

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

Sr. No.221

FAO No.5481 of 2015

Date of decision: 29.08.2018

Shakshi Rani and others

....Appellants

versus

Harbaljinder Singh (since deceased) through his LR and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

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

Mr. Pardeep Goyal, Advocate
for the respondent No.2.

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DEEPAK SIBAL, J. (Oral)

The present appeal is directed against the award dated 21.04.2015 passed by the Motor Accident Claims Tribunal, Sangrur (for short – the Tribunal) through which the claim petition preferred by the appellants has been dismissed.

The case set up by the appellants before the Tribunal was that on 10.07.2013 deceased Rajesh Kumar alongwith Harbaljinder Singh @ Kaka, claimant No.2 Parteek Bangia and four other persons had gone to Patiala as on that day brother-in-law of Harbaljinder Singh namely Gurpreet Singh was to be released on bail. Deceased Rajesh Kumar, Harbaljinder Singh and claimant No.2 went in car No.PB-13-Z-1668 whereas the other persons were in a separate car. At 8.00 P.M., Gurpreet Singh was released from Patiala Jail. Thereafter, they paid obeisance at Gurudwara

Dukhniwaran Sahib, Patiala after which Rajesh Kumar, claimant No.2 Parteek Bangia, Harbaljinder Singh and Gurpreet Singh went to drop Gian Singh, who was Jail Official at Nabha. The other persons returned to Sangrur in their car. After dropping Gian Singh at Nabha, Rajesh Kumar, claimant No.2 Parteek Bangia, Harbaljinder Singh and Gurpreet Singh went to Sangrur via Chhintanwala. The car was being driven by Gurpreet Singh and Rajesh Kumar was sitting on the left front seat whereas claimant No.2 Parteek Bangia and Harbaljinder Singh were sitting on the back seat of the car. The car was being driven by Gurpreet Singh in a rash and negligent manner and because of that Gurpreet Singh lost control of the car resulting in the car turning turtle. As a result of the accident, Harbaljinder Singh and Gurpreet Singh died at the spot whereas Rajesh Kumar died on the way to Civil Hospital, Nabha. Claimant No.2 Parteek Bangia was the only person, who survived in the accident. It was further the case set up by the claimants that the claimant No.2 had disclosed the above facts to the police. However, the police had obtained claimant No.2 Parteek Bangia's signatures on blank papers for initiating proceedings but when he realized that the police had lodged a wrong report, claimant No.2 approached the police to initiate proceedings as per the actual facts of the incident. However, police put off the matter and refused to initiate any proceedings. Claimant No.2 Parteek Bangia then sent a letter to SSP, Patiala, but to no avail.

On being put to notice, Insurance Company filed a written statement denying the claim set up by the appellants.

To prove their case, the claimants examined Shakshi Rani as CW-1, Trivender Singh as CW-2, Prem Chand as CW-3, Parteek Bangia as CW-4, Gurdarshan Singh as CW-5 and Hari Om Singh as CW-6. They also

tendered into evidence photographs Mark A to Mark D. Driving license of Harbaljinder Singh was also tendered into evidence as Ex.P7. On the other hand, the Insurance Company tendered into evidence insurance policy as Ex.R1, copy of statement of Sukhwinder Singh as Ex.R2, copies of statement of Parteek Bangia as Ex.R3 and Ex.R4, copy of statement of Shakshi Rani Ex.R5 and copy of letter dated 03.12.2013 of SSP, Patiala as Ex.R6.

The Tribunal after sifting the evidence which have come on record and concluding that no accident as claimed by the appellants had taken place, dismissed the claim petition. It is in these circumstances that the appellants have preferred the present appeal.

Learned counsel for the appellants submitted that Parteek Bangia, who was the eye-witness to the accident while appearing before the Tribunal as CW-4 had categorically deposed that the accident resulting in the deaths of Rajesh Kumar, Harbaljinder Singh and Gurpreet Singh had taken place due to the rash and negligent driving by Gurpreet Singh. It was further submitted that the Tribunal erred by relying upon the statements made by Parteek Bangia before the police to hold that the accident did not take place especially when such statements were not on oath when compared to the statement made by him before the Tribunal. It is further submitted that even if the version of Parteek Bangia as given by him before the police was to be accepted that the vehicle in question turned turtle because of bursting of one of its tyres, the same should be considered as negligence on the part of the owner of the vehicle as it was his duty to maintain his car.

Learned counsel for the respondent-Insurance Company

defended the award under challenge.

After hearing learned counsel for the parties and going through the record, this Court finds no merit in the submissions raised by the learned counsel for the appellants.

The accident in question took place on 10.07.2013 at about 10 p.m. in which two persons died at the spot and one died on the way to the hospital. On the very next day i.e. on 11.07.2013, through Ex.C-1, Parteek Bangia, who was the only eye-witness to the accident got recorded a DDR in Police Station, Sadar Nabha to the effect that the car in which he and the other deceased persons were travelling turned turtle as one of its tyres burst after hitting a sharp object lying on the road. That was his first version in which negligence on the part of the driver was not even alleged. After an unexplained delay of about 50 days, Parteek Bangia went back to the police with a new version that the accident in question had taken place due to the rash and negligent driving of the vehicle in question by Gurpreet Singh. The new version given by Parteek Bangia was investigated by the police during the course of which the police examined at least three persons namely Sukhwinder Singh, brother of deceased Harbaljinder Singh and the claimants Shakshi Rani and Parteek Bangia. During the course of such investigation through Ex.R-2, Sukhwinder Singh stated that the accident took place when the left tyre of the vehicle in question had burst on hitting some pointed object lying on the road. To the same effect was the statement made by claimant Parteek Bangia, which was recorded on 06.09.2013 (Ex.R4) as also by claimant Sakshi Rani (Ex.R5). On the basis of the above, the investigation was closed.

From the above, it is clear that not only on 11.07.2013, i.e. on

the very next day when the accident took place did Parteek Bangia state before the police that the accident had taken place due to the fact that the left tyre of the vehicle in question had burst on hitting a sharp object lying on the road, he reiterated his stand in the course of an investigation conducted by the police on his application. To the same effect were the statements made by the claimant Shakshi Rani as also Sukhwinder Singh brother of deceased Harbaljinder Singh. The afore-referred statements were duly exhibited by the Insurance Company before the Tribunal. The above facts coupled with the deposition of Parteek Bangia at the time of his cross-examination, wherein he admitted that he had given a statement to the police on 11.07.2013 at 10.00 P.M., clearly show that the deceased did not die due to the rash and negligent driving of the vehicle in question by Gurpreet Singh but due to the accident which resulted on account of the bursting of one of its tyres when the car hit a sharp object lying on the road.

The stand taken by the claimants before the Tribunal as also before this Court that Parteek Bangia had not made any statement before the police and he was made to sign blank papers is not worthy of acceptance as Parteek Bangia admitted in his cross-examination that on 11.07.2013 at 10.00 P.M., the police had recorded his statement and that he is a well read person knowing both English and Punjabi languages. Further even during the investigation conducted by the police on his application he admitted that the accident took place when the left tyre of the vehicle in question burst on hitting a pointed object lying on the road. No reason has been spelt out either before the Tribunal or before this Court as to why the police would had obtained signatures of Parteek Bangia on blank papers. Mala-fides on the part of the police have not even been alleged. There is also no reason to

doubt the police in this investigation as no third party rights are involved in the accident in question as there was only one car with four occupants which met with an accident out of which three occupants died and the fourth one went to lodge the DDR in which he did not even allege negligence of the driver.

In the case in hand, the accident is said to have taken place when the left tyre of the vehicle in question burst on hitting a pointed object lying on the road. It is not disputed that the accident took place in the dead of night with no light on the road. Thus, it was sheer bad luck that the vehicle in question hit some pointed object lying on the road resulting in bursting of the tyre and the consequent accident. Even otherwise, no evidence was led by the claimants to show any fault in the maintenance of the vehicle in question or that the tyres of the car were not being maintained by the owner. In the absence of such evidence no finding in this regard can also be returned by this Court to allow the claimants' appeal.

In view of the above, no merit is found in the present appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 29, 2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No