

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

FAO-6276-2011(O&M)

Date of decision:-4.2.2019

Nanak Chand and another

...Appellants

Versus

Prem Shanker Gupta and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.M.K. Bhatnagar, Advocate
for the appellants.

Respondent No.1 proceeded ex-parte
vide order dated 15.1.2015.

None for respondent No.2.

Mr.M.K.Garg and Mr.Paras Sharma, Advocates
for respondent No.3.

Mr.Abhishek Goyal, Advocate for
Mr.Pardeep Goyal, Advocate for respondent No.4.

H.S. MADAAN, J.

One Jaswinder Singh son of Sh.Nanak Chand and
Smt.Swaran Kaur, both petitioners/claimants, aged about 29 years,
resident of village Mussapur, Tehsil Anandpur Sahib, District Ropar
working as Teacher in Government School, Azampur stated to be getting
Rs.13,305/- as monthly salary had suffered multiple and grievous injuries
in a road side accident, which took place on 30.5.2009 at about 8:30 p.m.
in the area of village Musapur and he had succumbed to those injuries on

that very date.

The parents of deceased, namely, Sh.Nanak Chand aged about 50 years – father and Smt.Swaran Kaur aged about 46 years – mother had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Prem Shanker Gupta, owner and driver of motorcycle bearing registration No.PB-12L-2455, National Insurance Co. Ltd., Ropar – insurer of the said motorcycle as well as Ranjit Singh – owner and driver of motorcycle bearing registration No.PB-16C-3930 and New India Assurance Co. Ltd., Mehatpur, District Una – insurer of the said vehicle claiming compensation to the tune of Rs.30 lacs on account of death of Jaswinder Singh in the mishap.

According to the claimants, on 30.5.2009 at about 8:30 p.m., the deceased was coming from Anandpur Sahib for going to his village Musapur on motorcycle bearing registration No.PB-16C-3930, which was being driven by respondent No.3 – Ranjit Singh at a high speed and in rash and negligent manner; that when the motorcycle was in the area of village Musapur, then all of a sudden another motorcycle bearing registration No.PB-12L-2455, which was being driven by respondent No.1 – Prem Shanker Gupta, came from behind and while wrongly overtaking, the handles of both the motorcycles struck against each other, resultantly, Ranjit Singh lost control over the motorcycle bearing registration No.PB-16C-3930 and the motorcycle hit against a *KIKAR* tree; that due to the impact, the deceased fell down on the road and suffered multiple serious and grievous injuries on head and other parts of the body; that he was taken to Singhpur Hospital, where he was declared

dead; the post-mortem examination was conducted on his dead body at Civil Hospital, Anandpur Sahib; that an amount of Rs.50,000/- was spent on his last rites.

Notice of the claim petition was given to respondents, who appeared and filed separate written statements contesting the claim petition.

In the written statement submitted on behalf of respondent No.1, he denied most of the assertions for want of knowledge stating that no accident had ever taken place with his motorcycle and it had been falsely involved in this case to get illegal compensation. According to such respondent, as a matter of fact on 30.5.2009 at about 8:30 p.m., such respondent was coming from Anandpur Sahib side and no accident took place with his motorcycle; that the claimants in connivance with local police had wrongly involved motorcycle of such respondent and the respondent in this case just to get compensation.

In the written statement submitted on behalf of respondent No.2 – insurance company, it had taken up preliminary objections that owner of motorcycle bearing registration No.PB-12L-2455 did not inform the answering respondent regarding the accident immediately thereof; that the driver of the motorcycle in question was not holding a valid and effective driving licence issued by the competent authority at the time of alleged accident and the vehicle was handed over to the alleged driver by the insured having full knowledge of that; that the vehicle was being driven in violation of law as well as terms and conditions of the policy, which was within the knowledge of the alleged insured, therefore, the

answering respondent – insurance company is absolved of its liability to indemnify the respondent No.1; that the claimants have filed a petition in collusion with respondent No.1; as a matter of fact no accident had taken place with motorcycle bearing registration No.PB-12L-2455; that in DDR No.4 dated 31.5.2009, which was recorded on the basis of statement of claimant Nanak Chand, there is no mention of motorcycle bearing registration No.PB-12L-2455 and its driver, which goes to show that such motorcycle has been falsely involved in this case to get wrongful compensation from the answering respondent. On merits, the pleas taken in the preliminary objections were reiterated.

In the written statement filed by respondent No.3, he had taken up preliminary objection to the effect that the claimants have no locus standi to file the present claim petition and they are not entitled to get any compensation from the answering respondent as the claim petition is based on wrong facts. On merits, it is contended that the accident took place due to sole negligence of the deceased, who was driving the motorcycle bearing registration No.PB-16C-3930 at the time of accident; that he had lost balance, resultantly motorcycle struck against the tree on the road side; that the deceased and answering respondent fell down; that the deceased Jaswinder Singh died at the spot, however answering respondent, who was pillion rider suffered injuries; that the motorcycle bearing registration No.PB-12L-2455 was not involved in the accident.

In the written statement submitted on behalf of respondent No.4 – insurance company, it took up preliminary objections to the effect that owner of motorcycle bearing registration No.PB-16C-3930 did not

inform the answering respondent regarding the accident immediately thereafter; that the driver of the vehicle was not having a valid and effective driving licence, which was within knowledge of the insured; the terms and conditions of the policy were violated, absolving the answering respondent of its liability to indemnify the insured; that a false story has been concocted to get compensation, which is different from the version given in the DDR etc. On merits, the material assertions in the claim petition were denied, whereas pleas taken in the preliminary objections were reiterated.

In the end, all the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether death of Jaswinder Singh took place in a road accident on 30.5.2009 at about 8:30 p.m. in the area of village Mussapur involving motorcycle No.PB-12L-2455 and motorcycle No.PB-16C-3930 driven rashly and negligently by respondents No.1 and 3 respectively?OPP.
2. If issue No.1 is proved whether claimants being legal heirs of deceased entitled to get compensation? If so, to what amount and from whom? OPP.
3. Whether respondents No.1 and 3 drivers were not holding valid and effective driving licenses at the time of alleged accident? If so its effect? OPR.
4. Whether there is collusion between claimants and respondents

NO.1 and 3? OPR.

5. Relief.

Both the parties led evidence in support of their respective claims.

In order to prove their case, the petitioner/claimant No.1 – Nanak Chand had got his statement recorded as PW1. The petitioners further examined Kashmir Singh as PW2 and Bakshish Singh as PW3.

On the other hand, the respondents examined Ranjit Singh as RW1, HC Lekh Raj as RW2 and HC Chuhan Singh as RW3(wrongly written as RW2).

After hearing arguments, the Tribunal decided issues No.1 and 2 against the claimants and resultantly dismissed the claim petition.

This award left the petitioners/claimants aggrieved and they have preferred an appeal against the said award, notice of which was given to the respondents.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the appeal.

The Tribunal considering the facts and circumstances of the case and evidence brought before it had come to a specific conclusion while deciding issue No.1 against the claimants and in favour of the respondents holding that the motorcycle driven by deceased Jaswinder Singh slipped abruptly due to which he sustained injuries and later on succumbed to the same and there was no rashness and negligence on the part of respondents No.1 and 3 at all. This conclusion is mainly for the following reasons:

- (i) PW1 Nanak Chand was not present at the time of accident and he was disclosed about the accident by Kashmir Singh PW2;
- (ii) PW1 Nanak Chand not filing any application to the police though he admitted having visited Police Station Nurpur Bedi.
- (iii) RW1 Ranjit Singh owner of ill-fated motorcycle No.PB-16C-3930 stating that the motorcycle was being driven by Jaswinder Singh at the time of accident and due to uneven road, Jaswinder Singh lost balance of motorcycle, resultantly it struck against Tahli tree on the road side, as such, both the riders had fallen down on the ground and suffered injuries; that they were removed to hospital, Jaswinder Singh succumbed to the injuries, though Ranjit Singh was referred to PGI, Chandigarh.
- (iv) Statement of alleged eye-witness Kashmir Singh PW2 being in contradiction with statement of RW1 Ranjit Singh qua the manner and taking place of accident. The presence at the spot of RW1 Ranjit Singh was found to be established, whereas it was not so as regards PW2 Kashmir Singh. (Since his deposition was self-contradictory as detailed in the discussion by MACT).
- (v) Delayed lodging of DDR by claimant Nanak Chand inasmuch as it was got recorded on the next day of the accident at 8:30 a.m.
- (vi) Statement of PW2 Kashmir Singh that he had visited police station after 6-7 days of accident being not believable.
- (vii) Joint statement of Gurchain Singh, Jiwan Singh, Balbir Singh, Baldev Singh, Avtar Singh, Tek Chand, Kuldeep Singh, Ram Singh, Kamal Singh and Thakur Singh recorded in the hospital by

the police and only then post-mortem of dead body allowed. In joint statement they had stated that the accident had taken place due to slipping of motorcycle No.PB-16C-3930.

(viii) There being non mentioning of accident having taken place on account of rash and negligent driving of motorcycle No.PB-12L-2455 either in the joint statement of Gurchain Singh and others Ex.R7, DDR got recorded by Nanak Chand Ex.R4 or statement of Nanak Chand Ex.R6. Rather those documents showing that the motorcycle owned by respondent No.3 had slipped abruptly resulting in Jaswinder Singh suffering injuries to which he had succumbed.

(ix) Involvement of motorcycle No. PB-12L-2455 owned and driven by respondent No.3 being not established.

(x) Presence at the spot of PW3 Bakshish Singh at the relevant time not established, rather he was found to have reached the spot after 20 minutes of the accident.

Under the circumstances, I do not find any illegality of infirmity in the award passed by the Tribunal. Rather the same is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

Finding no merit in the appeal, the same stands dismissed.

4.2.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No