

In the High Court of Punjab and Haryana at Chandigarh

FAO- 6219 of 2011 (O&M)
Date of Decision:12.12.2019

Smt. Shakuntala and others

---Appellants

vs.

David and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Munish Jolly, Advocate
for the appellants

Mr.Namit Kumar, Advocate
for Mr. Alankrit Bhardwaj, Advocate
for respondents No. 1 and 2

Mr. Sanjeev Goyal, Advocate
for the insurance company

Rekha Mittal, J.

Challenge in the present appeal has been directed against award dated 24.5.2011 passed by the Motor Accidents Claims Tribunal, Rohtak (in short “the Tribunal”) whereby application for grant of compensation on account of death of Bal Kishan in a motor vehicular accident that took place on 16.5.2010 was dismissed, in view of findings on issue No. 1, taken up with issue No. 3.

The case set up by the appellants is that on 16.5.2010, Bal Kishan was going to Sheetal Nagar, Rohtak on motor cycle bearing No. HR-

12M-6551. At about 9-00 p.m., when he reached near Water Works on Jhajjar road, Rohtak, truck tralla No. HR-55A-8063 came from back side and hit motor cycle of Bal Kishan. Due to impact, Bal Kishan along with motor cycle fell down, sustained grievous injuries and died at the spot. The accident was caused due to rash, negligent and high speed driving of aforesaid truck tralla by respondent No. 1 therein. Balram and others saw the accident. Ram Kishan son of Ujala Singh lodged the FIR.

The driver and owner did not contest the claim petition and were proceeded against ex parte.

The insurance company filed the written statement contesting claim of the appellants. The pleadings in the written statement, in brief, have been noticed by the Tribunal in para 5 of the award.

The Tribunal framed following issues for determination:-

1. Whether the accident in issue took place due to the rash and negligent driving of the truck trella bearing registration No. HR-55A-8063 as alleged? OPP
2. If issue No. 1 is proved, whether the petitioners are entitled for the compensation on account of death of Sh. Bal Kishan son of Ujala Singh in the accident, if so, to what amount and from whom? OPP
3. Whether the petition does not disclose any cause of action against the answering respondent? OPR3
4. Whether respondent No. 1 was not holding a valid and proper driving licence and permit at the time of alleged accident? OPR3

5. Whether the insured has violated the terms and conditions of the insurance policy? OPR3

6. Whether the petition is wrong and bad for non-joinder of necessary parties? OPR3

7. Relief.

The appellants examined one of the claimants Shakuntala wife of late Baljeet Kishan PW1, Balram PW2, Ram Kishan PW3, Pawan Kumar Additional Ahlmad PW4 and Attar Singh PW5. The insurance company tendered documents, noticed in para 8 of the award.

The Tribunal made certain general observations in para 16 of the award with regard to false claims being made before the Tribunal and false implications to extract compensation from the insurance company. It refused to rely upon testimony of Balram PW2 examined to discharge onus of issue No. 1 for the reasons detailed in para 19 of the award. It was further held that there is clear attempt on the part of driver/owner to collude with claimants with the hope of saddling the insurance company with liability to pay compensation.

Counsel for the appellants would argue that reasons assigned in para 19 of the award for rejecting testimony of Balram are not borne out from materials on record. It is further argued that nothing tangible and material has been elicited in cross examination of Balram to discard or disbelieve his testimony or to prove that his conduct is unnatural. It is argued that nothing was put to Balram if he informed family of the deceased about accident or shifting of deceased to hospital or identification of the dead body etc. It is argued that mere fact that Balram could not tell colour

of the offending vehicle can not constitute a ground to discard or disbelieve his testimony.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal in respect of collusion between claimants and owner/driver of offending vehicle in order to extract compensation from the insurance company. It is argued that driver and owner of offending vehicle did not contest claim proceedings but it is surprising that copy of driving licence of David was tendered into evidence by counsel for the claimants when no such licence was taken into possession by the police, as per materials available on record of the criminal case. It is argued that Balram in his testimony before the Tribunal had stated himself to be resident of Sheetal Nagar, Rohtak but in his statement recorded under Section 161 Cr.P.C., he has given his address of Uttar Pradesh. It is further argued that Balram neither lodged the FIR nor there is evidence on record that he shifted the deceased to hospital. Balram has claimed that Bal Kishan used to work with him as carpenter. It is argued that failure of Balram to lodge FIR or inform family of the deceased about accident has rightly been given weightage to discard or disbelieve his testimony in the face that FIR was lodged by brother of the deceased on 17.5.2010 against an unknown vehicle and driver.

I have heard counsel for the parties, perused the paper book, records of the Tribunal and criminal case pertaining to FIR No. 110 dated 17.5.2010.

The Tribunal may be right in its observations that false claims are lodged in connivance with driver or owner of the vehicle, in order to

extract compensation from the insurance company, a cause of concern in the interest of public exchequer. Possibility of introducing false witnesses is also a set back to administration of justice. At the same time, this Court can not lose sight of the fact that proceedings before the Tribunal are summary in nature. The Tribunal owes an obligation to award just and reasonable compensation in deserving cases.

In the case at hand, driver of offending vehicle was put to trial on due investigation of aforesaid FIR by the police of Police Station, Shivaji Colony, Rohtak. Balram was not examined in the criminal case. Perusal of records would reveal that summons issued by the criminal court for service of Balram were received back with the report of incorrect address and later evidence of prosecution was closed by order. From proceedings of criminal court, it can not be gathered that Balram knowingly and intentionally stayed away from criminal proceedings. Even if the Tribunal was not convinced with testimony of Balram, it should have examined investigating officer of the case to know as to on what basis, David was put to trial despite the FIR being lodged against unknown vehicle and driver. In this context, reference can be made to judgment of the Delhi High Court **Meera Devi and others vs. Jitender and others 2016(3) ACC 654.**

Balram PW2 appeared in the witness box. Of course, in his testimony before the Tribunal, he had stated himself to be resident of Sheetal Nagar, Near Gujjar Dairy, Rohtak but in his statement under Section 161 Cr.P.C., he has given his address of village Bhamini, Police Station and District Devria (UP). In the said statement, there is no reference to his

being resident of Sheetal Nagar, Rohtak. However, in cross examination, he had stated that police recorded statement on the date of accident. Then self stated that police obtained his signatures on a blank paper. He could not tell numbers of the tyres and colour of the offending vehicle. Nothing was put to the witness if he informed family of the deceased about the accident or who shifted the injured/dead body to hospital.

Perusal of criminal file would reveal that police did not shift the dead body from the spot rather the police had gone to mortuary for conducting necessary proceedings. Counsel for the insurance company has failed to point out materials on record that the deceased/dead body was shifted from the spot by somebody else than Balram. The question of identification of dead body at the time of post mortem examination was certainly an event much later in point of time after the accident. Taking a cumulative view of the aforesaid circumstances, it would be in the fitness of things that award passed by the Tribunal is set aside and the matter is remitted to the Tribunal for deciding the case afresh on the basis of materials on record and examination of investigating officer of criminal case. The Tribunal would also re-examine Balram in order to test his veracity with regard to his being resident of Sheetal Nagar, Rohtak as Balram has tried to show his presence at the spot being resident of said area and accident also having taken place there. The Tribunal may seek producing of documentary evidence by Balram with regard to his residence in Sheetal Nagar, Rohtak at the time of accident. In case, on appreciation of evidence, the Tribunal arrives at a conclusion that Balram is a false witness, desirability of launching criminal proceedings against him may be examined

so that there is check on people becoming false witnesses and examined in the court to support claim for grant of compensation. The Tribunal may also examine any other witness, if necessary, for extracting truth and doing complete justice.

In view of what has been discussed hereinbefore, the appeal stands disposed of. The award passed by the Tribunal is set aside. The matter is remitted to the Tribunal for deciding the case afresh, in view of the aforesaid observations. The parties through their counsel are directed to appear before the Tribunal on 15.1.2020. The Tribunal shall decide the case within a period of three months of parties putting in appearance. Nothing stated hereinbefore shall be construed as an expression of opinion regarding merits of the case.

(Rekha Mittal)
Judge

12.12.2019
paramjit

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