IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

216 **FAO No.686 of 2000**
Date of Decision : 06.09.2022

Nishan Singh ....Appellant

VERSUS

Satyawan and Others ....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr.Jagtej Singh Kang, Advocate for
Mr. K.S. Dhaliwal, Advocate for the appellant.

Mr. R.N. Lohan, Advocate for respondent no.1.

Mr. Pardeep Goyal, Advocate for respondent no.3.

ALKA SARIN, J. (Oral)

The present appeal has been filed against the award dated 03.02.1999 passed by the Motor Accident Claims Tribunal, Jind (hereinafter referred to as the 'Tribunal') dismissing the claim petition filed by the claimant-appellant only on the ground that it was not discernible as to who was the driver of the truck bearing registration no.HR-46-3783 (hereinafter referred to as the 'offending truck').

Learned counsel appearing on behalf of the claimant-appellant has contended that the injured in the accident had categorically stated that respondent no.1-Satyawan was the driver of the offending truck. The statements of the injured, who were present in the truck at the time of accident, had totally been ignored by the Tribunal.

Per contra learned counsel for the respondent no.3-Insurance Company has contended that there is no evidence on the record to show that respondent no.1 was the driver of the offending truck. It is further contended that one Subhash was the driver, who handed over the offending truck, to

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respondent no.1-Satyawan without consent and permission of respondent no.2, and as such there was no liability of the respondent no.3-Insurance Company to pay the compensation.

Learned counsel appearing on behalf of respondent no.1 states that respondent no.1 has no role to play in the present case inasmuch as he was not the driver of the offending truck.

I have heard learned counsel for the parties.

The brief facts relevant to the present *lis* are that on 25.08.1995, the claimant-appellant was working with respondent no.2 - Safidon Co-operative Marketing-cum-Processing Society Ltd., Safidon - on contract basis. On the said date, the claimant-appellant along with other workers loaded 250 bags of fertilizers under the orders of respondent no.2 in the offending truck at HAFED situated in Safidon Town for delivering these bags to Dathrath Co-operative Society Ltd., Dathrath. It was further stated in the claim petition that the claimant-appellant along with others were to unload the aforesaid fertilizers bags at village Dathrath, hence, they boarded the truck at the HAFED Godown. The offending truck was being driven by respondent no.1-Satyawan and when the offending vehicle was going to village Dathrath, Raja Ram and Sube Singh (other injured) were sitting in the cabin with respondent no.1 whereas the claimant-appellant along with other workers was sitting on the bags loaded in the truck. Respondent no.1 was stated to be driving the offending truck rashly and negligently and when it reached at a distance of 1 km away from HAFED Godown from Sheela Kheri side near Swastik Rice Mills of Safidon on Safidon-Jind Road, respondent no.1, who was driving the offending truck at a high speed, lost

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control and as a result the offending truck turned turtle and the claimant-appellant received multiple injuries.

The claim petition was contested by respondent no.1 stating therein that he had not caused the accident and that he never remained in service of respondent no.2. Respondent no.2 filed a separate written statement raising the pleas that the accident in question did not take place due to rash and negligent driving of respondent no.1 and actually a cow came running from right side of the road all of a sudden and in order to save the cow, respondent no.1 took the vehicle to the wrong side of the road as a result of which it turned turtle. It was further stated in the amended written statement that Subhash was employed by respondent no.2 and respondent no.2 handed over the truck to Subhash and gate pass was also signed by Subhash. However, Subhash later on handed over the truck to respondent no.1-Satyawan.

Respondent no.3-Insurance Company also filed its written statement contesting the claim petition.

On the basis of pleadings of the parties, the following issues were framed :

1. Whether the accident in question took place due to rash and negligent driving of respondent no.1, driver of truck No.HR-46-3783 in which the petitioner received injuries? OPP
2. If issue no.1 is proved in the affirmative to what amount of compensation the petitioner is entitled to and from whom? OPP

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3. Whether the respondent no.1 was holding a valid driving licence on the date of accident? OPR

4. Relief.

The following additional issue no.3-A was framed by the Tribunal :

3-A. Whether Subhash son of Dhanpat resident of village Bhag Khera was authorized driver of respondent no.2 of the truck in question and he handed over the vehicle to respondent no.1 Satyawan for driving the truck at the time of accident as alleged in the amended written statement, if so to what effect? OPR.

The Tribunal, holding that there was no evidence on the record to show that respondent no.1-Satyawan had any connection with the truck in question, dismissed the claim petition itself. Aggrieved by the said award, the present appeal has been preferred by the claimant-appellant.

In the present case respondent no.2, who is admittedly owner of the offending truck, admitted in his amended written statement that the truck was being driven by respondent no.1 at the time of accident. The factum of the accident has not been denied, however, the manner in which the accident took place has been denied. The stand taken by respondent no.2 was that the offending truck was handed over to one Subhash who unauthorizedly handed it over to respondent no.1. The Tribunal while dismissing the claim petition of the claimant-appellant has totally ignored the deposition of the claimant-appellant who categorically stated that respondent no.1-Satyawan was driving the offending truck. Even in the written statement filed by

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respondent no.2, this is not a fact which has been denied though the stand had been taken that he was not authorized to drive the offending truck. The question whether respondent no.1 was authorized to drive the offending truck or not would be a determining factor as to whether respondent no.3-Insurance Company would get the recovery rights or not. However, the same cannot be made a ground to dismiss the claim petition. Admittedly, the accident took place and the claimant-appellant was travelling in the offending truck. Once the factum of the accident is not in dispute, it is incumbent upon the Tribunal to assess the compensation in accordance with the law.

Hon'ble Supreme Court in case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [2020 (13) SCC 486]** has held as under :

> *"It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard*

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of proof beyond all reasonable doubt which is followed in criminal cases."

In view of the above and the settled law, the award passed by the Tribunal is set aside. The matter is accordingly remanded back to the Tribunal to decide the claim petition afresh on merits. Since the accident pertains to the year 1995, the Tribunal is requested to expedite the hearing of the matter.

The parties are directed to appear before the Tribunal on 26.09.2022 at 10.00 a.m. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

06.09.2022
jk

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

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