

In the High Court of Punjab and Haryana at Chandigarh

FAO No.5037 of 2018(O&M)

Date of Decision: 21.8.2018

Satwinder Singh

---Appellant

versus

Sita Devi and antoher

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Gaurav Sharma, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against award dated 20.3.2018 passed by the Motor Accidents Claims Tribunal, Sangrur (in short “the Tribunal”) whereby compensation has been awarded on account of death of Hem Raj in a motor vehicular accident that took place on 8.5.2016.

The instant appeal has been filed by driver of Tata Sumo/Tata Scorpio bearing No. PB-11W-2473, the alleged offending vehicle.

As per case set up by the claimant, on the fateful day of 8.5.2016 at about 2-00 p.m., Hem Raj (since deceased) alongwith Bir Chand his employee was going from Sangrur side to Banganwali via Sangrur-Dhuri Road on motor cycle bearing No. PB-13AP/4341. Hem Raj was driving the motor cycle while Bir Chand was on the pillion seat. When they reached near Sunrise Marriage Palace, in the revenue estate of village Akoi Sahib, Tata Sumo/Tata Scorpio bearing No. PB-11W- 2473 driven rashly and negligently came from back side of deceased Hem Raj. The

driver of Tata Sumo struck the vehicle in the motor cycle of Hem Raj and as a result, Hem Raj and Bir Chand were thrown on the road along with motor cycle. The driver of Sumo stopped his vehicle for a while but later fled away. The number of Tata Sumo was noted down by Bir Chand who took injured Hem Raj to Civil Hospital, Sangrur but Hem Raj was declared dead. FIR No. 62 dated 8.5.2016 was registered in Police Station, Sadar Sangrur at the behest of Bir Chand. The claimant prayed for grant of compensation being widow of deceased Hem Raj.

Counsel for the appellant has assailed findings of the Tribunal on issue No. 1 by making few submissions. It is argued that FIR Ex. C4 was registered at the behest of Bir Chand but in the FIR, registration particulars of the alleged offending vehicle have not been mentioned. In the FIR, it was got recorded by Bir Chand that Tata Sumo came from back side of the motor cycle and driver of Tata Sumo brought it ahead of the motor cycle without giving indication while being driven in a rash manner and turned towards left side and motor cycle struck against Tata Sumo. While appearing in the witness box, Bir Chand has changed his version viz-a-viz one recorded in the FIR and had stated that Tata Sumo struck against back of the motor cycle and caused the accident. It is argued with vehemence that there is a serious discrepancy in the case of the claimant with regard to manner of accident, therefore, testimony of Bir Chand is not worthy of reliance. In addition, it is argued that the appellant has filed an application for permission to lead additional evidence to place on record the documents Annexures A1 and A2 i.e. mechanical test report of the motor cycle and that of Tata Sumo. It is argued that as per mechanical test report of the motor cycle the back light and indicator were found 'OK' and the same

creates a doubt in the story propounded by the claimant that Tata Sumo struck the motor cycle from behind.

The second submission made by counsel is that if Bir Chand was present at the spot and knew about registration particulars of the vehicle, there was no reason for him not to give registration particulars in the first information report lodged on 8.5.2016. It is argued that Bir Chand has been introduced later being employee of Hem Raj. The last submission made by counsel is that income assessed by the Tribunal at the rate of Rs. 12,000/- per month is on higher side and accordingly compensation assessed by the Tribunal needs to be reduced as minimum wage at the relevant time was less than Rs. 7500/- per month.

I have heard counsel for the appellant, perused the paper book particularly the award and copies of documents made available by counsel during the course of hearing particularly statement of Bir Chand CW2 and Bhupinder Pal CW3 examined to substantiate plea of the claimant that accident took place due to rash and negligent driving of Tata Sumo in question.

Bir Chand tendered into evidence his duly sworn affidavit Ex. CW2/A by way of examination in chief and reiterated version of the claimant with regard to the manner in which the accident took place. The witness was cross examined at length but nothing tangible and fruitful has been brought forth in his cross examination to create slightest doubt with regard to his presence at the spot and having seen the occurrence. In cross examination of Bir Chand, he was not confronted with his previous statement recorded in the FIR. As per the settled position in law, FIR is not a substantive piece of evidence and the same can be used for the

purpose of contradiction or corroboration of facts. No explanation was sought from Bir Chand that if he happened to be present at the spot why he was not able to give particulars of the offending vehicle. In the given scenario, the appellant cannot derive any advantage to his contention by comparing the facts recorded in statement of Bir Chand before the Tribunal viz-a-viz facts mentioned in the FIR.

Statement of Bir Chand is duly corroborated by Bhupinder Pal, another witness to the occurrence examined by the claimant. On the contrary, Satwinder Singh driver of the alleged offending vehicle appeared in the witness box and has deposed that no accident has ever taken place with the vehicle in question and the same has been falsely involved. There is nothing on record suggestive of the fact that either Bir Chand or the claimant had any animosity against Satwinder Singh or registered owner of the vehicle to get the vehicle falsely indicted in civil and criminal proceedings and that too in the given circumstances that the vehicle is not insured. Indisputably, on due investigation of the FIR lodged at the behest of Bir Chand, report under Section 173 of the Code of Criminal Procedure was submitted in the court and Satwinder Singh was put to trial. In this view of the matter, I find myself unable to accept submissions of counsel for the appellant that testimonies of the witnesses examined by the claimant to prove the accident are not sufficient to discharge onus of issue No. 1 or the Tribunal has committed an error much less illegality by relying upon testimonies of Bir Chand and Bhupinder Pal to uphold plea of the claimant.

Counsel for the appellant has sought to rely upon mechanical test report Annexure A-1 of the motor cycle driven by deceased Hem Raj.

The said mechanical report is sought to be produced by way of additional evidence by invoking Order 41 Rule 27 of the Code of Civil Procedure.

The mechanical test report is not per se admissible in evidence. No prayer has been made for examination of the person who prepared the report. No reasons are forthcoming as to why the appellant did not examine a witness to prove reports Annexures A1 and A2. In this view of the matter, the appellant cannot derive any advantage to his contention from the reports Annexures A1 and A2.

This brings the court to quantum of compensation assessed by the Tribunal. It has been consistently stated by the witnesses including Sita Devi widow of the deceased that Hem Raj was running *atta chakki* and earning Rs. 20,000/- per month. Taking a clue from minimum wage available at the relevant time coupled with that the deceased was running *atta chakki*, I do not find fault qua income assessed at Rs. 12,000/- per month. I have gone through the award but unable to find that the Tribunal has faulted in any manner in assessing loss of dependency as well as compensation under conventional heads making total sum to the tune of Rs. 12,31,600/-, payable with interest @ 7% per annum. In this view of the matter, I do not find any reason to interfere in findings of the Tribunal, based upon detailed and correct appreciation of the materials on record.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

21.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No