

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

F.A.O.No.5344 of 2014

Date of Decision: May 04, 2018

Poonam Rani & another

...Appellants

Versus

Bhupinder Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

**Present: Mr.Harminder Singh, Advocate,
for the appellants.**

**Mr.S.S.Goraya, Advocate,
for respondent No.1.**

**Mr.Amandeep Singh, Advocate,
for respondent No.2.**

**Mr.R.C.Kapoor, Advocate,
for respondent No.3.**

AMIT RAWAL, J. (Oral)

The claimants are in appeal against the findings rendered by the Motor Accident Claims Tribunal, Ludhiana, whereby the petition claiming compensation on account of the death of deceased Sadhu Ram, who at the age of 60 years unfortunately died in a vehicular accident occurred on 26.6.2010, has been dismissed.

As per the case set up in the claim petition, the deceased was travelling in his Scooter bearing registration No.PB56-B-0120 and was hit by a Honda City Car bearing registration No.PB-10-BM-8156 driven by respondent No.1 Bhupinder Singh and insured with New India Assurance Co.Ltd. According to the evidence brought on record, the accident was witnessed by PW-3 Dharamjit and PW-4 Zora Singh. The Tribunal returned the findings on issue No.1 on the premise that the claimants have not been

able to prove the rash and negligent driving of the Honda City Car. Since the contents of the FIR were not readable, the Tribunal dismissed the claim petition.

Mr.Harinder Singh, learned counsel for the appellant-claimants submitted that there has been gross misreading and non-advertance to the entire examination-in-chief of PW-3 and PW-4 as only part of the examination-in-chief of PW-3 has been extracted in the impugned award. During the course of hearing, he has shown copy of the examination-in-chief of the aforementioned witnesses, which read as under:-

“ EVIDENCE BY WAY OF AFFIDAVIT PW-3

I, Dharamjit aged about 35 years s/o Pritam Singh r/o H.no.1034, Mohalla Muradpura, Miller Ganj, P.S.Div.no.2, Ludhiana, do hereby solemnly affirm and declare as under:-

- 1. That the deponent is the eye witness to the accident caused by respondent while driving Honda Citi Car bearing registration no.PB-10BM-8156 on 26.6.2010 at about 1.30 p.m. in the area of P.P.Daba, P.S.Shimlapuri, Ludhiana.*
- 2. That the FIR no.49 dt.26.6.2010 U/s 279/304-A IPC was registered on the statement of the deponent the attested copy of which is Ex.P-4.*
- 3. That the deceased Sadhu Ram who the able bodied man and was very hardworking and used to work from early morning to late night and was also rendering taxi service to the public alongwith his auto spare parts business at Raikot and due to his untimely death in accident that business was ruined and the shop was closed.*
- 4. That on 26.6.2010 the deceased alongwith deponent resident of Muradpura came to meet his friend Gurvinder Singh in village Lohara, Tehsil and District Ludhiana and after meeting him he alongwith his friend Paramjit Singh were*

coming back near Lohara Canal and by they were standing near Canal Bridge then a car came from the side of Mohalla Begoana. Deceased was on his scooter bearing no.PB-56B-0120 then a car bearing driven by respondent no.1 bearing no.PB-10BM-8156 make Honda City having silver colour came at over speed and struck against the scooter of Sadhu Ram to fell down and received serious injuries to the body and he was admitted in D.M.C. & H, Ludhiana but he died on the same day in the Hospital. FIR no.49 dt.26.6.2010 u/s 279/304-A IPC was recorded by the deponent in P.P.Daba, P.S.Shimlapuri. The accident entire took place due to rash and negligent driving of the respondent no.1 and all the respondents are liable to pay the claim jointly and severally through the claimant.”

Statement of PW-4

“ *EVIDENCE BY WAY OF AFFIDAVIT PW-4*

I, Zora Singh s/o Gurdial Singh aged 53 years r/o Village Heran, Tehsil Raikot, District Ludhiana, do hereby solemnly affirm and declare as under:-

- 1. That the deceased Sadhu Ram s/o Ram Chand of Raikot was known to the deponent since long back. As the deponent purchased spare parts from the shop of late Sadhu Ram at Railot.*
- 2. That on 26.6.2010 the deponent had also gone to see his relative at village Lohara namely Satnam Singh s/o Bhag Singh. The deceased Sadhu Ram was on his scooter bearing no.PB-56B-0120 and one person namely Dharamjit was also on the pillion and the deponent was behind them on his scooter bearing no.CH-01K-2487.*
- 3. That when they reached at the Canal Bridge at village Lohara, after meeting their relatives. The deceased stopped his scooter at about 1.30 p.m.at the Canal Bridge side then a car bearing registration no.PB-10BM-8156 make Honda City came from Gill Canal Bridge towards Mohalla Begoana side which was driven by respondent no.1 in rash and negligent manner*

and it struck against the scooter of Sadhu Ram who fell down and due to the direct stock is suffered serious injuries to his body and he was admitted to the D.M.C.Hospital, Ludhiana. But injured Sadhu Ram died on the same day in the Hospital and the FIR no.49 dt.26.6.2010, U/s 279/304-A IPC was recorded at the statement of Dharamjit Singh at P.s.Shimlapuri, Ludhiana already on file.

4. That the deponent has seen the occurrence and the accident entirely took place due to the rash and negligent driving by the respondent no.1 and the family of the deceased have been deprived of the love and affection due to the untimely death caused in the accident by the respondent No.1”.

He further submitted that had the aforementioned statements been looked into, the findings on issue No.1 had been returned in favour of the appellants.

On the other hand, Mr.R.C.Kapoor, learned counsel appearing on behalf of the Insurance Company submitted that there is no illegality or perversity in the award under challenge. The Insurance Company cannot be permitted to distribute the largesse that the claimants failed to discharge the onus.

Mr.S.S.Goraya, learned counsel representing respondent No.1 submitted that in criminal case, the driver involved in the accident had been acquitted.

I have heard the learned counsel for the parties, appraised the paper book, records of the Court below and of the view that the findings on issue No.1 rendered by the Tribunal by noticing the statement of PW-3 in bits and pieces is not correct appreciation of law and not sustainable. For the sake of brevity, the findings rendered in Paras 12 and 13 of the award read thus:-

“12. However, I am of the opinion that the claimants have failed to prove that the accident had occurred due to the rash and negligent driving of the offending vehicle by the respondent no.1. The reason is that there is nothing on file to indicate that the accident had occurred on account of the rash and negligent driving of the offending vehicle by the respondent no.1. The only eye witness the PW3 has made the following statement regarding the accident.

“They were standing near canal bridge then a car came from the side of Mohalla Begoana. Deceased was on his scooter bearing no.PB-56B-0120 then a car being driven by respondent no.1 bearing no.PB-10BM-8156 make Honda City having silver colour came at over speed and struck against the scooter of Sadhu Ram to fell down and received serious injuries.”

The above said is the only evidence. A copy of the FIR has been placed on file as Ex.P3. The same admittedly is not readable. From the above quoted testimony it is obvious that material details necessary for determining the question are missing. It is not stated as to on which part of the road the deceased was standing with his scooter. It is also not stated that as to on which part of the road the accident took place. It is also not explained as to what care and caution was required to be observed by the respondent no.1 and as to which care and caution were not observed by him. The only allegation is that he was driving the car at an over speed. The expression “Over Speed” is only an opinion. Hence, without there being the above said details regarding the accident, it cannot be stated that the car was in fact being driven in a high speed. There is nothing on file to indicate that the accident had not occurred on account of negligence imputable to the deceased. Hence, in these circumstances, it cannot be stated as to on account of whose fault the accident had occurred. Hence, I hold that the claimants have failed to prove that the accident had occurred on account of the rash and negligent driving of the offending

car by the respondent no.1.

13. The learned counsel for the claimants has submitted that the fact that the FIR was registered against the respondent no.1 indicates that the police has found that the accident had occurred on account of rash and negligent driving of the respondent no.1. However, I do not agree with the learned counsel for the claimants. The FIR is only the first information regarding the incident. Further more, it is common knowledge that the police challans a person who has received less in the accident and the police generally leave the decision of the matter on the court. Hence, I hold that simply because the FIR was registered against the respondent no.1, it cannot be held that the accident had occurred on account of rash and negligent driving of the offending vehicle by the respondent no.1.”

On conjoint reading of the statements of PW-3 and PW-4, vis-a-vis the observations, the Tribunal has abdicated in not referring the complete statement of PW-3 and not adverting to statement of PW-4. Both the witnesses have been cogent and consistent in stating on oath that the accident occurred due to the rash and negligent driving of vehicle No.PB-10BM-8156 Honda City insured with the Insurance Company. In the entire cross-examination, nothing contrary surfaced to belie the statement regarding the rash and negligent driving and, thus, the findings on issue No.1 could not have been rendered against the claimants. Resultantly, the same are set-aside and returned in favour of the appellant-claimants. Rest of the issues are already decided in favour of the appellants.

With the aforementioned modification, the appeal stands allowed.

May 04, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No