

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

FAO No.87 of 2015 (O&M)

Date of decision: 20.08.2018

SUNITA DEVI AND ORS

... Appellants

Versus

VINOD AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Jagdish Manchanda, Advocate
for the appellants.

Mr. Rishab Lohan, Advocate for
Mr. R.N. Lohan, Advocate
for respondent No.1.

Mr. S.S. Kharb, Advocate
for respondent No.2.

Mr. Sanjiv Pabbi, Advocate
for respondent No.3.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 04.12.2014 passed by the Motor Accidents Claims Tribunal, Jind whereby application for grant of compensation filed under Section 166 of the Motor Vehicles Act, 1988 by Smt. Sunita Devi and others on account of death of Birbhan in a motor vehicular accident that took place on 03.09.2008 was dismissed by the Tribunal on the basis of findings qua issue No.1.

The facts relevant for disposal of present appeal are that as per case set up by the claimants/appellants, on 03.09.2008 Birbhan along with Raj Kumar and Ishwar Singh was going to village Dhatrath for personal work. Birbhan was driving motorcycle bearing No.HR-06L-6440. Raj Singh, his brother and Ishwar Singh, his brother-in-law were following him on another motorcycle. At about 9.15 pm, when they reached near Nand Kishore Sheller in village Dhatrath, Vinod respondent No.1 struck against motorcycle of Birbhan while driving motorcycle No.HR-40-8926 in a rash and negligent manner. Birbhan suffered multiple injuries and was shifted to General Hospital, Jind and declared dead. FIR 156 dated 04.09.2008 under Sections 279 and 304-A IPC was registered in Police Station, Pillukhera against respondent No.1.

The deceased was working as Constable in BSF at salary of Rs.10,350/- per month. A prayer was made for grant of compensation in regard to loss of dependency as well as under conventional heads.

Respondent No.1 filed the reply and raised preliminary objections inter alia non-maintainability of the application; cause of action and locus standi to file the claim application etc. It is averred that no such accident took place due to fault of the answering respondent but it was rather because of fault of the deceased who was under influence of intoxication. All other material averments contained in the application have been denied with a prayer for dismissal.

The registered owner of the alleged offending motorcycle also

filed reply exactly in terms of the defence raised by respondent No.1.

The insurance company also filed the reply denying its liability to pay compensation.

The controversy between the parties led to framing of the following issues by the Tribunal:-

- “1. Whether the accident in question was caused by respondent No.1 while driving motorcycle TVS Max 100 bearing registration No.HR-40-8926 in a rash and negligent manner causing death of Birbhan son of Sh. Dariya Singh, as alleged?OPP*
- 2. If issue No.1 is proved, whether claimants are entitled to any compensation and if so, to what extent and from whom?OPP*
- 3. Whether respondents No.1 and 2 had violated any term and condition of the insurance policy?OPR-3*
- 4. Relief.”*

Smt. Sunita Devi, one of the claimants appeared in the witness box and the claimants examined EASI Ram Karan PW1, Dr. Satish Sulekh PW2, Constable Rajesh Kumar PW3 and Raj Singh PW5.

To rebut case of the claimants, respondents examined Joginder Singh, Record Keeper RW1, Dr. Rajesh Gandhi RW2, Rajesh RW3 and Raja @ Rajinder RW4.

After having heard counsel for the parties in the light of materials on record, the learned Tribunal determined issue No.1 against the claimants and as a result thereof, the application for compensation was

dismissed without recording any finding on issues No.2 and 3.

Counsel for the appellants would argue that Raj Singh PW5 is the author of FIR No.156 dated 04.09.2008 registered in Police Station Pillukhera with regard to occurrence wherein he recorded his statement giving a detailed account as to how the accident took place due to rash and negligent driving of offending vehicle by respondent Vinod. Raj Singh PW5 appeared in the witness box and tendered into evidence his duly sworn affidavit Ex.PW5/A wherein he reiterated version putforth by the claimants in para 24 of the claim application. It is further argued that the mere fact that criminal proceedings initiated against Vinod culminated in judgment of acquittal would neither enure to the benefit of respondents to escape their liability to pay compensation nor can be construed against the appellants to reject their claim for compensation. In support of his contention, he has relied upon judgment of this Court **Ram Parkash Vs. Bagga Singh and others, 2014(3) RCR (Civil) 65.**

Counsel representing respondents No.1 and 2 have supported findings of the Tribunal on issue No.1 with the submission that testimony of Raj Singh cannot form the basis for accepting plea of the claimants in view of his previous statement recorded in the criminal trial. Raj Singh was confronted with copy of his statement Ex.R1 and he admitted that the same was correctly and voluntarily made with full senses on 13.11.2013. It is further argued that in his statement Ex.R1, Raj Singh has categorically deposed that he does not know anything about the accident and he was not

present at the spot.

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

Indisputably, Raj Singh PW5 is the only witness examined by the claimants to discharge onus of issue No.1 that the accident took place due to rash and negligent driving of offending vehicle by Vinod. Raj Singh tendered into evidence his affidavit Ex.PW5/A by way of examination in chief and reiterated the story brought forth by the claimants. In his cross examination, he was confronted with his previous statement recorded in criminal proceedings marked as Ex.R1. A relevant extract from his cross examination reads as follows:-

“It is correct that this fact of my presence at the alleged place of accident was not told by me during my evidence recorded in the Court of Sub Divisional Judicial Magistrate, Safidon on 13.11.2013. I have seen copy of my statement Ex.R1 given by me before SDJM, Safidon. I made this statement correctly and voluntarily with my full sense recorded in the criminal trial on 13.11.2013. It is incorrect to suggest that I was neither present at the place of accident nor I had witnessed the same or that Ishwar son of Diwan Singh, resident of village Kinana was also not present at the place of accident. I did not witness the persons riding upon the motorcycles which I alleged to be offending motorcycle. I do not identify the riders of said motorcycles. Vir Bhan deceased was my younger brother.”

A perusal of statement of Raj Singh Ex.R1 recorded in the criminal proceedings makes it apparent that he has altogether denied the accident having taken place in his presence. He has neither identified respondent No.1 to be author of the accident nor the offending vehicle. He would depose that he did not know as to with what source accident had taken place. He did not know the name of the driver who caused the accident.

Taking into consideration previous statement of Raj Singh recorded in the criminal proceedings, I find myself unable to accept contention of the appellants that testimony of Raj Singh in examination in chief is sufficient to record a finding in favour of the claimants that accident took place due to rash and negligent driving of offending vehicle by Vinod. The fact that Vinod has admitted the factum of accident but with an additional plea that the same was due to fault of the deceased is not at all sufficient to discharge onus of issue No.1. Indeed the claimants have failed to prove their case, therefore, they can neither derive any advantage to their contention from version of respondent No.1 nor his failure to appear in the witness box to counter case of the claimants.

To be fair to the appellants, it may be true that acquittal of the accused in criminal proceedings ipso facto may not be a ground to reject claim before the Tribunal but in the light of discussion hereinbefore, the appellants cannot derive any advantage to their contention from the referred authority. In this view of the matter, I do not find an error much less

illegality in findings on issue No.1 and the same are accordingly affirmed.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

20.08.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No