

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

F.A.O. No. 7479 of 2014

DATE OF DECISION :- December 11, 2018

Parkash Tiwari and another

...Appellants

Versus

Hardeep Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Chandan Deep Singh, Advocate for the appellant.

Mr. Neeraj Khanna, Advocate for respondent no. 3.

Under challenge in this appeal is award dated 25.1.2014 passed in MACT No. 34 of 11.3.2010 by Motor Accident Claims Tribunal, Ludhiana vide which claim petition under Section 166-A of Motor Vehicles Act for grant of compensation on account of death of Sheelu Tiwari in a road side accident was dismissed. The reason for dismissal of the claim petition was mainly on account of finding on issue no. 1 "Whether the accident, that took place on at about 12.15 P.M. on 8.2.2010 at Gill Road, Chet Singh Nagar, Shimlapuri, Ludhiana, occurred due to rash and negligent driving of the truck bearing registration No. PB-10-BB-4513, by respondent no. 1? OPP

Since the claimants had not examined any eye witness to prove the accident and only copy of the F.I.R. and post mortem report of the deceased had been produced in evidence, learned Tribunal had decided the issue against the claimant holding that claimants have failed to prove that accident had

occurred due to rash and negligent driving of the offending vehicle by respondent no. 1.

For that very reason, the claim petition was dismissed which left the claimants aggrieved and they have approached this Court by way of filing the appeal against the said award/order.

Notice of the appeal was given to the respondent, who put in appearance through counsel.

I have learned counsel for the parties besides going through the record.

Learned counsel for the claimants has submitted that he has moved an application under Order 41 Rule 27 for additional evidence to examine Harkesh Kumar, an eye witness. Testimony of this witness is necessary for just decision of the case and the case be remanded to the Tribunal with a direction to allow the claimants to examine Harkesh Kumar, an eyewitness. Though this request is being opposed on behalf of the appearing respondent but I find that ends of justice demand that the same be allowed. Section 166 of the Motor Vehicles Act is a piece of welfare legislation providing for grant of compensation to the persons who sustain injury in the road accident or to the legal heirs/representatives of a person who meets unfortunate end in such mishaps. Strict technical view is not to be taken in such type of cases. Even otherwise rules of procedure are meant to advance ends of justice.

In the present case, a young unmarried boy of 25 years had lost his life in the road mishap. His parents have been denied compensation on account of his death for the reason that they could not prove that the accident had taken place due to rash and negligent driving of the offending vehicle. It is

stated that the eyewitness could not be examined on account of wrong legal advise and now he be directed to be examined. Therefore, the application calls for acceptance, the same is allowed. Recording of statement by the Tribunal is necessary, therefore, it would be proper and appropriate if the case is remanded to the Tribunal after setting aside the impugned award.

Accordingly, the appeal is disposed of, inasmuch as the impugned award is set aside and the case is remanded to Motor Accident Claims Tribunal, Ludhiana with a direction to allow the claimants to examine Harkesh Kumar and then to afford reasonable opportunity to respondents to cross-examine the witness. The respondents be permitted to lead evidence in rebuttal, if they so desire. The parties through their counsel are directed to appear before Motor Accident Claims Tribunal, Ludhiana on 18.1.2019. The Tribunal shall fix a date for examination of Harkesh Kumar.

Keeping in view the fact that the accident relates to the year 2010, earnest efforts be made to dispose of the claim petition afresh after doing the needful and hearing learned counsel for the parties expeditiously, preferably within a period of three months from the date which has been fixed i.e. 18.1.2019.

(H.S. MADAAN)
JUDGE

December 11, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No