IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 12.07.2019

FAO 2350 of 2016 (O&M)

Rajan and another ....*Appellants*

Versus

Lalsa and others ....*Respondents*

FAO 1989 of 2016 (O&M)

Lalsa and others ....*Appellants*

Versus

Rajan and others ....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Ishan Cooner, Advocate
for the claimants

Mr. Rakesh Bakshi, Advocate
for the driver and owner of the offending vehicle

Mr. Neeraj Khanna and Mr. Ravinder Arora, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

This order will dispose of aforesaid appeals as these have emerged out of the same award dated 08.12.2015 passed by the Motor Accidents Claims Tribunal, Panchkula (in short, 'the Tribunal') whereby compensation has been assessed on account of death of Santosh in a motor vehicular accident that took place on 29.10.2013.

FAO No. 1989 of 2016 has been filed by the claimants seeking enhancement of compensation whereas the other appeal has been filed by driver and owner of offending vehicle i.e. Tractor No. HR 49A 6474 to assail their liability to pay compensation. The insurance company of the aforesaid truck has been exonerated of liability to pay compensation.

FAO No. 2350 of 2016

Counsel for the appellants (Driver and Owner of offending vehicle) would argue that findings of the Tribunal on issue No. 1 are the result of misreading of evidence, thus, cannot be allowed to sustain. It is argued that both claimants No. 1 and 2, parents of the deceased appeared in the witness box to discharge onus of issue No. 1 but in their cross examination they had admitted that they are not eye witnesses to the occurrence and as such, their testimonies are not sufficient to prove that accident is the result of rash and negligent driving of offending vehicle by Rajan, its driver.

Counsel for the appellants has also assailed findings of the Tribunal exonerating the insurance company of liability to pay compensation. It is argued that no evidence has been adduced by the insurance company to prove that deceased was travelling on the mudguard of tractor in question.

Counsel representing the respondents/claimants has supported findings of the Tribunal on issue No. 1 with the submission that on due investigation of FIR lodged at the behest of father of the deceased, challan was presented in the Court. It is further argued that testimonies of Lochan (PW1) and Lalsa (PW2) coupled with factum of presentation of challan against Rajan, there is sufficient material on record to establish *prima facie* that accident is the result of rash and negligent driving of offending vehicle.

Counsel representing the insurance company while refuting contentions of the appellants would urge that the tractor is meant for only one traveller i.e. driver, therefore, the insurance company has rightly been exonerated of liability to pay compensation with regard to death of Santosh, stated to be travelling on mudguard of the tractor.

Counsel for the appellants, in reply, would argue that even in criminal case against Rajan, he has been acquitted of the offence charged against him as prosecution failed to adduce sufficient evidence to prove his negligence.

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

Lochan, father of the deceased and author of FIR Ex.P1 tendered into evidence his duly sworn affidavit Ex. PW1/A by way of examination in chief. In para 2 of the affidavit, he has reiterated version that accident took place due to rash and negligent driving of the aforesaid tractor by respondent No. 1 therein. As a result of which, Santosh Kumar fell down from the tractor and sustained serious injuries that proved fatal on the way to hospital.

In his cross examination by counsel for the insurance company before the Tribunal, he has deposed to the following effect:-

> "My son expired in the month of Oct., 2013 but I do not remember the date and time was 11.30 - 12.00. I am not an eye witness to the accident, so I could not tell the manner in which accident had occurred. Volunteered the accident was occurred due to rash and negligent driving of respondent No. 1."

Similarly, Lalsa, mother of the deceased has admitted in her cross examination that she was not present where the accident took place. She did not know how the deceased fell from tractor as she was not present at the spot. She cannot say that the deceased fell because of his own mistake. In view of facts elicited in cross examination of Lochan and Lalsa, their testimonies are not sufficient to record a finding even on the basis of balance of probabilities that accident took place due to fault attributable to driver of the tractor. Indisputably, driver of the tractor has been acquitted in the criminal proceedings as prosecution failed to establish his negligence for causing accident. Perusal of the award would reveal that the Tribunal has not adverted to cross examination of the aforesaid witnesses while accepting plea of claimants that accident is the result of rash and negligent driving of tractor. In view of the above, I find merit in contention of the appellants that findings of the Tribunal on issue No. 1 cannot be allowed to sustain and liable to be set aside. Accordingly, issue No. 1 is answered against the claimants and in favour of the appellants. As a natural corollary, the claimants shall not be entitle to get compensation.

Though in view of findings recorded herein-before, this Court need not to dilate on the question of liability of the insurance company. However, even if plea of the claimants is accepted on its face value that the deceased sustained injuries while he was travelling on the tractor, the insurance company is not liable to pay compensation for injuries or death of a gratuitous passenger travelling on the tractor meant only for driver of the said vehicle. There is nothing on record suggestive of the fact that any premium was paid by the insured covering the risk of death or injury of a traveller besides driver of tractor. In this view of the matter, findings recorded by the Tribunal exonerating the insurance company of liability to pay compensation are affirmed.

In view of what has been discussed herein before, the appeal is allowed. The award passed by the Tribunal is set aside. The application filed by the claimants for compensation is dismissed.

FAO 1989 of 2016

In view of findings recorded in FAO No. 2350 of 2016, nothing survives for consideration of this Court. Accordingly, the appeal preferred by the claimants for enhancement of compensation is dismissed.

(Rekha Mittal)
Judge

12.07.2019
Mohan Bimbra

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No