

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

F.A.O. No. 3622 of 2018(O&M)

Date of Decision: 02.07.2018

The New India Assurance Co. Ltd.

.....Appellant.

Versus

Smt. Baljit Kaur and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Lalit Garg, Advocate
for the applicant-appellant.

LISA GILL, J (Oral).

This appeal has been filed by the appellant-Insurance Company against the impugned award dated 05.02.2018, passed by the learned Motor Accident Claims Tribunal, Panchkula.

Brief facts necessary for the adjudication of the case are that two claim petitions were filed seeking compensation by two sets of claimants. Both the claim petitions were decided by a common impugned award dated 05.02.2018. The present appeal has been preferred in respect to MACP No. 90 of 2-17 filed by respondents no.1 to 3.

As per the averments in the claim petition, Bhagat Singh (deceased) alongwith his wife Baljeet Kaur (respondent no.1) and their daughter (respondent no.2) were proceedings towards Panchkula on their Honda Activa bearing registration no. HR-03-U-8305. The scooter was being driven by Bhagat Singh on the left hand side of the road at moderate speed while observing all traffic rules. When, they reached near Saket Hospital, Chandimandir, at about 08.30.a.m., a three-wheeler bearing registration No. HR-68-B-4751 driven by respondent no.4-Sucha Singh in a

rash and negligent manner hit the scooter from behind. All three persons riding the scooter fell on the road and received severe injuries. Bhagat Singh was shifted to Civil Hospital, Sector-6, Panchkula, thereafter referred to PGI, Chandigarh. He ultimately succumbed to his injuries on 04.03.2017.

FIR No. 63 dated 03.03.2017 (Ex.P-3), under Sections 279, 337, 304-A IPC, was lodged. Charge under Section 279 and 304-A IPC was framed against the driver-Sucha Singh. Charge sheet was exhibited as Ex.P1 and the postmortem report as Ex.P-4.

Claimant-respondents sought compensation on account of death of Bhagat Singh, their husband/father while asserting that he was working as a driver on a heavy vehicle with Rajiv Kumar, Transporter and Carriage Contractor, Ambala-Kalka Road, village Dhakauli, District Mohali, earning ₹18,000/- per month alongwith other perks. He was the sole bread earner of the family.

Learned tribunal on considering the facts and circumstances of the case concluded that the accident in question was caused due to rash and negligent driving of the offending three-wheeler by respondent-Sucha Singh. A sum of ₹12,40,000/- alongwith interest at the rate of 7.5 %from the date of filing of the petition till realization was awarded to the claimants. Aggrieved therefrom, the present appeal has been filed.

Sole contention raised by learned counsel for the appellant is that FIR no. 63 dated 03.03.2017, was registered in respect to an accident which took place on 03.03.2017 without mentioning any details of the three-wheeler or its driver. Learned counsel for the appellant states that the FIR was lodged against an unknown person and a three-wheeler, the registration

number of which was not revealed. It is only in the supplementary statement of the propounder of the FIR i.e. Kanchan-respondent no.2 that the detail regarding the vehicle and the name of the driver is mentioned. There is nothing on record to show how the propounder of the FIR No. 63 dated 03.03.2017 came to know about the identity of the driver or the vehicle. He relies upon the decision of the **Surender Singh and another Vs. Prem Singh and others 2015(2) R.C.R (Civil) 67**. It is thus prayed that the impugned award dated 05.02.2018 be set aside and the claim petition be dismissed.

I have heard learned counsel for the appellant and have gone through the file as well as the documents, which are produced in Court today.

There is no dispute that the FIR in this case was registered on the statement of respondent no. 2-Kanchan, daughter of the deceased. It is mentioned in the FIR that the Aactiva scooter on which she alongwith her parents was travelling was hit from the behind by a three-wheeler. Registration number of the three-wheeler or the details of the driver have not been mentioned. Supplementary statement of the propounder of the FIR was recorded on 15.04.2017, wherein the details of the offending three-wheeler and the name of its driver were revealed.

I do not find any merit in the argument raised by learned counsel for the appellant. There is no denial of the fact that the FIR in question indeed was lodged. PW-2-Kanchan, has specifically deposed regarding the incident in question as well as the lodging of the FIR. She has specifically denied the suggestion of false implication of the respondent-

driver in the accident. PW-5-HC Gurbachan Singh, deposed that he investigated FIR No. 63 dated 03.03.2017 and final report under Section 173 Cr.P.C., (Ex.PW5/1) was registered against the accused-driver after completing the investigation of the case. PW-5, further stated that during investigation, an identification parade was conducted on 17.04.2017. Suggestion that accused was falsely implicated is specifically denied. Respondent-driver did not even step into the witness box in this case. He was admittedly facing trial in the criminal proceedings. There is nothing on record to indicate the false implication of the three-wheeler or any kind of collusion between the claimants and any other person. There is no allegation much less proof that the police authorities in connivance with the claimants have lodged a false FIR or the police authorities have presented an incorrect challan/final report under Section 173 Cr.P.C., against the driver, only because of the alleged collusion between the parties. There is nothing on record to reflect that the respondent-driver protested against any false implication. Charge sheet under Sections 279, 304-A IPC, was duly framed against the accused-driver on 09.06.2017, who is facing trial. Copy of the charge sheet is on record as Ex.P-1.

Learned tribunal in the abovesaid factual matrix has rightly held that the accident in question in which Bhagat Singh lost his life was indeed caused due to rash and negligent driving of the three-wheeler in question by respondent-Sucha Singh. There is indeed nothing on record to indicate that the present was a case of hit and run as projected. There is no evidence on record to indicate that the claimants have given incorrect details of the offending three-wheeler or its driver. Claimants have successfully proved

the factum of the rash and negligent act of the respondent-driver on a preponderance of probabilities.

In ***Surender Singh's*** case (Supra), the learned tribunal had dismissed the claim petition filed by the claimants therein on the ground that the appellant himself was working in the police department and had manoeuvred the circumstances. Appeal filed by the claimants in the said case, before this Court was thus dismissed. In the present case, there is no evidence to show that the claimants or the deceased have any connection with the said department. Thus, the decision relied upon by learned counsel for the appellant in ***Surender Singh's*** case (Supra), is not applicable in the facts and circumstances of the case.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned award dated 05.02.2018 passed by the learned MACT, Panchkula, which calls for interference by this Court.

There is a delay of eight (08) days in filing of this appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing of this appeal has been rendered academic.

Appeal is accordingly dismissed with no order as to costs.

02.07.2018

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.