

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on:30.09.2022

DATE OF DECISION: October 10, 2022

1.

FAO-819-2022 (O&M)

Ashok Kumar

..... Appellant

Versus

Shakuntala and others

..... Respondents

2.

FAO-820-2022(O&M)

Ashok Kumar

.....Appellant

Versus

Baby and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. J.S. Cooner, Advocate for the appellant
in both appeals.
None for respondents No.1 & 2 in both cases.
Mr. Nigam Kumar, Advocate
for respondents No.3-Insurance Company
in both appeals.

HARKESH MANUJA, J.

This order of mine shall dispose of two appeals arising out of the common award dated 16.08.2021 passed by learned Motor Accident Claims Tribunal, Panchkula, (for short 'the Tribunal'), filed by Driver/ owner of the Tractor-trolley against the recovery rights given to the Insurance Company.

Brief facts of the case as delineated in FAO-819-2022 are that on 08.10.2018, deceased Harjeet Singh and Labh Singh were going to Marranwala on motorcycle bearing registration No.HR-49-E-6571 at a moderate speed. At about 7.40 am, when they reached

near Radha Swami Satsang Bhawan, Gorakhnath, offending Tractor-trolley bearing registration No. PB-12-AE-6928 coming from Baddi side in a rash and negligent manner, being driven by respondent No.1 and hit their motorcycle. As a result thereof, both fell down and sustained multiple grievous injuries, resulting to their death at the spot. Regarding this incident, an FIR No.282 dated 08.10.2018, under Sections 279, 304-A IPC was registered on the statement of Makhan Singh son of Sh. Pola Singh, an eye-witness, at Police Station Pinjore.

The claimants being parents of deceased Harjeet Singh filed a claim petition-MACP/36/2019 before the learned Tribunal for grant of compensation to the tune of Rs.50 lacs, alleging rash and negligent driving of the offending vehicle by appellant/respondent No.1.

Another claim petition- MACP/164/2018 was filed at the instance of parents of deceased Labh Singh claiming compensation of Rs.50 lacs, again alleging rash and negligent driving of the offending vehicle by appellant/respondent No.1.

Learned Tribunal vide impugned award dated 16.08.2021 recorded a finding in favour of the dependents/ respondents No.1 and 2 to the effect that the accident took place on 08.10.2018 due to rash and negligent driving of the appellant, resulting into death of Harjeet Singh and Labh Singh. Learned Tribunal further awarded a sum of Rs.8,66,000 to the parents of deceased Harjeet Singh;

whereas another sum of Rs.10,17,200/- to the parents of deceased Labh Singh.

As regards, finding on issue No.3, the learned Tribunal recorded that the Tractor-trolley, at the time of accident was carrying sand and was being plied without permit, resulting into violation of the terms of insurance policy. Accordingly, the insurance company though held liable to pay the compensation at the first instance, but was given recovery rights against the appellant.

It has been contended on behalf of learned counsel for the appellant/ Driver that the finding of fact recorded by the learned Tribunal to the effect that at the time of accident, respondent No.1 was carrying sand in the trolley is against the evidence available on record. He further submits that in the absence of any proof of sand in the trolley, at the time of accident, the learned Tribunal went wrong while holding that there was violation of terms of insurance policy as regards the requirement of permit for using the tractor trolley as transport vehicle.

On the other hand, learned counsel for respondent No.3- Insurance Company submits that in view of statement made by PW3- Makhan Singh i.e. the eye witness, the learned Tribunal did not commit any error while recording its finding and as such the impugned award does not warrant any interference.

I have heard learned counsel for the parties and gone through the record. The primary question to be answered in this

appeal is as to whether at the time of accident, the appellant was carrying sand in the trolley attached to the Tractor.

On a meaningful reading of the evidence available on record, I am unable to accept the finding recorded by the learned Tribunal as regards liability. While dealing with the present appeals, being the first Appellate Court and hence the final Court of fact, I have carefully gone through the pleadings and the evidence and have been able to trace out that the case, as set up by respondent No.3 regarding carrying of sand in the trolley at the time of accident is not made out.

In this case, the accident took place on 08.10.2018. FIR No. 282 dated 08.10.2018 under Sections 279, 304-A IPC was registered at Police Station, Pinjore, on the statement of eye-witness Makhan Singh and the same was proved on record as Ex.P5. In the entire FIR, there is no mention of carrying sand in the trolley attached to the Tractor involved in the accident. Still further, final report under Section 173 Cr.P.C. was prepared by the investigating agency on 05.11.2018 and it was proved on record as Ex.P12. Neither in the FIR; nor even in the final report, while mentioning about taking into possession of the offending tractor-trolley, the factum of it carrying sand has been recorded. Even PW3-Makhan Singh while appearing before the learned Tribunal nowhere attributes any negligence to the police authorities either while recording of the FIR or even at the time of submission of final report.

Though, in the claim petition the factum of trolley carrying sand has been mentioned, the same has been emphatically denied by the present appellant in his written statement before the Tribunal. Similarly, the eye-witness PW3-Makhan Singh, deposed in his examination-in-chief that the trolley was carrying sand. To this, a specific suggestion of denial was put to him from the side of present appellant. More than that, respondent No.3-Insurance Company, neither in its written statement raised any such kind of plea; nor even any witness was produced so as to allege any kind of violation of the terms of Insurance policy, thus, respondent No.3 never even discharged its burden to prove any violation of the insurance policy and therefore, the onus never shifted upon the appellant in this regard.

Needless to mention here that once there was no mention of sand being carried in the Tractor-trolley as per the FIR; nor any supplementary statement was made by the eye-witness to this effect before submission of the final report under Section 173 Cr.P.C., the first and the basic version relating to the accident in question conceived at the instance of the same eye-witness, could not have been disbelieved by the learned Tribunal, based on an oral statement made by him. As per the settled proposition, the primary evidence of contents of a document is the document itself. Once the FIR as well as the report under Section 173 Cr.P.C. were proved on record wherein the contents regarding trolley carrying sand were missing, the said documents could not have been rebutted merely on the basis

of the oral testimony of the authority of said FIR, in the absence of their being any reliable corroboration to the said oral statement.

In view of findings recorded hereinabove, I find merit in the contentions raised on behalf of the appellant. Resultantly, both the appeals are allowed. The findings qua issue No.3 as recorded by the learned Tribunal in its award dated 16.08.2021 in favour of respondent No.3 are hereby set aside, consequently denying them the recovery rights against the present appellant.

Pending miscellaneous application(s), if any, shall also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

October 10, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>