

FAO- 1895 of 2007(O&M)

PARAMJIT KAUR SAINI
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In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 25.3.2019

FAO- 1895 of 2007(O&M)

Bhagwati

---Appellant

versus

United India Insurance Company Limited and others

---Respondents

FAO- 1896 of 2007(O&M)

Santosh

---Appellant

versus

United India Insurance Company Limited and others

---Respondents

FAO- 2143 of 2007(O&M)

Satbir Singh

---Appellant

versus

United India Insurance Company Limited and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Kulvir Narwal, Advocate
for the appellant in FAO- 1895 and 1896 of 2007
Ms. J.J.Kaur, Advocate, and
Mr. Ish Puneet Singh, Advocate
for the appellant in FAO-2143 of 2207
Ms. Vandana Malhotra, Advocate
for the insurance company
Mr. B.R.Gupta, Advocate
for respondent No. 3 in all the appeals

Rekha Mittal, J.

This order will dispose of FAO Nos. 1895, 1896 and 2143 of

2007 as these have emerged out of common award dated 8.2.2007 passed by the Motor Accidents Claims Tribunal, Jhajjar (in short “the Tribunal”) whereby applications filed by the injured (claimants) for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (in short “the Act”) in respect of injuries sustained by them in a motor vehicular accident that took place on 25.9.2004 were dismissed in view of findings on issue No. 1-A. For facility of reference, facts are taken from FAO No. 1895 of 2007.

Counsel for the appellant would argue that the Tribunal has dismissed the claim application primarily on the ground that in the FIR lodged at the behest of Satbir Singh, one of the injured-victims, there is no reference to registration particulars or name etc. of driver of alleged offending tractor No. HR-36C-3432. It is argued that on the basis of FIR lodged by Satbir Singh, investigation was conducted by the police and challan was presented in the court whereby Naveen, driver of aforesaid tractor was put to trial but the Tribunal did not bother to examine the investigating officer even if it was not satisfied with statements of injured-victims to prove the accident being the result of rash and negligent driving of offending vehicle by Naveen. It is prayed that award passed by the Tribunal may be set aside and the Tribunal may be directed to decide the case afresh after examining the investigating officer, by invoking Section 165 of the Evidence Act. In support of his contention, he has relied upon judgment of the Delhi High court **Meera Devi and others vs. Jitender and others 2016(3) ACC 654.**

Counsel representing the respondents, on the contrary, would argue that it was for the claimants to discharge onus of issue No. 1-A but if

she did not bother to examine the investigating officer to support her contention, she can not be heard to say that matter pertaining to the year 2004 should be re-opened for almost de novo trial.

Be that as it may, there is no denial that legislation in its wisdom has imposed an obligation upon the Tribunal to assess just and reasonable compensation. Under Section 165 of the Evidence Act, the court is empowered with plenary powers to put any question to any witness or party and arm the Judge with the most extensive power possible for the purpose of getting at the truth. The object of trial is to ascertain truth and then do justice on the basis of truth and the Judge is required to elicit a fact wherever interest of truth and justice would suffer, if he did not.

The Delhi High court in **Ram Rati vs. Devender Singh 2013 (8) RCR (Civil) 294** has held that the claim Tribunal has not conducted the inquiry in terms of the principles laid down in **Mayur Arora vs. Amit 2011 (1) TAC 878** and remanded the matter to the Claims Tribunal for a fresh enquiry. In para 16 of the judgment in **Meera Devi and others' case (supra)**, it has been held that the Claims Tribunal has not conducted any inquiry into the matter as contemplated in the Act. If the Claims Tribunal has any doubt about veracity of PW2, the Claims Tribunal should have examined the investigating officer under Section 165 of the Evidence Act. As a consequence, the impugned award was set aside and the matter was remitted to the Claims Tribunal for conducting a fresh enquiry under Sections 168 and 169 of the Act.

Counsel for the respondents have failed to cite any judgment contrary to what has been held in **Meera Devi and others' case (supra)**. In view of the above, I find merit in contention of the appellants that the matter

needs remittance to the Tribunal for decision of the case afresh, after examining investigating officer of the case in order to know the basis of connecting the offending vehicle with the accident in question.

In view of what has been discussed hereinbefore, the appeals are allowed, the impugned award is set aside and the matter is remitted to the Tribunal for decision of the case afresh, on the basis of materials already on record and additional evidence in the shape of testimony of investigating officer in the criminal case and evidence in rebuttal, if any, to be produced by the respondents before the Tribunal. The parties through their counsel are directed to appear before the Tribunal on 24.4.2019. The Tribunal shall decide all the issues afresh but would complete adjudication within a period of three months of the parties putting in appearance. The respondents including the insurance company would be at liberty to raise a plea that the claimants cannot be allowed interest for a particular period in case their plea for grant of compensation is otherwise allowed.

Disposed of.

(Rekha Mittal)
Judge

25.3.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No