

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. FAO No.4252 of 2014 (O&M)
DATE OF DECISION: 24.02.2020

Smt. Suresh Devi and others
.....Appellants
versus

Pardeep Kumar and others
.....Respondents

2. FAO No.4253 of 2014 (O&M)

Smt. Murti Devi and others
.....Appellants
versus

Pardeep and others
.....Respondents

3. FAO No.4580 of 2014 (O&M)

Smt. Dharam Kaur
.....Appellant
versus

Pardeep Kumar and others
.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Aman Bansal, Advocate for the appellants
in FAO No.4252 and 4253 of 2014 and
Mr. B.R. Gupta, Advocate for the appellant
in FAO No.4580 of 2014

Mr. Balraj Gujjar, Advocate for respondent
Nos.1 and 2

Mr. Subhash Goyal, Advocate for respondent
No.3/Insurance Company

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ALKA SARIN, J.:

The present order shall dispose off aforementioned three appeals bearing FAO Nos.4252, 4253 and 4580 of 2014. All these appeals have been filed by the claimants and pertain to the same accident. The Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') vide award dated 18.02.2014 had dismissed all the three claim petitions filed by the appellants in the present appeals. Aggrieved by the said award, three separate appeals have been filed by the claimants therein.

2. The brief facts relevant to the present case are that on 04.07.2011 at about 6.00 p.m., Rajpal and Rajinder Singh were on their way from Village Dholi Pali to Village Ladpur, District Jhajjar in a Bolero Jeep bearing Registration No.HR-14-D/8762, which was being driven by the Driver, namely, Devender. When they reached near Village Akoda at Dadri-Mahendergarh Road, a dumper bearing Registration No.HR-19-E/0981 came from Dadri side on the wrong side and hit the Bolero Jeep. As a result of the collision, Rajpal, Rajinder and Devender sustained fatal grievous injuries and succumbed to the same on the spot. On the statement of Dalbir Singh, FIR No.264 dated 05.07.2011 was registered at Police Station Mahendergarh.

3. Respondent Nos.1 and 2, driver and owner of the alleged offending vehicle, filed a joint written statement and denied the entire facts. The factum of

the accident was also denied by respondent Nos.1 and 2.

4. Respondent No.3/Insurance Company also denied the case set up by the claimants. The factum of the accident was also denied.

5. On the basis of the pleadings and the evidence on the record, the Tribunal returned a finding that the claimants had miserably failed to prove that the accident took place on account of rash and negligent driving of respondent No.1. In view of the finding on issue No.1, the claim petitions filed by the claimants were dismissed.

6. Aggrieved by the award dated 18.02.2014, the present three appeals have been filed.

7. I have heard learned counsel for the parties.

8. It has been contended by learned counsel for the appellants that after the passing of the award, the Criminal Court has convicted the driver of the vehicle vide judgment dated 20.01.2016, passed by the Judicial Magistrate Ist Class, Mahendergarh. The said judgment has been produced by way of additional evidence before this Court vide CM No.22803-CII of 2018, which has been allowed vide a separate order.

9. It has further been contended that the complainant i.e. author of the FIR had appeared in the witness-box and clearly deposed regarding the factum

of the accident. Further, Ahlmad of the Criminal Court had also appeared as PW-3. However, the evidence has not been considered by the Tribunal while dismissing the claim petitions filed by the appellants-claimants.

10. *Per contra*, learned counsel for the respondents have stated that the Tribunal has rightly dismissed the claim petitions inasmuch as there was no evidence on the record to prove the fact that accident had occurred in the manner alleged. It has further been contended that no eye-witness had been produced by the claimants in order to prove the accident.

11. A perusal of the file reveals that though no eye-witness had been produced by the claimants in order to prove the factum of the accident, however, that cannot be a sole ground for dismissing the claim petitions. There cannot always be an eye-witness of an accident. Further, in a given case, the eye-witnesses may not come forward to depose. Hence, in a given case the non-production of an eye-witness cannot be held against the claimants. As far as the other evidence on the record in the present case is concerned, the author of the FIR had appeared and clearly deposed regarding the factum of the accident and his knowledge qua the accident. Ahlmad of the Criminal Court had also appeared as PW-3 and had produced on record the summoned file bearing Case No.197 of 2011 titled as *State V/s Pardeep*, relating to FIR No.264 dated 05.07.2011. At that point of time

charges had not been framed against the accused. The claimants have now, by way of additional evidence, produced on record the judgment dated 20.01.2016 passed by the Judicial Magistrate Ist Class, Mahendergarh as additional evidence.

12. A perusal of the said judgment reveals that the accused has been convicted of the offences under Sections 279 and 304-A of the Indian Penal Code.

13. It is trite that the Motor Vehicles Act, 1988 has been enacted as a beneficial piece of legislation. The compensation contemplated under the Motor Vehicles Act is to give solace to the claimants who have lost their loved ones in accidents. The strict principles of the Evidence Act cannot be made applicable under the Motor Vehicles Act. In the present case, now by way of additional evidence, it has come on record that the driver of the offending vehicle has been convicted by the Criminal Court.

14. In view of the fact that the driver of the offending vehicle has been convicted, I deem it just and proper to remand the case back to the Tribunal to be decided afresh in view of the evidence on the record. If required, the parties may be afforded two effective opportunities each to lead their evidence. Thereafter, the Tribunal is requested to make an endeavour to decide the matter within a period of six months from the date of the receipt of the certified copy of the judgment. The parties to appear before the Tribunal on 04.08.2020.

15. In view of the aforesaid discussion, the present appeals are allowed, the impugned award passed by the Tribunal is set aside and the matter is remanded for deciding afresh.

(ALKA SARIN)
JUDGE

24.02.2020
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES