

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

**1. FAO No.4450 of 2010
Date of decision :08.01.2020**

Smt.Santosh and others Appellants

versus

Sepoy Siri Pal Saini and others. Respondents

2. FAO No.5453 of 2010

Smt.Santosh and others Appellants

versus

Sepoy Siri Pal Saini and others. Respondents

CORAM : HON'BLE MR.JUSTICE SANT PARKASH

Present : Mr. Naveen Gupta, Advocate for the appellants.

None for the respondents.

SANT PARKASH, J.

1. These are two FAOs bearing No.4450 of 2010 and FAO No.5453 of 2010 arising out of the impugned award dated 22.02.2010 vide which the claim petitions were dismissed. However, in the claim petition No.4450 of 2010, the learned Tribunal awarded a sum of Rs.50,000/- awarded under no fault liability.

2. Initially, the legal heirs of Ramesh Kumar filed two claim petitions bearing MACT No.109, and MACT No.04 on account of his death as well as damage to his motor cycle. Both these claim petitions were consolidated vide order date 18.05.2009.

3. The facts as unfolded from the petition are that on 04.11.2008, the deceased Ramesh Kumar was going from his house on his motorcycle bearing No.HR01-T/ 9233 and the eye witness Mangat Ram / brother of the deceased was following on his motor cycle bearing No.HR01-T/4306 . Despite the fact that the motor cycle was being driven at a moderate speed by the deceased but the respondent No.1 while driving the military truck make Ashika Leela bearing No.010141272-W came from behind at a very high speed and rash and negligent manner, struck against the motor cycle. Resultantly, the deceased fell down on the road and sustained multiple and grievous injuries and he was crushed under the front wheel of the truck. While he was shifted to the hospital, the deceased succumbed to the injuries. Regarding the said accident FIR No.449 dated 04.11.2008 was recorded under Section 279/304-A/ 427 IPC against respondent No.1.

4. In the written statement, filed on behalf of respondents No.1 to 3, factum of the negligence on the part of the respondent No.1 was denied specifically. It was the plea of the respondents that Military vehicle took turn to the left having indicated for the same. However, Ramesh Kumar (deceased) attempted to overtake the Military vehicle from wrong side i.e. left side, but could not control his vehicle while doing so and took evasive measures and applied sudden brakes which caused the bike to skid and motor cyclist collided with the rear left wheel of the military vehicle.

5. In the replication, filed on behalf of the claimants, the facts as detailed in the claim petitions were reasserted whereas those of the written statement were controverted.

6 The issues as reflected in the impugned award are reproduced as below:-

“1. Whether the accident took place due to rash and negligent driving of respondent No.1 while driving Military Truck No.010141272-W, resulting to damage of Bajaj Discover Motorcycle bearing registration No.HR01-T-9233, as alleged?OPP

2. If issue No.1 is proved, to what amount of compensation and from whom, the claimant is entitled to ? OPP.

3. Relief.”

7. The issue No.1 is with regard to the damage to the motor cycle being driven by the deceased. It shows the casual manner in which the cases are being dealt with by the Lower Courts. There is no whisper in the issue with regard to the death of Sh.Ramesh Kumar in the said accident whereas the learned Tribunal has consolidated both the files. In the given circumstances, it was obligatory on the part of the Tribunal either to reproduce the issues of both the claim petitions or to frame the consolidated issues after consolidation of both the cases on 18.05.2009. It is a serious irregularity committed by the learned Tribunal.

Proceeding further, the learned Tribunal awarded opportunities to both the parties to adduce the evidence. In support of their claim, the claimants examined Harish Pal (PW-1), Santosh (PW-2), Madan Lal (PW-3) and Dharamvir (PW-4).

8. *Per contra*, the respondents relied upon the statements of Subedar S. Lal (RW-1) and Sepoy Siripal Saini |(RW-2) and also on the documentary evidence in the form of inquiry report conducted by the

Military Authorities regarding the present occurrence Ex.R-1. The learned Tribunal, after having heard and evaluating the evidence coming before it, dismissed the petitions and awarded the compensation of Rs.50,000/- under the no claim liability.

9. Assailing the impugned award, learned counsel for the the appellant vehemently argued that the learned Tribunal miserably failed to appreciate the evidence of the eye witness and outrightly discarded it whimsically. There was no reason to doubt the presence of PW-3 Madan Lal, the eye witness merely on conjectures and surmises. The learned Tribunal further could not appreciate the fact that the proceedings under the motor accident claim cases are the summery in nature and the cases are to be decided on preponderance of the probabilities and strict rules of evidence are not applicable. The learned Tribunal also did not take into consideration the factum of pendency of the criminal case against the respondent No.1 regarding the present occurrence.

10. Opposing the contentions tooth and nail learned counsel for the respondents submitted that the learned Tribunal after appreciating the evidence and the rival contentions of both the parties, passed the impugned award which does not warrants any interference at all by this Appellate Court.

11. After having heard and bestowal of thoughts, this Court is of the considered opinion that the learned Tribunal miserably failed to appreciate the evidence brought on the record by the claimants and the other attending circumstances while declining the claim of the legal heirs and deciding the issue No.1 against them. From the file it would be evidently crystal clear that in order to establish the factum of the accident,

the claimants relied upon the testimony PW-3 Madan Lal, who happens to be brother of the deceased. The learned Tribunal doubted the presence of PW-2 primarily merely on three grounds. Firstly, it discarded the evidence of PW-3 on the ground that he did not collect the belongings of the deceased and he did not take him to the hospital. In this context, it would be appropriate to observe that in such a scenario where brother of any person is seriously injured in an accident, it cannot be expected from him that he would start collecting belongings of the injured rather it would be expected from him that he would take care of the injured and would like to save his life by all means. The learned Tribunal has given undue importance to this fact that he (eye witness) did not take the injured to the hospital. The deceased was taken to the hospital by respondent No.1 and his co-driver. If the deceased had been taken to the hospital by the respondent No.1 and his co-driver in an auto rickshaw, it was expected from them because the persons from disciplined force. The conduct of the respondent No.1 and the co-driver can be applauded on that count but the respondent No.1 can not be absolved from the liability of causing the accident.

12. The learned Tribunal further gave undue impetus to the inquiry report Ex.R-1. If glanced through, this inquiry report would reveal that the Army Authorities constituted a board for inquiring into the cause of the accident and during the course of inquiry the statements of respondent No.1 and that of his co-driver were recorded. If the statements of these two witnesses annexed with the inquiry report Ex.R-1 are gone into minutely, it would be revealed that they have reproduced the version as stated in the written statement and attributed the cause of the accident

to the rash and negligent driving of the deceased himself. None from the family member of the deceased or even the eye witness was examined in the inquiry proceeding and at the most, it can be said that these inquiry proceedings were ex-parte qua the claimants.

13. Other attending circumstance, which the learned Tribunal ignored out rightly was the prompt registration of the FIR and filing of the challan against the respondent No.1 by the Police authorities after thread bare investigation. There is no dispute about the settled proposition of law that the registration of the FIR is prima facie proof of the rash and negligent driving of the driver of the offending vehicle. In this context reference can made to judgement passed by this Hon'ble Court in **Gurdeep Kaur Vs. Tarsem Singh, 2008-2 RCR (Civil) 774.**

14. Taking into consideration the totality of the circumstances, it can be concluded that the learned Tribunal did not consider the evidence in the right perspective and was swayed away by the version of the respondents. It also did not reproduce the issues of both the claim petitions or even did not care to frame the consolidated issues after the consolidation of the cases. In such a scenario it would be desirable if the learned Tribunal is directed to reproduce the issues and reappraise the evidence of both the parties and then decide the issue No.1 afresh and pass the award accordingly. Resultantly, the findings of learned Tribunal on issue No.1 are hereby reversed and the award dated 22.02.2010 is set aside, and the same is remanded back with the direction to decide the same within 03 months from the date of receipt of the order.

15. Accordingly, both the appeals stand disposed of.

(SANT PARKASH)
JUDGE

08.01.2020.
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Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No