

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-701-2018(O&M)
Date of Decision: 18.01.2019

Rajinder Kumar Sharma

--Appellant

Versus

Suresh Kumar & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Rajneesh Chauhan, Advocate for the appellant.

Mr. Jaideep Verma, Advocate for the respondents.

TEJINDER SINGH DHINDSA.J (Oral)

Rajinder Kumar Sharma, owner of the vehicle in question has filed the instant appeal assailing the award dated 9.8.2017 passed by the M.A.C.T, Rup Nagar.

Brief facts may be noticed at the outset. A claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 seeking compensation to the tune of Rs.80 lakhs on account of death of Nitish Kumar in a motor vehicle accident that took place on 25.3.2015. Claimants were the parents, sister and brother of the deceased. In the claim petition it was asserted that on 25.3.2015 Nitish Kumar (since deceased) was proceeding from Chandigarh to Ghanauli on his motorcycle bearing registration no. PB-12P-7647. At about 9.30 P.M a truck bearing registration no. HR-64-1253 came from the back side (Rup Nagar side) and being driven in a rash and negligent manner, struck with the motorcycle and on account of which Nitish Kumar fell down and his head was crushed under the tyre of the truck. Nitish Kumar is stated to have died at the spot. FIR No.21 dated 26.3.2015 came to be lodged at Police Station, Sadar Rup Nagar on the statement of uncle of the deceased namely Ritesh @ Hitesh

Kumar.

The claim petition came to be contested by the driver and owner of the offending vehicle in terms of filing separate written statements. The factum of accident was denied and it was further submitted that the FIR in question does not reflect the registration number of the vehicle in question. Respondent no.3-Insurance Company filed a written statement taking a preliminary objection that the insurance policy had been manipulated by the owner/present appellant and that no policy covering the period 15.3.2015 to 14.3.2016 had ever been issued by any official of the Insurance Company. It was further stated that even a complaint dated 8.6.2016 had been lodged with the police against the owner of the vehicle in such regard.

On the pleadings of the parties, the following issues were framed by the Tribunal:-

- “1. Whether Nitish Kumar had died in motor vehicular accident which took place on 25.03.2015 at about 9.30 pm, due to rash and negligent driving of truck bearing registration no. HP-64-1253 being driven by respondent no.2 as alleged?OPP*
- 2. Whether the petitioners are entitled for compensation, as prayed?OPP*
- 3. Whether the claim petition is not maintainable?OPD*
- 4. Whether the respondent no.2 was not having valid documents at the time of accident?OPD*
- 5. Relief.”*

Perusal of the impugned award reveals that the Tribunal has placed reliance on the statements of PW-1 Kanwal Kumar and PW-3 Ritesh @ Hitesh Kumar, who claimed to be eye witnesses to the accident as also the report under Section 173 Cr.P.C that had been presented against the

driver of the vehicle in question namely Rajesh Pathania and has recorded a finding with regard to involvement of the offending truck in question in the accident and which resulted in the death of Nitish Kumar. In so far as quantum of compensation is concerned, income of the deceased has been taken as Rs.25,000/- per month, age has been accepted as 23 years at the time of accident, 50% deduction has been made towards personal and living expenses of the deceased and a multiplier of 18 has been applied to calculate the compensation amount of Rs.27 lakhs. An additional amount of Rs.20,000/- towards funeral expenses has also been awarded. By taking notice of the statement recorded of the owner/present appellant, who appeared as RW-1 and admitted that his vehicle was not insured at the time of accident, Insurance Company has been absolved of the burden of the compensation.

Counsel representing the appellant/owner of the vehicle argues that it is a case of misreading and misappreciation of evidence. FIR had been lodged against an unknown driver and unknown vehicle. He argues that it was a clear case of hit and run and a convenient vehicle has been introduced with a view to claim compensation.

Per contra, counsel representing the caveators/respondents no.1 to 4 supports the award. It is submitted that the driver of the offending vehicle was challaned and thereafter is facing trial on the charge of rash and negligent driving. Further argued that the accident was witnessed by two eye witnesses and who had been duly examined and there would be no occasion to disbelieve the same. Further contended that the quantum of compensation awarded is as per parameters laid down by the Apex Court in case of ***Smt. Sarla Verma and others Vs. Delhi Transport Corporation***

and another, 2009(3) R.C.R (Civil), 77. Counsel, as such, prays for dismissal of the appeal.

Counsel for the parties have been heard at length. Records of the Tribunal had been summoned and the same have also been perused.

In the considered view of this Court, the impugned award dated 9.8.2017 passed by the Tribunal cannot sustain.

Author of the FIR is Ritesh @ Hitesh Kumar, PW-3. While appearing in the witness box PW-3 stated that he was following deceased Nitish Kumar on his own scooter and when the accident occurred he had read the number of the offending truck. He further stated that he had witnessed the accident along with one Kanwar Kumar. PW-3 further deposed that he had stated to the police that the accident took place with an unknown vehicle being driven by an unknown driver but subsequently upon confirming about the registration number, had disclosed the same to the police after a period of 7-8 days. His deposition in this regard was to the following effect:-

“I was not sure about the registration number of the truck after the accident and only after confirming the same, I had disclosed this registration number to the police after 7-8 days. I recollected the registration number after 7-8 days. Earlier I was puzzled.”

The testimony of PW-1 Kanwal Kumar would also be relevant. PW-1 Kanwal Kumar has deposed that he was following Nitish Kumar on his scooter. Upon accident having occurred, PW-1 has stated that he had read the registration number of the truck. He deposed that he was the only eye witness of the said occurrence and that uncle of the deceased namely Ritesh @ Hitesh Kumar reached at the spot after the accident had

already taken place and that he had told Ritesh @ Hitesh Kumar about the offending vehicle having struck against the motorcycle and having caused the accident. In this regard deposition of PW-1 was categoric to the effect that uncle of the deceased Ritesh @ Hitesh Kumar came at the spot after the accident in my presence on 25.3.2015. PW-1 has further deposed that the truck after causing the accident had stopped and the driver had alighted prior to running away. The Driving License of the accused/driver had fallen down from the pocket and he had picked up the same and handed over the same to the police. PW-1 in his statement has also deposed that he belongs to the same village as that of the deceased and that he was having visiting terms with the family of the deceased.

The position that clearly emerges is that inspite of PW-1 and PW-3 having deposed that they had read the registration number of the offending truck, yet, the FIR had been registered against an unknown vehicle being driven by an unknown person. It is intriguing that even though, PW-1 states that the Driving License of the driver of the offending vehicle had fallen out of the pocket of the driver and the same had been picked up and handed over to the police, still, particulars of the driver did not find a mention in the FIR. Furthermore, on the one hand PW-1 has deposed that he was the solitary witness to the accident and that Ritesh @ Hitesh Kumar, PW-3 had reached thereafter and that he had told him about the offending truck having struck the motorcycle, PW-3 Ritesh @ Hitesh Kumar claims himself to be following the deceased and having witnessed the accident himself.

The variations in the deposition of PW-1 and PW-3 cannot be overlooked. They would go to the root of the matter.

PW-3 Ritesh @ Hitesh Kumar concededly is the real uncle of the deceased. Even Kanwal Kumar is a resident of the same village as the deceased and has admitted in his deposition that he was on visiting terms with the family of the deceased. Mere relationship or being an acquaintance cannot be the sole ground to discard the testimony of an otherwise reliable witness but in the peculiar facts and circumstances of the case and by noticing the glaring contradictions, this Court would not hesitate to record that PW-1 and PW-3 have been planted as witnesses so as to introduce the offending vehicle.

It is a settled proposition of law that in cases relating to motor accident claims, the claimants are not required to prove the case as it is required to be done in a criminal trial. The standard of proof i.e. beyond reasonable doubt is not to be applied in such cases. The claimants are to establish their case on the touch stone of preponderance of probability. In the present case even going by the principle of preponderance of probability and by examining the deposition of PW-1 and PW-3, this Court would conclude that the offending truck was not involved in the accident.

The material contradictions in the statements of the two alleged eye witnesses PW-1 and PW-3 have been overlooked by the Tribunal. Undoubtedly, the police has filed a challan against the driver but the same in isolation would not be conclusive with regard to involvement of the offending truck in the peculiar facts and circumstances of the case. Many a time the police puts in the challan on the basis of the statements without getting into the truthfulness of such statements.

In view of the reasons recorded above, present appeal is accepted and the impugned award dated 9.8.2017, passed by the Tribunal is set aside.

Appeal is allowed.

(TEJINDER SINGH DHINDSA)
JUDGE

18.01.2019

lucky

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No