

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

FAO No.2250 of 2014(O&M)

Date of decision: 28.3.2018

Nachhatar Singh and another

.....Appellants

VERSUS

Simla Devi and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Hitesh Verma, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 06.11.2013 passed by the Motor Accidents Claims Tribunal, Sangrur (in short 'the Tribunal') whereby compensation has been awarded on account of death of Satish Kumar in a motor vehicular accident that took place on 27.02.2010.

Counsel for the appellants would state that the present appeal has been preferred by driver and subsequent purchaser of the alleged offending vehicle to assail their liability to pay compensation. He would further inform that appeal on behalf of appellant No.2 has been dismissed vide order dated 17.08.2016 for want of compliance of order dated 29.04.2016 and in the given scenario, the present appeal survives for consideration only qua appellant No.1 Nachhatar Singh.

Counsel for the appellant has assailed the award on few counts. The first and foremost submission made by counsel is that as the appellant is alleged to be subsequent purchaser of the offending vehicle i.e Tempo No.PB10-D-9710 driven by Baljinder Singh – appellant No.2 at the relevant time, the appellant cannot be fastened with liability to pay

compensation. In addition, it is argued that as registered owner of the vehicle is liable to pay compensation, he, at best, can take recourse to appropriate proceedings in law for recovery after payment to the claimants. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Pushpa @ Leela and others Vs. Shakuntla and others, AIR 2011 SC 682**. Further reference has been made to judgment of this Court **Gurnam Singh Vs. Smt. Manju Rani and others, FAO No.2113 of 2008 decided on 29.04.2010**.

The second submission made by counsel is that Ruldu Ram, alleged eye-witness to the occurrence and father of the deceased, at whose behest FIR No.54 dated 27.02.2010 was registered, did not appear in the witness-box to substantiate plea of the claimants that accident occurred due to rash and negligent driving of the aforesaid vehicle by Baljinder Singh. Rather the claimants examined Sanjiv Kumar CW-1 and Vidya Rattan CW-3 to prove the accident but their names did not figure in the FIR registered by Ruldu Ram. According to counsel, Sanjiv Kumar and Vidya Rattan are the procured witnesses, therefore, their testimony should not have formed the basis for recording findings qua issue No.1 against the appellant and his co-respondents before the Tribunal.

I have heard counsel for the appellant, perused the paper-book particularly award dated 06.11.2013.

The claimants examined aforesaid two witnesses to discharge onus of issue No.1 that accident occurred due to rashness and negligence on the part of Baljinder Singh, driver of the offending vehicle. Counsel for the appellant has not pointed out any materials elicited in cross examination of Sanjiv Kumar and Vidya Rattan to prove that they had been introduced later or their testimonies are not worthy of credence and

reliance. Indisputably, Baljinder Singh, driver of the offending vehicle did not appear in the witness box to counter testimonies of Sanjiv Kumar and Vidya Rattan or to say on oath that either the offending vehicle was not involved in the occurrence or the accident is not the result of any rashness and negligence attributable to him. An adverse inference is liable to be drawn against Baljinder Singh for his failure to appear in the witness box without any tangible explanation. It is also undisputed fact that on due investigation of FIR lodged by Ruldu Ram, charge-sheet was filed in the Court and Baljinder Singh was put to trial though eventually he was acquitted of the offence charged against him as Ruldu Ram did not appear in the witness box before the criminal Court. Taking a cumulative view of the facts and circumstances discussed hereinbefore, I find it difficult to differ with findings recorded by the Tribunal determining issue No.1 in favour of the claimants and against respondents therein.

This brings the Court to contention of the appellant that he is not liable to pay compensation even if it is accepted that he is the subsequent purchaser of the vehicle in question. In the two judgments referred to by counsel for the appellants, the issue before Hon'ble the Supreme Court as well as this Court was, whether the registered owner of the vehicle can avoid his liability to pay compensation on the premise that before the occurrence, he had already sold the vehicle to a third person. Hon'ble the Supreme Court by relying upon its earlier judgment **Dr. T.V. Jose Vs. Chacko P.M., 2002(1) RCR (Civil) 120** and definition of owner under Section 2(30) of the Motor Vehicles Act, 1988 (in short 'the Act') as well as provisions of Section 50 of the Act has held that the registered owner cannot escape his liability to pay compensation. Similarly in **Gurnam Singh's case** (supra), the registered owner of the vehicle was

before this Court to assail findings of the Tribunal whereby he and Sudesh Kumar @ Desa – respondent No.4 were held liable to satisfy the award jointly and severally and Gurnam Singh was held liable to pay compensation amount first. This Court refused to accept contention of Gurnam Singh by relying upon judgments referred therein but held in the concluding para that appeal filed by the registered owner of the vehicle is without any merit. However, he would be at liberty to take appropriate recourse in accordance with law against the person to whom the vehicle had been allegedly sold. It has nowhere been held by the Court that the subsequent purchaser cannot be held jointly and severally liable to pay compensation.

The Tribunal in para 17 of the award has held, reads thus:-

“17. It has not been established by the respondents regarding transfer of the vehicle in the name of Nachhattar Singh son of Gurdev Singh in the record of the Motor Vehicle Registering Authority. Although there is unproved copy of affidavit dated 05.02.2008 regarding transfer of the vehicle, which fact is admitted by Nachhattar Singh respondent. In these circumstances, respondent No.1 being the driver of the offending vehicle, respondents No.2 and 3 being registered owners of the offending vehicle and respondent No.5 being transferee of the offending vehicle are jointly and severally liable to pay the compensation amount to be assessed in the latter part of the award to the claimants and the claimants are entitled to receive the compensation amount in equal share.”

Counsel for the appellants has not disputed factual findings recorded by the Tribunal that the vehicle in question had been purchased by Nachhatar Singh from its registered owner prior to the occurrence in question. The appellant being the owner of vehicle and an employer of Baljinder Singh, at the relevant time, cannot escape his vicarious liability to pay compensation on account of rashness and negligence attributed to Baljinder Singh, driver of the vehicle in question.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, applications for condonation of delay are of academic relevance only.

MARCH 28, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no