

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

Date of decision:26.3.2019

1.

FAO No.3040 of 2013(O&M)

Baljeet Singh

.....Appellant

VERSUS

Rajender and others

.....Respondents

2.

FAO No.3041 of 2013(O&M)

Parmila and others

.....Appellants

VERSUS

Rajender and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. A.K. Gahlawat, Advocate for the appellant(s).

Mr. Paramjeet Singh, AAG, Haryana.

Mr. Sandeep Suri, Advocate for the insurance company.

REKHA MITTAL, J.

This order will dispose of FAO Nos.3040 and 3041 of 2013 as these have emerged out of the same award dated 28.09.2011 passed by the Motor Accidents Claims Tribunal, Bhiwani (in short 'the Tribunal') whereby applications for grant of compensation on account of death of Sher Singh and Hari Om in a motor vehicular accident that took place on 13.01.2009 have been dismissed, in view of findings on issue No.1. For facility of reference, facts are taken from FAO No.3040 of 2013.

As per case of the claimants, on the fateful day, Hari Om and Sher Singh were going from Madina to Mundhal in car No.HP-41-A-0444 driven by Hari Om and Sher Singh was sitting by his side. At about 3.30 PM, when they reached Balambha Mor towards Meham, a Haryana Roadways Bus No.HR46-A-9693 of Rohtak depot driven by Rajender - respondent No.1 came from front side and hit the car. The occupants of car sustained multiple injuries and died on the spot. The accident was witnessed by Baljeet and his son, relatives of Hari Om and Sher Singh, who followed the car.

Rajender – respondent No.1 filed the written statement and denied that the bus was driven rashly or in a zig-zag manner. It was also denied that Baljeet Singh was a witness to the accident. It was averred that respondent No.1 was under training on Haryana Roadways Bus under driver Rai Singh and the bus was driven at a moderate speed and it was driver of the car who was rash, drove the car at a high speed and responsible for the accident.

Respondents No.2 and 3 also filed reply, in line, with the pleadings of respondent No.1. The claim application is stated to be bad for non-joinder of necessary parties i.e. owner and insurer of car No.HP-41A-0444. It is pleaded that the deceased was coming from Rohtak side and talking on mobile phone. When Rai Singh and respondent No.1 saw him, they stopped the bus on left side and the car hit the stationary bus. The accident was reported in newspapers (Annexure R-1) and photograph of the bus and car is Annexure R-2. The insurance company filed reply and raised usual pleadings.

The Tribunal framed the issues reproduced in para 9 of the award. Issue No.1, relevant in the present context, reads as follows:-

"1. Whether the accident took place due to rash and negligent driving of bus bearing registration no.HR-46A-9693 by respondent No.1 Rajender, resulting into deaths of Sher Singh and Hari Om and damages to the car bearing registration No.HP-41A-0444 of petitioner Baljeet Singh, as alleged? OPP."

Counsel for the appellants has assailed findings of the Tribunal on issue No.1 with the submission that Baljeet, an eye-witness to the occurrence and author of FIR lodged against Rajender has duly proved case of the claimants that accident is the result of rash and negligent driving of offending bus by Rajender. It is further argued that on due investigation of FIR lodged with promptitude by Baljeet, Rajender was put to trial and the said fact also corroborates testimony of Baljeet that accident is the result of rash and negligent driving of offending bus because the driver brought the bus on wrong side of the road when two vehicles involved in the occurrence were running in opposite directions. It is further argued that the Tribunal has wrongly relied upon the photograph (Annexure R-2) available on the records of criminal case to hold that plea taken by Baljeet that bus had come on wrong side and hit the car stands falsified. It is argued that photograph (Annexure R-2) is a photocopy and has not been proved even in the criminal proceedings, therefore, reliance placed upon photograph (Annexure R-2) by the Tribunal in claim proceedings is absolutely misplaced, therefore, findings of the Tribunal on issue No.1 are liable to be set aside.

Counsel representing the respondents has supported findings of the Tribunal on issue No.1 with the submission that on a detailed consideration of the materials on record, the Tribunal has rightly negated plea of the appellants that Rajender is the author of accident or rashness and negligence in causing the accident can be attributed to him.

I have heard counsel for the parties, perused the paper-book and records.

Baljeet, the only witness examined by the claimants to discharge onus of issue No.1 is none else but father of deceased Hari Om and brother in law of deceased Sher Singh as sister of Baljeet is married to Sher Singh. Baljeet was examined in the case twice. For the first time, he tendered into evidence his affidavit dated 03.08.2010 Ex.PW1/A. In the said affidavit, Baljeet has deposed to the following effect;-

"1....When the car reached just had (sic) of village Balmbha More towards Meham a Haryana Roadways (Training) Bus No.HR-46A-9693 of Rohtak Depot being driven by its driver i.e. respondent No.1 in rash and negligent manner with a high speed came from the front side and caused accident by hitting straight into the car."

Nothing has been stated by Baljeet as to how the bus driver was rash or/and negligent or what was the speed of bus driven by him. When he was recalled for examination, he tendered into evidence his second affidavit attested on 17.05.2011 Ex.PW1/B. In para 2 of the affidavit, besides deposing about the bus being driven rashly, negligently and at a very high speed, he has made addition that after coming on wrong side, the bus struck straight against Indica car. In his cross examination on

03.08.2010, Baljeet had stated that their motorcycle was away and at a distance of two acres from the site of accident. Sandeep was driving the motorcycle and he was the pillion rider. In his cross examination conducted on 17.05.2011, he has changed his stance with regard to distance and stated that distance between their motorcycle and car was about 15/20 feet. He further stated that speed of Indica car was 100 Kms per hour. Still later, he has deposed to the following effect:-

"I had reached the site of accident after about two minutes. I had not noticed the bus coming from the opposite direction. In fact I had seen the bus after the accident in question."

On due consideration of statements of Baljeet recorded on different occasions in the same proceedings, it becomes a fact that Baljeet tried to make improvements.

The primary issue for consideration is whether Baljeet was actually following the car driven by his son Hari Om and an eye-witness to the occurrence or his testimony can be taken as sufficient to attribute rashness and negligence to respondent No.1 for the unfortunate occurrence in which Hari Om and Sher Singh succumbed to injuries.

Indisputably, the car driven by Hari Om is owned by Baljeet Singh. As per version of Baljeet Singh, Hari Om, Sher Singh, Sandeep and Baljeet had gone to Madina for some work and they were on their way back to Mundhal Khurd when the occurrence in question took place. There is no explanation by Baljeet Singh that if all of them had gone to Madina for some work why Baljeet Singh and Sandeep did not travel in Indica Car, admittedly, owned by Baljeet Singh. Sandeep another son of Baljeet Singh did not appear in the witness box to corroborate testimony of

Baljeet Singh that he was driver of motorcycle on which Baljeet Singh was travelling as a pillion rider and they had seen the accident. This fact alone creates a serious doubt with regard to presence of Baljeet Singh at the spot or his actually had seen the accident.

Baljeet Singh in his first statement recorded on 03.08.2010 had stated in his cross examination that their motorcycle was at a distance of two acres from the site of accident. It is difficult to believe that a person travelling as a pillion rider on a motorcycle at a distance of two acres would be in a position to say that accident between the two vehicles is the result of rash and negligent driving of either of the two vehicles. These observations of the Court stand fortified from the facts elicited in cross examination of Baljeet Singh on 17.05.2011 and extracted hereinbefore wherein he had stated that he had not noticed the bus coming from the opposite direction and in fact had seen bus after the accident. All these facts taken together leads to an irresistible conclusion that testimony of Baljeet Singh is not at all sufficient to prove that the accident was caused due to rash or negligent driving or both on the part of driver of alleged offending bus. Not only this, records of the criminal case in respect of FIR No.11 dated 13.01.2009 under Sections 279, 304-A IPC, summoned by the Tribunal was requisitioned by this Court. The criminal trial culminated in acquittal of Rajender. This Court is not oblivious of the fact that merely because driver of the offending vehicle has been acquitted in the criminal trial *ipso facto* is not a ground to determine issue No.1 against the claimants nor can become the basis for setting aside findings of the Tribunal on issue No.1 if determined in favour of the claimants. Nevertheless, statement of Baljeet Singh recorded in the criminal

proceedings certainly assumes significance in view of the discussion made hereinbefore. Subsequent to his examination in the claim proceedings on 17.05.2011, Baljeet Singh appeared in the criminal case on 08.09.2011. In his examination in chief, he has candidly stated that he had not seen the accident. Baljeet was declared hostile at the request of representative of the State and failed to support cause of the prosecution. He has denied the correctness of his statement as first version recorded by the police. He has denied the suggestion that he had seen the accident or he has connived with the accused to make a false statement. Taking into consideration the facts elicited in testimony of Baljeet recorded in claim proceedings on two occasions coupled with that this is something unnatural that Baljeet would have travelled on a motorcycle despite seat being available in the car owned by him and driven by Hari Om along with his statement in the criminal proceedings, it can safely be held that Baljeet was not present at the spot and he has been introduced later being father of one of the deceased and brother in law of the other.

The Tribunal has recorded certain observations on the basis of photograph (Annexure R-2) appended with the criminal case. I have examined the photograph but express my inability to draw an inference much less conclusion from the photograph to say that the car had gone on the wrong side and accident had taken place for the said reason. From the photograph, it is difficult to say as to which vehicle is shown on wrong side of the road. In this view of the matter, findings of the Tribunal based upon examination of photograph (Annexure R-2) cannot be affirmed. This apart, photograph (Annexure R-2) has not been proved, in accordance with law even in the criminal case. At the same time, in view of discussion

made hereinbefore, I find it difficult to differ with findings of the Tribunal determining issue No.1 against the claimants and in favour of the respondents. As the claimants/appellants failed to prove the accident to be result of rash and negligent driving of offending bus, the Tribunal has rightly rejected their claim for assessment and payment of compensation.

In view of what has been discussed hereinbefore, finding no merit, the appeals fail and are accordingly dismissed leaving the parties to bear their own costs.

MARCH 26, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned :

yes/no

Whether reportable :

yes/no