

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.4530 of 2003

Date of Decision: 20.05.2022

Union of India

....Appellant

VERSUS

Paramjit Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. S.K. Sharma, Advocate for the appellant.

None for the respondents.

VIKAS SURI, J. (Oral)

1. The present appeal has been filed by the Union of India through Commanding Officer, 10 Corps Sig. Regt. (AREN), against the award dated 30.07.2003 passed by Motor Accident Claims Tribunal, Bathinda, whereby claim petition preferred by the appellant-UOI was dismissed with costs.

2. The facts, shorn of unnecessary detail are that on 15.07.2001, a military vehicle belonging to appellant being a 2.5 ton Truck bearing No.97-D-108556-M, met with an accident with a Maruti Zen car in which the driver of the said car suffered injuries and succumbed to the same. The claim petition was instituted alleging damage to the military truck on account of the said accident caused by rash and negligent driving of Krishan Singh, driver of the car and as such compensation to the tune of Rs.6,21,097-40P along with interest @ 18 % was sought from the owner and driver of the car, employer of the driver and the insurance company of the car, who were arrayed as respondents.

3. Respondent No.1, being the legal representative of the owner and driver of the Maruti Zen car involved in the accident, filed a separate reply, wherein a specific plea was raised that said claim petition is a counter blast to the criminal case registered against G. Madhaiyan, driver of the military vehicle on account of whose rash and negligent driving the accident had taken place. It was specifically pleaded that no loss had occurred to the military truck and the same would also be clear from the photographs taken at the spot by the police. In sum and substance, the averments made in the claim petition were denied and refuted. It was also specifically pleaded that the accident had taken place due to rash and negligent driving of the military vehicle. As such the claim petition was opposed.

4. Respondent Nos. 2 and 3 had filed a separate reply on similar lines. It was pleaded that SI Krishan Singh, Station House Officer (driver of Maruti Zen car) had died in the accident and the car was totally damaged by the military truck due to the negligence of G. Madhaiyan, driver of the offending military vehicle. Reference was also made to FIR No.34 dated 16.07.2001 under Sections 279, 337, 338, 304-A IPC registered against the driver of the military truck and that challan had been presented in the Court. It was specifically pleaded that a light vehicle can never cause damage to the heavy vehicle. They had also denied their liability to pay compensation.

5. From the pleadings of the parties, the following issues were framed:

- “(i) Whether Krishan Singh deceased while driving Car No.PB-11L-4615 rashly and negligently on 15.7.2001 caused damage to military vehicle truck 2.5 ton No.97-D-108556-M? OPP
- (ii) Whether the claimant is entitled to compensation. If so to what extent and from which of the respondents? OPP

- (iii) Whether the claimant has no cause of action to file the claim petition against the respondents No. 2 and 3? OPR
- (iv) Relief.”

6. Ocular and documentary evidence was lead by the parties. Issue Nos. 1 to 3 were taken up together by the Tribunal. Reliance has been placed on the report (Ex.A-21) by AW4 Subedar K.K. Katoch, whereby loss to the military truck was assessed in the work-shop and also on the photographs (Ex.A-7 to Ex.A-20) by AW3 G.P. Pathak, besides the deposition of two other witnesses viz. AW5 G. Madhaiyan and AW6 Sat Pal Singh.

7. On the basis of the pleadings and evidence adduced on the record, learned Tribunal returned a categorical finding that the true position had not been depicted by AW-3 i.e. G.P. Pathak, who had proved the photographs and the site plan Ex.A-6. It was further held that the said photographs did not show damage to the military vehicle, as described by the other witness Subedar K.K. Katoch, who had deposed as AW-4. The Tribunal concluded that the claimant had failed to establish that the military truck was damaged and the star witnesses of the claimant i.e. AW-5 and AW-6 i.e. G. Madhaiyan and Sat Pal Singh had not stated even a word that military truck was damaged. Resultantly, it came to the conclusion that the claim petition deserves to be and as such was dismissed with costs.

8. Learned counsel appearing for the appellant has contended that the learned Tribunal did not appreciate the evidence on record in its true perspective and rather, formed its own independent opinion as what it perceived from the photographs proved on record. It has been contended that the Tribunal thus erred in returning the finding that the accident took

place on account of the rash and negligent driving of the military vehicle and that the appellant was not entitled to any compensation.

9. Two other decided appeals arising out of the same accident being FAO-4213-2003 and FAO-4239-2003, were noticed in the order dated 29.04.2022, one of which was against an award by the Tribunal granting compensation to the tune of Rs.1,46,595/- on account of the loss and damage to Maruti Zen car (PB-11-L-4615) in the accident caused by the military truck/vehicle owned by the Union of India. It transpires that from the same accident, three separate claim petitions came to be filed before the Tribunal. Besides the claim petition on account of death of S.I. Krishan Singh (driver of the car), one was for seeking compensation on account of loss and damage to the Maruti Zen car and the other for seeking compensation on account of the alleged loss and damage to the military truck. As such, three separate awards came to be passed and therefore, three appeals were carried to this Court by the appellant-UI.

10. FAO No.4213 of 2003 titled "*Union of India vs. Paramjit Kaur*" was dismissed by a Division Bench of this Court on 16.10.2003 and the other being FAO No.4239 of 2003 '*Union of India and another vs. Paramjit Kaur*' was also dismissed by another Division Bench on 13.12.2004. It may be noticed that while dismissing FAO No.4239 of 2003, the Division Bench affirmed the findings of the Tribunal in so far as the negligence of the offending vehicle (military truck) and damage to the Maruti Zen car by the military truck was concerned. It was specifically held that the findings returned by the Tribunal were based on evidence and did not call for any interference. Thus, the factum that the accident had taken place on account of rash and negligent driving of the military vehicle by its

driver, resulting in damage to the Maruti Zen car was affirmed. The relevant portion of the said decision dated 13.12.2004, reads as under:-

“After hearing the learned counsel for the parties and perusing the record, in our opinion, no fault could be found with the findings of the learned Tribunal, which may require interference by this court in the present appeal. So far as the negligence is concerned, the learned Tribunal had rightly found that the accident in question had taken place on account of rash and negligent driving of the military vehicle by its driver, resulting in damage to the Maruti Zen car. In our opinion, this finding of the Tribunal is based on evidence led by the parties and does not call for any interference especially when nothing has been shown that any piece of evidence has been misread or any material piece of evidence has been ignored by the learned Tribunal, while coming to these findings.”

11. Admittedly, no further appeal was carried against either of the orders dated 16.10.2003 or 13.12.2004 and as such, the same have attained finality. The litigating parties in the present appeal are same and the said proceedings pertain to this very accident, including the vehicles involved.

12. I am of the considered view that the correctness or otherwise of the findings returned by the Tribunal with respect to negligence and the damage having been caused by the military truck to the Maruti Zen car, had already been adjudicated by a Court of competent jurisdiction. The said proceedings having attained finality, it would not be lawfully permissible for the appellant-UOI to agitate its converse proposition in the present appeal. The earlier adjudication is binding upon the parties and would operate as *res judicata*. Thus, the present appeal is liable to fail on that count alone. Even otherwise, on merits, the findings returned by the Tribunal are based on

reading of the evidence adduced on record and does not call for interference, as held by the Division Bench. No fault could be found with the same.

13. No other point was urged or argued.

14. In view of the above, the present appeal being bereft of merit deserves to fail and is accordingly dismissed.

(VIKAS SURJ)
JUDGE

May 20, 2022
Sachin M.

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