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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No.2131 of 2013 (O&M)
Date of Decision: 08.01.2019

Darshan Kaur @ Mandeep Kaur and others

Appellants

Versus

Gurdial Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Manpreet Singh, Advocate
for the appellants.

Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma, Advocate
for respondent No.1.

Mr. Amit Kundra, Advocate
for respondent No.2-Insurance Company.

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AVNEESH JHINGAN, J (Oral):

The award dated 23.02.2013 passed by the Motor Accident Claims Tribunal, Rupnagar has been assailed by the claimants seeking enhancement of compensation awarded under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] and also challenging the 50% contributory negligence attributed to the deceased.

The driver-cum-owner of truck bearing registration No. HP-24C-1439 [hereinafter referred to as 'offending vehicle'] and insurer (The New India Assurance Company Ltd.) of the offending vehicle have been arrayed as respondents No. 1 and 2 respectively in the appeal.

The brief facts necessary for adjudication of the present appeal are that on 13.11.2011, a motor vehicular accident took place involving motor cycle bearing registration No. PB-12H-6719 and the offending vehicle. In the said accident, Rana Singh lost his life.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to contributory negligence. The Tribunal calculated compensation as ₹12,03,000/-. As the contributory negligence was held to be 50:50, the claimants were held entitled to ₹6,01,500/-.

Learned counsel for the appellants contends that the Tribunal erred in relying upon the site-plan to show that the accident occurred on a four-lane road. His contention is that the accident occurred on Nalagarh Road near Tax Barrier. His further grievance is that only the site-plan was produced before the Tribunal but the Investigating Officer was not examined. He relies upon the deposition of Swaranjit Singh (PW-2). He argues that the amount awarded is on the lower side as no future prospects have been awarded and the amounts awarded under the conventional heads are on the lower side.

Learned counsel for the respondents argues that the accident occurred as the deceased was driving his motor cycle on the wrong side of the main road. The contention is that it is a four-lane road and in order to go towards Nalagarh Road, the deceased was coming on the wrong side to have a turn towards Nalagarh Road.

Heard learned counsel for the parties, perused the paper book and record.

From the perusal of the FIR and the statement of PW2, the exact spot of accident is not forthcoming. From the reading of the claim petition, it appears that the case of the claimants was that the accident took place near Tax Barrier. To decide the issue of negligence, the Tax Barrier has not been shown in the site-plan which was relied upon by the respondents before the Tribunal.

There is no dispute on the proposition that under Section 166 of the Act, the onus to prove rash and negligent driving is on the claimants. Apart from the pleadings in the claim petition and deposition of PW-2, there is nothing more on the record which could be relied upon to state that the accident occurred because of contributory negligence. The site plan was not substantiated by examining the Investigating Officer.

In view of above, it would be appropriate to remand the matter back to the Tribunal to decide the issue of rash and negligent driving of the offending vehicle afresh, after affording an opportunity to the parties to adduce evidence in support of their claim, if so desired. As the issue regarding the negligence of the offending vehicle itself is being remanded, the Tribunal shall also consider the issue regarding quantum of compensation to be awarded.

The parties are directed to appear before the Tribunal on 11.02.2019. The record be also sent back to the Tribunal.

[AVNEESH JHINGAN]
JUDGE

January 08th, 2019
pankaj baweja

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