going to Rewari from Dharuhera in Tata Magic No. HR-47/AT-8949 alongwith Madan Lal and other occupants. Respondent No. 2 driver of the Tata Magic No. HR-47/AT-8949 was driving the same in a very rash and negligent manner. I alongwith other occupants asked many times to respondent No. 2 to drive it carefully but he did not pay any heed to our advice. At about 2.30/3.00 p.m. when the Tata Magic reached near Hansaka Sherewali Mandir then another vehicle white colour also came front side in a rash and negligent manner driven by its driver and both the vehicles struck each other from front side. After the accident our vehicle also hit a tree and I alongwith other occupants of the Tata Magic No. HT-47/AT-8949 sustained serious multiple

injuries on our person. This accident has been occurred due to composite rash and negligent driving of the respondent No. 2 and another vehicle involved in the accident.”

A statement to the similar effect was made by Madan Lal, another injured victim who also preferred application for compensation. The appellant and Madan Lal were subject to lengthy cross examination by the contesting parties but nothing tangible and material has been brought forth to create a doubt in their version much less to shatter evidential value of their testimonies. In this view of the matter, it can be safely held that the Tribunal has seriously erred by refusing to place reliance upon testimonies of the injured-victims whose presence at the spot cannot be doubted.

The driver of the vehicle in question did not appear in the witness box to counter testimonies of the injured. As per the settled position in law, if a party fails to examine himself/herself without any tangible explanation, an adverse inference is liable to be drawn against him/her. Narinder Kumar author of the FIR was not examined to prove the first version contained in FIR Mark 'A'. However, perusal of the allegations raised in the FIR would substantiate plea of the appellant that she was one of the occupants of Tata Magic alongwith other passengers whose names find reference therein. In the first information report, it has been recorded that when Tata Magic reached near Hansaka Sherewali Mandir, from the opposite side one Scorpio white colour came at a high speed being driven in a rash and negligent manner and struck directly against Tata Magic as a result of which driver of Tata Magic lost balance and the vehicle struck against a tree on the road. The very fact that there was head-on collision

between the scorpio and Tata Magic gives an indication that present is a case of composite negligence of the two vehicles involved in the occurrence. In absence of respondents having examined driver of the offending vehicle or Narinder Kumar author of the FIR, anything stated by Narinder Kumar in the FIR cannot be given primacy over testimonies of the injured victims correctness whereof has been tested in cross examination before a court of law. In this view of the matter, it can be safely held that the Tribunal has misdirected itself by placing more reliance upon the FIR viz-a-viz testimonies of the injured victims. I would hasten to add that FIR is not a substantive piece of evidence and the same can be used for the purpose of corroboration/contradiction in case author of the FIR appears in the witness box. That being so, findings of the Tribunal on issue No. 1 are erroneous and cannot be allowed to sustain.

For the foregoing reasons, the appeal is allowed. Findings of the Tribunal on issue No. 1 are set aside. As the Tribunal has not recorded findings on other issues, the matter is remitted to the Tribunal for decision of other issues on the basis of materials on record as well as additional evidence, if any, permitted to be adduced by the parties. It is clarified that though the appeal has been preferred only by Gyani Bai but since findings of the Tribunal on issue No. 1 are common for both the claimants namely Gyani Bai and Madan Lal coupled with that the provisions of the Act for grant of compensation are a benevolent social legislation, the Tribunal would also decide the other issues qua Madan Lal as well after hearing the parties, in accordance with law. The Tribunal would issue notice to Madan Lal for securing his presence. The parties through their counsel are directed

to appear before the Tribunal on 14.2.2018.

(**Rekha Mittal**)
Judge

15.1.2018
paramjit

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