

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

FAO No.2823 of 2013 (O&M)

Date of decision: 15.01.2020

Phullo and others

... Appellants

Versus

Noman and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Balkar Singh, Advocate for the appellants.

Mr. Mohan Singh Rana, Advocate for respondents No.1 and 2.

Mr. Vishal Aggarwal, Advocate for respondent No.3.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against award dated 19.12.2012 passed by the Motor Accidents Claims Tribunal, Yamuna Nagar at Jagadhri whereby application for grant of compensation on account of death of Balinder in a motor vehicular accident that took place on 10.01.2011 has been dismissed in view of findings on issue No.1, reads thus:-

Whether Balinder son of Rati Ram died due to the injuries sustained by him in a motor vehicle accident which took place on 10.01.2011 in the area of Police Station, Sadar Yamuna Nagar on account of rash or/and negligent driving of tractor trolley bearing No.HR-02W-6462 by respondent No.1 which is owned by respondent No.2 and insured by respondent No.3, as alleged?OPP.

The case of claimants is that deceased was engaged in loading and unloading of sand in the vehicles. On the ill-fated day, he along with other labourers namely Niju @ Nikku, Baldev Singh, Aman Kumar, Dinesh and Rakesh Kumar had gone to Yamuna river near Railway Bridge, Kalanaur for the purpose of loading sand. After loading sand, the aforesaid persons were sitting on sand filled in the trolley but deceased was sitting on mudguard of the tractor No.HR-02-W-6462. The tractor was driven by Noman in a rash and negligent manner and at a high speed. At about 5 pm, when they reached near Railway Bridge of Yamuna river, due to high speed of tractor, Balinder suffered jerk, fell down and tractor ran over him and he died at the spot.

To prove their case, claimants examined Dinesh son of Hari Ram, an eye-witness to the occurrence. He tendered into evidence his affidavit Ex.PW3/A and reiterated the version as to how the accident took place due to rash and negligent driving of tractor trolley (Swaraj blue color) by respondent Noman.

The Tribunal rejected testimony of Dinesh Kumar for the reasons assigned in paras 11 and 12, read thus:-

1. Dinesh Kumar did not disclose registration number of the tractor in his affidavit or cross examination.
2. He did not give information to the police about the accident.
3. He has not recorded his statement before the police regarding the accident.
4. He has feigned ignorance about name of the driver

and owner of tractor trolley.

Perusal of cross examination of Dinesh Kumar would reveal that there is no challenge to his testimony that he along with other labourers including the deceased had gone for loading sand on the day of occurrence. The mere fact that Dinesh Kumar being a labourer did not know registration particulars of the tractor attached with a trolley used by him and others for the purpose of transportation from the place of lifting of sand to their village cannot be taken seriously particularly in the face of situation that driver of offending vehicle did not appear in the witness box to counter testimony of Dinesh Kumar that he was driver of offending vehicle. On due investigation of FIR, Noman was put to trial for committing offence under Sections 279 and 304-A IPC though eventually he was acquitted of the offence charged against him. As per settled position in law, acquittal of driver in the criminal case *ipso facto* is not a ground to discard case of the claimants.

Noman, the driver or owner of the offending vehicle have not alleged hostility against them for indicting them in civil and criminal proceedings. Dinesh and other labourers travelling in trolley got scared after the unfortunate occurrence. It cannot be overlooked that such like poor people ordinarily do not want to face the police. I stand fortified in my observation from statement of Deepak in cross examination that they fled away from the spot leaving tractor trolley there. In these circumstances, non lodging of FIR or non recording of statement before the police by Deepak

cannot carry much weight nor can it be construed to discard or disbelieve his testimony.

In view of the above discussion, I find it difficult to sustain the reasoning adopted by the Tribunal to reject plea of claimants that accident is the result of rash and negligent driving of offending vehicle by respondent No.1 therein. Accordingly, issue No.1 is answered in favour of the claimants/appellants and against the respondents therein.

There is no dispute that appellants are the parents and minor son of deceased Balinder and as such, they can maintain an application for grant of compensation. There is no clear evidence on record with regard to income of the deceased. As per case of the claimants, he was working as a labourer for loading sand. Taking a clue from notification issued by the State of Haryana fixing minimum wage of an unskilled labour at the relevant time, income of the deceased is assessed at Rs.4500/- per month. The deceased is stated to be 37 years old at the time of occurrence. In the postmortem report, his age is approximately 30 years. Claimants shall be entitle to addition in income for future prospects @ 40%. The admissible multiplier, in view of age of 37, is 15.

The application for compensation has been filed by the parents and minor son of the deceased and as such, admissible deduction is 1/3rd. In this manner, loss of dependency is calculated at Rs.7,56,000/- [(4500 x 12 x 15) + (40% future prospects) – (1/3rd deduction for personal expenses)].

Under conventional heads, claimants shall be entitle to

Rs.30,000/-, detailed hereunder:-

1. Expenses on last rites	Rs.15,000/-
2. Loss of estate	Rs.15,000/-

Total compensation is Rs.7,86,000/- payable with interest @ 7.5% per annum from the date of petition till realization.

Respondents No.1 and 2 being driver and owner of offending vehicle shall be jointly and severally liable to pay compensation. The deceased was travelling on mudguard of offending tractor. Deepak deposed that the labourers boarded the tractor trolley just to reach their destination. Meaning thereby that deceased was a gratuitous passenger who was travelling on mudguard of the tractor. As such, insurance company is not liable to pay compensation to the claimants. In this context, reference can be made to judgment of this Court **Data Ram and another Vs. TATA AIG General Insurance Co. Ltd. and others, FAO No.4290 of 2014 along with connected case, decided on 24.8.2017.**

In view of what has been discussed hereinbefore, the appeal is partly allowed in the aforesaid terms.

15.01.2020
ashok

(REKHA MITTAL)
JUDGE

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