

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.4500 of 2009

Date of Decision: 23.01.2019

Rameshwar Dass

.....Appellant

Vs.

Raj Dulari and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE DR. RAVI RANJAN

Present:- Mr.Sandeep Moudgil, Advocate, for the appellant.

Mr.Deepak Arora, Advocate, for respondent No.4.

Mr.Ashwani Talwar, Advocate, for the respondent No.5.

DR. RAVI RANJAN, J.

This appeal has been preferred by owner-cum-driver of the offending tractor challenging the judgment and Award dated 23.07.2009 passed by the Motor Accident Claims Tribunal, Patiala.

At the time of hearing, counsel for the appellant has raised the issue that, since it is borne out from claim petition itself that accident took place due to rash and negligent driving of both the respondents No.1 and respondent No.3, in such a situation, the appellant could not have been fastened with the liability to pay the compensation amount sparing the driver/owner or the insurer of the canter which was also involved in the said accident.

In the claim petition, it has been averred by the claimant that on 15/16.06.2004 at about 8:00 P.M. the deceased i.e. Varinder Singh along with other worshipers after unloading the goods of *Langer*, were returning to village Haibatpur from village Azizpur in the Canter No.HR-06/4406 which was being driven in rash and negligent manner. Suddenly a tractor bearing

registration No.PB-39-3684 came towards the Patrol Pump and without blowing any horn and blinking headlights which was being driven by respondent No.1 in a very rash and negligent manner. Due to coming of the Tractor on the road without blinking indicator light or giving any signal or horn, the respondent No.3 could not control his truck and collided with the tractor driven by respondent No.1 i.e. the appellant due to which deceased along with other occupants of the truck received injuries on various parts and their body as the canter turned turtle. The injured Varinder Singh was taken to hospital at Chandigarh where remained under treatment for about 6 to 7 hours but died at about 1:20 am. Hence the claim petition was filed.

Much emphasis has been given by the learned counsel for the appellant on this part of the claim petition that as it is also stated in the claim petition that the truck was also being driven in a rash and negligent manner. However, it has been stated in the claim petition that the tractor suddenly, without blowing horn or blinking red light or etc. came in front of the canter and this was the reason of collision between the vehicles. It is nowhere stated that due to what reason, the claimant came under the impression that the canter was also being driven in a rash and negligent manner.

Both the driver and owner of the tractor as well as driver-cum-owner of the canter have filed their respective written statements shifting their responsibility upon the shoulders of one and another. Respondent no.4 has filed separate written statement. The Tribunal after considering the pleading of parties framing following issues:

1. Whether deceased Varinder Singh died due to rash and negligent driving of respondent No.3 by driving the offending vehicle No.HR-06-4406 as alleged on 16.06.2004 at 8 P.M? OPA.

2. Whether offending vehicle tractor No.PB-39-3684 was driven without blowing any horn and was driven by respondent No.1 in a rash and negligent manner as alleged? OPA.
3. Whether the claimants are entitled to compensation, If so its quantum and from whom? OPA.
4. Whether the canter in which the deceased was travelling was coming in a fast speed trying to overtake the tractor of respondent No.1 due to overtaking of Maruti car as alleged? OPR-1.
5. Whether the driver of the tractor is the author of the accident as alleged? OPR-3.
6. Whether the claim petition is not maintainable as alleged in para No.1 and 2 of the preliminary objection? OPR-4.
7. Whether the driver of the truck/canter was not having valid and effective driving licence, it so its effect? OPR-4
8. Whether the truck/canter was not having valid RC and fitness certificate as alleged? OPR-4.
9. Whether the claimants have no locus standi and cause of action against respondent No.4? OPR-4.
10. Whether the claim petition is not maintainable as no accident has been attributed to the driver of the truck/canter? OPR-4.
11. Relief.

Issues No.1,2,4,5,6,9 and 10 being interconnected have been considered together by the Tribunal. PW-1 claimant Raj Dulari, PW-2 Gurmit Singh and PW-3 Sukhdev Singh who is eye-witness and was one of the persons who was travelling on the canter, were examined as witnesses on behalf of the claimants. The Tribunal has come to the conclusion that accident was caused due to rash and negligent driving of Tractor for which FIR was also lodged against respondent No.1. At the time of hearing, it appears that learned counsel for appellant/respondent No.1 had placed strong

reliance by Ex.R-3 i.e. Award passed by Motor Accident Claims Tribunal, Ambala, in a claim petition arising out of the same accident. It was submitted that the MACT, Ambala, has held respondent No.2 i.e. the driver of canter was liable for the accident. However, Tribunal has recorded that, after going through the aforesaid Award (Ex.R-3), it appears that the claim petition was filed under Section 163A of the Motor Vehicles Act and as such, the matter was to be decided only on no fault theory, whereas, the present case was filed under Section 166 of the Motor Vehicles Act. The scope of Section 166 is entirely different. In such proceedings, finding of rash and negligent driving causing accident has to be recorded on the basis of materials available on record. The Tribunal has opined that the testimony of Sukhdev Singh, who is the eye-witness of the accident and also death certificate Ex.C3 and FIR Ex.C4 and the post mortem report Ex.C5 coupled with the testimony of R.W.1 Rameshwar Dass, respondent No.1, who categorically admitted that he has been *challaned* by the police in the aforesaid FIR and is facing trial before the Court of Judicial Magistrate Ist Class, Rajpura, it has been held that accident has occurred due to rash and negligent driving of respondent No.1 due to which the deceased Varinder Singh has lost his valuable life.

I am of the considered opinion that no good ground could be raised by the learned counsel for the appellant warranting interference in such finding recorded by the Tribunal. Of course, in the claim petition a bit of confusion has been created by the claimant by also saying that both the vehicles were being driven in negligent manner but upon the description which has been given in the claim petition, it definitely appears that the

without blinking the headlights, on the road on which the canter was already plying and that has caused accident for which only the Driver of the tractor can be held responsible. This story also stands established by the testimony of PW-3 Sukhdev Singh who was travelling in the canter itself as he has clearly stated that it was the negligence of the driver of the tractor which has caused the accident.

By way of last indulgence, it has been urged on behalf of the appellant that in the criminal case he has been acquitted of the charges. However, in a criminal trial prosecution has to establish its case beyond all reasonable doubts and even on one doubt being there, the case has to decide in favour of accused person. Such test is not required in the proceedings under Section 166 of the Motor Vehicles Act. It is well established that such type of summary proceedings, stringent proof is not required to be given by the claimant.

I am of the considered opinion that, on the basis of materials which were available before the Tribunal, it has come to the just and proper finding which is not required to be altered, modified or interfered.

In the result, this appeal has to fail being devoid of any merit, and, accordingly, the same is dismissed.

It is made clear that no other ground has been raised on behalf of the parties at the time of hearing of this appeal save and except those which have been discussed as above.

(DR.RAVI RANJAN)
JUDGE

23.01.2019

anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No