

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

F.A.O. No.6285 of 2018(O&M)

Date of Decision: 30.11.2018

Parveen Kumar

.....Appellant.

Versus

Gurpreet Singh and another

..... Respondents.

AND

F.A.O. No. 6287 of 2018(O&M)

Parveen Kumar

.....Appellant.

Versus

Surjeet Kaur and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Supriya Garg, Advocate
for the appellant(s).

LISA GILL, J.

This order shall dispose of FAO No. 6285 of 2018 and FAO No. 6287 of 2018 as both the appeals arise from the same accident which took place on 08.04.2016.

Both the appeals have been filed by the owner of the offending vehicle i.e., truck bearing registration no. PB-29-K-9397 challenging the liability imposed upon him by the learned Motor Accident Claims Tribunal, Bathinda (for short 'Tribunal'). For the sake of convenience, facts are being extracted from FAO No. 6285 of 2018.

MACT No. 18 dated 04.05.2017, was filed by respondent no.1- Gurpreet Singh, claiming compensation on account of damage caused to his Alto car bearing registration no. PB-22-B-9946.

MACT No. 116 dated 01.12.2016, was filed by respondents

no.1 to 3 seeking compensation on account of death of Harnek Singh son of Dhanwant Singh in a motor vehicle accident which took place on 08.04.2016. Both the claim petitions were decided by separate awards of even date i.e. 01.09.2018.

Brief facts which are common to both the appeals are that Harnek Singh (deceased), Surjeet Kaur @ Sarjeet Kaur, Kuldeep Kaur, Sandeep Singh and his wife Sarabhjit Kaur on 08.04.2016 went to Baba Kala Mahar, near Kotakpura, Sikhan Wala Bir in the Alto Car bearing registration no. PB-22-B-9946, driven by Sandeep Singh. When they were returning to Bathinda after paying obeisance at the shrine and they reached at village Varra Bhaika, near Water Works, at about 8.15.a.m., a truck bearing registration no. PB-29-K-9397 loaded with stones came by and sought to overtake the Alto car. Sandeep Singh slowed down the speed of his car. After overtaking the Alto car, the said truck in a rash and negligent manner suddenly stopped ahead of his car by applying brakes. As a result thereof, driver side of his car was damaged. Sandeep Singh suffered injury on his left arm, left eye, below the nose and his father who was travelling on the adjoining seat suffered serious and fatal injuries on chest, head, neck and other internal injuries. Sandeep Singh's mother, sister and wife, sitting on the back seat also suffered injuries. Harnek Singh was brought to Max Hospital, Bathinda, where he remained under treatment till 11.04.2016. The doctors while opining that chances of survival of Harnek Singh are bleak, discharged him on 11.04.2016 and within 15 minutes of discharge, Harnek Singh succumbed to the injuries received by him in the said accident. Alto Car in question was also badly damaged in the accident. FIR No. 29 dated

09.04.2016, under Sections 279, 337, 338, 427 IPC, was registered, in this respect. Later on Section 304-A IPC was added vide dairy No. 32 dated 25.08.2016.

Learned Tribunal concluded that the accident in question was caused due to rash and negligent driving of the offending vehicle by respondent-Sonu. Learned tribunal on considering the facts and circumstances of the case awarded a total sum of ₹60,000/- as compensation in MACT no. 18 dated 04.05.2017, on account of the damage caused to Alto car bearing registration no. PB-22-B-9946 and ₹11,32,000/- as compensation in MACT No. 116 dated 01.12.2016, on account of death of Harnek Singh. Offending vehicle in this case was admittedly not insured.

Aggrieved therefrom both these appeals have been preferred by the owner of the vehicle i.e. truck bearing registration no. PB-29-K-9397.

Learned counsel for the appellant(s) vehemently argues that the evidence on record is woefully insufficient to prove the involvement of the offending truck in the accident which took place on 08.04.2016. FIR in this case was registered on the next day after unexplained delay.

It is submitted that the accident in question did not take place with the offending vehicle. Furthermore, even if it is accepted that the accident in question took place with the offending truck, it was Sandeep Singh, driving the Alto Car, who was at fault. It is contended that the photographs on record and the nature of damage to the Alto car indicates that it is Sandeep Singh who is at fault. Furthermore, the learned tribunal has wrongly observed that RW-1-Sonu, driver of the truck has admitted the accident in question. In-fact RW-1 has specifically denied the same.

Testimony of RW-2 i.e. the owner (present appellant) has been totally ignored by the learned tribunal. The accident in question was specifically denied even in the written statement filed by the owner and driver of the truck. Therefore, liability has been wrongly fastened upon the owner-appellant.

Learned counsel does not raise any challenge to the compensation awarded on account of death of Harnek Singh. However, she submits that compensation awarded towards the damaged Alto car is excessive. It is thus prayed that both these appeals be allowed and appellant-owner of the truck in question be absolved of its liability.

I have heard learned counsel for the appellant(s) and have also perused the photocopy of the record which was requisitioned.

Doubtlessly, RW-1-Sonu, driver of the offending truck has not admitted the accident in question in so many words. His testimony is however, not worthy of any credence. This is so for the reason that in his cross-examination, RW-1 even denied registration of the criminal case against him or his being released on bail. However, in his affidavit Ex.RW1/A, RW-1 states that he was falsely involved in the FIR in question. RW-2-Parveen Kumar, owner of the offending truck admits that the truck in question was taken on Sapurdari by him. Registration of the FIR was admitted by him as well as the fact that bail was granted to the truck driver. In the very next breath, RW-2, states that no case is pending in any Court against the driver of the truck. The appellant-owner of the present truck, has admitted himself to be a contractor by profession owning two trucks. Thereafter, corrected by saying that one of the truck belongs to his brother.

None of the said witnesses can be relied upon in the facts and circumstances of the case.

A perusal of the record reveals that FIR No. 29 (Ex. C11) was registered on the very next day i.e. 09.04.2016. I have perused the vernacular of FIR No. 29. Sandeep Singh (CW-2), propounder of the FIR specifically stated that when they were returning to their house after paying obeisance at the shrine, the offending truck loaded with stones, at about 08.15.a.m., overtook his car. He slowed down his car, but the truck driver in a negligent manner suddenly applied brakes in front of him. Consequently, his car struck against the driver side of the truck. Injuries were caused to him as well as his father-Harnek Singh, who ultimately succumbed to his injuries. Number of the offending truck was specifically mentioned in the FIR, though name of the driver for obvious reasons was not mentioned. It is narrated in the police proceedings that information was received from the Police Control Room, Bathinda on 08.04.2016 in respect to Harnek Singh son of Dhanwant Singh, Surjit Kaur, his wife being admitted in Max Hospital, Bahinda pursuant to a motor vehicle accident. Both the above mentioned injured were declared to be unfit for recording their statement by the doctor when the police official went to the hospital, on receipt of this information, on 08.04.2016. ASI Hari Krishan went to Max Hospital, Bathinda on the next day i.e. 09.04.2016 where Sandeep Singh, son of the said injured met him and Sandeep's statement was recorded, on the basis of which the FIR was registered. Therefore, it cannot be said that there is any delay in lodging of the FIR, which detracts from the version put-forth by the claimants. After investigation, final report/challan under Section 173 Cr.P.C., was presented

against the driver and the same is on record as Ex.C-20.

Argument raised by learned counsel for the appellant(s) that the photographs on record do not prove the accident in question, bears no merit. I have perused the photographs Ex.C-9 to Ex.C-12. The said photographs clearly corroborate the version as set-forth by CW-2-Sandeep Singh. As per the FIR, the truck-driver over took his car and applied brakes in a negligent manner in front of him. Alto Car driven by Sandeep Singh is stated to have struck against the driver side of the said truck. The said photographs reveal damage on the left-side of the Alto car thereby corroborating the events as narrated in the FIR. Therefore, I do not find any illegality or infirmity in the finding returned by the learned tribunal to the effect that the accident in question was indeed caused due to rash and negligent driving of the offending vehicle by its driver-respondent-Sonu. Therefore, the claimants have indeed succeeded in proving the accident in question having been caused by the rash and negligent act on the part of the driver of the offending truck on the touchstone of preponderance of probabilities.

In respect to the argument raised regarding the compensation on account of damage to the Alto car, the same is devoid of any merit, as well. Cogent and clear evidence has been led by the claimant in the shape of the testimony of CW-3-Raj Pal Singhal, Insurance Surveyor and Loss Assessor, Valuer & Investigator, who proved his survey report Ex.C-4 dated 25.01.2017. As per the said report, loss to the tune of ₹85,000/- was assessed. Photographs of the damaged Alto car were placed on record. CW-3, specifically deposed that damage of the Alto car was inspected by him on 17.01.2017.

Contention on behalf of the appellant that the surveyor has given his report in the year 2017, whereas the accident took place in the year 2016, is of no avail. There is nothing on record to show that the said report is incorrect or fraudulent. Moreover, learned tribunal has not accepted the report in *toto* and has assessed the loss at ₹60,000/- and not ₹85,000/-.

At this stage, learned counsel for the appellant submits that limited relief to the extent that the appellant be permitted to deposit interest at the rate of 7.5% itself and not 10% after 45 days of receipt of copy of the award as directed by the learned tribunal. It is submitted that the appellant undertakes to deposit the entire amount of compensation in both the cases within two (02) months from the date of receipt of certified copy of the judgement in these appeals.

No other argument has been raised.

Accordingly, both the appeals are dismissed without any order as to costs. However, it is directed that in case the appellant deposits the entire awarded amount within (02) months from the date of receipt of certified copy of this decision, he shall be liable to pay interest at the rate of 7.5%.

In case, the amount of compensation is not deposited within two(02) months as above, direction of the learned tribunal in the impugned award dated 01.09.2018 in respect to award of interest, shall automatically come into operation.

30.11.2018
s.khan

[LISA GILL]
Judge

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