

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

XOBJC-184-CII of 2015 in/and
FAO No.7789 of 2014 (O&M)

Date of decision: 15.10.2019

Reliance General Insurance Co. Ltd.

.. Appellant

Versus

Mangat Rai and ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sanjeev Kodan, Advocate
for the appellant.

Ms. Navjot Kaur, Advocate for
Mr. Vishal Gupta, Advocate
for cross objectors/respondents No.1 and 2.

Mr. Ashok Bhardwaj, Advocate
for respondents No.3 and 4.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 17.05.2014 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib whereby compensation has been assessed on account of death of Darshan Kumar in a motor vehicular accident that took place on 12.03.2012.

Counsel for the appellant would argue that as the respondents/claimants failed to discharge onus of issue No.1 that accident is the result of rash and negligent driving of alleged offending truck No.PB-

23-F-6571, driven by Amarjit Singh, findings of the Tribunal on issue No.1 cannot be allowed to sustain and resultantly, plea of the respondents/claimants for grant of compensation is liable to be rejected by setting aside the award passed by the Tribunal. To bring home his contention, it is argued that only witness examined by the claimants, to discharge onus of issue No.1, is Mangat Rai, father of deceased Darshan Kumar who has candidly admitted in his cross examination that he was not present at the site at the time of unfortunate occurrence. It is further argued that the Tribunal has wrongly relied upon DDR Ex.P1 lodged by Mangat Rai to uphold plea of the claimants that accident is the result of rash and negligent driving of alleged offending vehicle. Counsel would apprise that as per the facts mentioned in DDR, foot of the deceased slipped from the truck and as a result thereof, he had fallen and sustained injuries. It is further argued that since Mangat Rai author of DDR was not present at the spot, any such facts stated in the DDR cannot be attached evidential value much less to prove that rashness and negligence in the occurrence can be attributed to Amarjit Singh, driver of alleged offending vehicle.

Counsel representing respondents No.1 and 2, on the contrary, has supported findings of the Tribunal by relying upon testimony of Mangat Rai PW1 and copy of DDR Ex.P1. She has relied upon judgment of this Court **The New India Assurance Company Ltd. Vs. Suresh Rani, 2014(13) RCR (Civil) 1847.**

I have heard counsel for the parties, perused the paper book

and records.

Before advertizing to submissions made by counsel for the parties, it is pertinent to take note of brief facts of the case. In para 25 of claim application, it has been averred that on 11.03.2012, Darshan Kumar who was working as cleaner on truck No.PB-23-F-6571 left Gobindgarh for Puna along with Amarjit Singh. On 12.03.2012 at about 2.00 pm, when they reached near Hansi, road was closed on account of demand of Jat reservation. Darshan Kumar was going in front of the truck to give signal. Amarjit Singh rashly and negligently crushed Darshan Kumar and he died at the spot. The accident occurred due to rash and negligent driving of respondent No.1. DDR No.9 dated 13.03.2012 was got registered in Police Station, Sadar Hansi.

Mangat Rai appeared in the witness box and tendered into evidence his affidavit Ex.PW1/A wherein he reiterated version of the claimants with regard to accident being the result of rash and negligent driving of offending vehicle by Amarjit Singh. In the opening lines of cross examination, he has deposed to the following effect:-

I was not present at the time of accident. No FIR was lodged. I do not know the contents of the DDR. I have not filed any complaint or objection against the DDR to any officer. I do not know in which manner the accident took place. I do not know that in the DDR it has been (sic) mentioned that the accident took place when foot of my son slipped and he fell down in front of the truck. I do not have any income proof pertaining to the income of my son. DDR Ex.P1 was lodged by me. It is wrong to suggest that accident

had took place on account of no fault of the offending truck. I do not have any record of funeral expenses.

Perusal of the aforesaid extract leaves no manner of doubt that Mangat Rai was not present at the spot therefore, his testimony is not at all sufficient to establish plea of claimants that accident is the result of rash or negligent driving of offending vehicle by Amarjit Singh. As Mangat Rai was not present at the spot, he possibly could not even state that foot of his son slipped and he fell in front of the truck. As such, the claimants cannot derive advantage to their contention from testimony of Mangat Rai PW1 or contents of DDR Ex.P1 to establish even on the basis of balance of probabilities that accident is the result of rash or negligent driving of offending vehicle by Amarjit Singh.

To be fair to respondents No.1 and 2, counsel has relied upon judgment of this Court **Suresh Rani's case (supra)**. The said judgment was rendered in view of its peculiar facts and circumstances wherein case of the claimants was that CW3 Amrit Sher Pal Singh had come to meet Shamsher Singh and conveyed him that he has caused an accident and was being hounded by the police. In the instant case, neither any FIR was registered nor the police conducted investigation on the basis whereof any report was submitted before the criminal Court. The Tribunal has failed to appreciate testimony of Mangat Rai in right perspective, therefore, committed a serious error by upholding plea of the claimants that accident is the result of rash or negligent driving of Amarjit Singh. The respondents could take

advantage of failure of driver of offending vehicle to appear in the witness box only if they were successful in adducing sufficient evidence to discharge initial onus of proving that accident is on account of failure of the driver to take reasonable care while driving the offending vehicle. In this view of the matter, findings of the Tribunal on issue No.1 are liable to be set aside and ordered accordingly. As a natural corollary, plea of the claimants for grant of compensation or assessment of compensation is not sustainable.

In view of what has been discussed hereinbefore, the appeal is allowed and cross objections are dismissed. The award passed by the Tribunal is set aside. The application for grant of compensation is dismissed, leaving the parties to bear their own costs.

15.10.2019

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No