

In the High Court of Punjab and Haryana at Chandigarh

**FAO- 6194 of 2017 and
Cross Objections No. 23- CII of 2018(O&M)
Date of Decision:4.4.2019**

Bohar Singh and another

---Appellants

vs.

Baljinder Kaur and others

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.H.S.Batth, Advocate
for the appellants

Mr. J.S.Cooner, Advocate
for the respondents-cross objectors

Rekha Mittal, J.

This order will dispose of FAO No. 6194 of 2017 and Cross Objection No. 23-CII of 2018 as these have emerged out of the same award dated 13.2.2017 passed by the Motor Accidents Claims Tribunal, Tarn Taran (in short “the Tribunal”) whereby compensation has been assessed on account of death of Lakhbir Singh in a motor vehicular accident that took place on 10.1.2016.

The sole submission made by counsel for the appellants is that the respondents-claimants failed to adduce satisfactory much less cogent and convincing evidence to establish their claim that accident is the result of

rash and negligent driving of alleged offending vehicle by Bohar Singh, appellant No. 1, therefore, findings of the Tribunal on issue No. 1 cannot be allowed to sustain and liable to be set aside. It is further argued that no sooner the respondents failed to prove issue No. 1, their claim for compensation is liable to be rejected. To bring home his contention, he has referred to the contents of FIR Annexure A1, testimony of Baljinder Kaur widow of Lakhbir Singh one of the claimants Annexure A-2 and that of Hira Singh another witness examined by the claimants Annexure A-3. It is argued that FIR was lodged at the behest of Nishan Singh and said Nishan Singh has not been examined before the Tribunal to prove the factum of accident. Baljinder Kaur widow of the deceased is not a witness to the occurrence and she has fairly conceded to this fact in her cross examination. Hira Singh examined by the claimants had narrated the facts regarding the occurrence in para 1 of his affidavit tendered by way of examination in chief but in the opening lines of his cross examination, he has stated that he was not witness to the occurrence and no occurrence took place in his presence. It is further argued that the Tribunal has answered issue No. 1 in favour of the claimants without going through testimonies of the witnesses much less to consider that testimony of widow of the deceased does not relate to the happening of accident, therefore, question of her testimony being supported by Hira Singh PW2 does not arise.

Counsel representing the respondents-claimants has supported findings on issue No. 1 with the submission that on the basis of FIR No. 4 dated 10.1.2016 registered in police station Valtaha District Tarn Taran at

the behest of Nishan Singh, due investigation was conducted by the police and challan was presented in the court against Bohar Singh, driver of the offending vehicle.

Counsel representing the appellants, in reply, would contend that criminal case registered against Bohar Singh culminated in judgment of acquittal passed by the Judicial Magistrate. It is further argued that the mere fact that challan was presented against Bohar Singh ipso facto is not sufficient to prove that the accident is the result of rash and negligent driving of offending vehicle by its driver.

Indisputably, Nishan Singh, author of FIR No. 4 dated 10.1.2016 was not examined to prove correctness of his first version given to the police with regard to the accident being the result of rash and negligent driving of offending vehicle by its driver. Baljinder Kaur widow of the deceased is not an eye witness to the occurrence. Hira Singh, the only witness examined by the claimants to prove the accident has admitted in the opening lines of his cross examination that he was not a witness to the occurrence as the occurrence did not take place in his presence. In this view of the matter, testimonies of the witnesses examined before the Tribunal are not at all sufficient to discharge onus of issue No. 1 that accident is the result of rash and negligent driving of offending vehicle. The mere fact that driver of the offending vehicle was put to trial on the basis of information given by Nishan Singh, ipso facto is not sufficient to accept plea of the claimants-respondents that accident is the result of rash and negligent driving of offending vehicle. The Tribunal without adverting to testimony

of the witnesses particularly the facts elicited in cross examination of Baljinder Kaur and Hira Singh has wrongly recorded a finding that their testimonies are sufficient to prove the occurrence and discharge onus of issue No. 1. In view of the above, findings of the Tribunal on issue No. 1 cannot be allowed to sustain and accordingly, set aside. As a natural corollary, the claimants shall not be entitle to get compensation assessed by the Tribunal much less to assert their right for enhancement of compensation in view of the cross objections filed by them.

For the foregoing reasons, the appeal is allowed. Award passed by the Tribunal is set aside. As a natural corollary, the cross objections preferred by the claimants are dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

4.4.2019
paramjit

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