

In the High Court of Punjab and Haryana at Chandigarh

FAO-6202 of 2018(O&M)

Date of Decision:25.2.2019

Gurmej Singh

---Appellant

versus

Deepa and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Inderjit Sharma, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against award dated 30.5.2018 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri (in short “the Tribunal”) whereby compensation has been assessed on account of death of Gagan @ Gagandeep in a motor vehicular accident that took place on 11.4.2014.

Gurmej Singh, registered owner of Combine No. PB-06 Q-7809 (alleged offending vehicle) has filed the appeal to assail findings of the Tribunal on issue No. 1 whereby rashness and negligence in causing the accident has been attributed to Baljinder Singh, driver of the offending vehicle. It is argued that Vijay Kumar PW3, one of the colleagues of Gagan @ Gagandeep was examined to prove the occurrence in question and he is the same person at whose behest FIR No. 17 dated 11.4.2014 was registered under Sections 279, 337 and 304-A IPC. It is further argued that in the FIR, there is no reference to particulars of the driver or that of the vehicle that

caused the accident. Vijay Kumar was examined as a witness in the criminal case registered against Baljinder Singh but in his cross examination he refused to identify or connect Baljinder Singh with the occurrence in question and eventually the criminal trial culminated in judgment of acquittal dated 1.8.2018 passed by the Judicial Magistrate, Kapurthala (Annexure A-1). It is argued with vehemence that in view of the aforesaid facts, the Tribunal has wrongly answered issue No. 1 in favour of the claimants and against the appellant-respondent.

I have heard counsel for the appellant but find that the present appeal devoids of merit and deserves to be dismissed.

There is no denial that Vijay Kumar appeared before the Tribunal and supported cause of the claimants that accident is the result of rash and negligent driving of aforesaid combine by Baljinder Singh. Counsel has failed to point out any tangible material brought forth in cross examination of Vijay Kumar in order to discredit him much less convince the court that he is not an eye witness to the occurrence or has been introduced later for the purpose of criminal and civil proceedings. If Vijay Kumar for the reasons known to him has not identified the driver during the criminal proceedings, claimants certainly can not be blamed for the same more particularly in the circumstances that Vijay Kumar is not related to the claimants nor he is one of the beneficiaries in case the claim is allowed. In this view of the matter, failure of Vijay Kumar to identify the driver in criminal proceedings or acquittal of the driver in that case cannot be taken sufficient to interfere in findings of the Tribunal answering issue No. 1 in favour of the claimants.

This apart, on due investigation of FIR lodged at the behest of

Vijay Kumar, challan was presented against Baljinder Singh and he faced trial. Baljinder Singh did not appear in the witness box to counter testimony of Vijay Kumar or to say on oath that he has been falsely indicted for causing the accident, therefore, an adverse inference is liable to be drawn.

Indisputably, the vehicle in question is not insured with any insurance company. No such plea has been raised that either Vijay Kumar or the claimants had any hostility against driver and owner of the vehicle in order to get them falsely implicated in the proceedings. On the contrary, if the claimants wanted to indict somebody with an intention to extract compensation, there was less likelihood of their having chosen a vehicle which is not insured. In this view of the matter, I find myself unable to accept contention of the appellant that findings recorded by the Tribunal on issue No. 1 are erroneous and merits intervention.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 30 days in filing the appeal has been rendered of academic relevance. However, it is clarified that in case the claimants file an appeal seeking enhancement of compensation, disposal of present appeal will not cause prejudice to their right in that regard.

(Rekha Mittal)
Judge

25.2.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No