

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

1. FAO No.319 of 2017 (O&M)
Date of decision : 26.07.2018

Mukesh Kumar

...Appellant

Versus

Shabir Khan and others

...Respondents

2. FAO No.1393 of 2017 (O&M)
Date of decision : 26.07.2018

Pinku

...Appellant

Versus

Shabir Khan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sat Narain Yadav, Advocate for the appellant.
(In both appeals)

ANIL KSHETARPAL, J. (ORAL)

CM No.1190-CII of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 71 days in filing the present appeal is condoned.

Application is allowed.

Main case

These two appeals have been filed against the award passed by the Motor Accident Claims Tribunal assessing the compensation payable on account of two young deaths.

Learned counsel for the appellant while referring to the judgment passed in the criminal trial has submitted that in the criminal case arising out of the same incident, driver has been acquitted of the charge. Although that judgment is not part of the trial Court file, however, with the help of the counsel, this Court has gone through the judgment.

The aforesaid judgment has been passed by giving the benefit of doubt due to the lack of evidence. It is also well settled that such judgment is not binding on the Tribunal. Learned counsel for the appellant has fairly admitted that Pinku, the driver-respondent No.6 was not examined in the present proceedings before the Motor Accident Claims Tribunal.

Learned counsel for the appellant has further submitted that since Canter (truck) was parked on one side of the road and the deceased had come from behind and dashed against the offending vehicle, therefore, the Motor Accident Claims Tribunal erred in refusing to give any finding with regard to contributory negligence.

This Court has also considered the aforesaid submission.

It is a positive case of the claimant that the aforesaid truck/canter was parked on the road without any indicator or signal of the parking. No evidence in this regard has been led by the appellant. The vehicle, which has been parked on the road, is required to either switch on the parking indicator if working or otherwise put some indication at a distance so that the driver of vehicle coming from either side come to know

that the vehicle has been stationed due to some fault and sufficient notice is available to take preventive steps. In the present case, as noticed, appellant or the driver has not led any evidence to prove that fact. The award passed by the Motor Accident Claims Tribunal is based upon the appreciation of the evidence and such appreciation of the evidence is not shown to be either perverse or result of any mis-reading of the evidence. Still further, the best evidence has been withheld by the appellant. Pinku-respondent No.6 was employed as a driver with the appellant who is owner of the vehicle but not examined. Appellants have also not deposited the amount required under Section 173 of the Motor Vehicles Act.

In view thereof, there is no ground to interfere.

Both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

26.07.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No