

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

FAO-756-2005

Date of Decision: 23.09.2022

Banti Devi and others

..... Petitioners

Versus

Sukhwant Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Yadvinder Singh Turka, Advocate
for the appellants.

Mr. Amit Aggarwal, DAG, Haryana
for respondents No.2 and 3/State.

HARSH BUNGER J.

This order shall dispose of the appeal (FAO-756-2005) filed by the Appellants-claimants, against award dated 02.11.2004 (hereinafter referred to as 'impugned award') passed by the Motor Accident Claim Tribunal, Ambala (for brevity 'the Tribunal'), whereby the claim petition filed by the Appellants-claimants seeking compensation under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act') was dismissed.

Sarwant Singh (mentioned as Sukhwant Singh in Memorandum of Parties), driver of Bus bearing registration No. HRA-4510 (hereinafter referred to as 'offending vehicle'); the General Manager, Haryana Roadways; the State Transport Controller, Haryana and the Insurance

Company have been arrayed as respondents No.1 to 4, respectively.

The record of this appeal was burnt and from the salvaged record of partially burnt case, the same was reconstructed, subject to all just exceptions and further verification.

Brief facts necessary for adjudication of the appeal are that the appellants/claimants [widow and sons of Baljeet Ram (hereinafter referred to as 'deceased')] filed petition under Section 166 of the Act claiming compensation on account of death of the deceased in a motor vehicle accident. It was stated in the petition that deceased was a driver under XEN (Mechanical) PWD (B&R), Ambala Cantt. and on 07.05.1977, the deceased was on duty on the truck owned by PWD Department when the offending vehicle being driven by one Sarwant Singh in a rash and negligent manner and at a very high speed hit against the deceased; who fell down and was run over by the offending vehicle and he died at the spot. It was stated that an FIR regarding the said accident was lodged at Police Station Shahabad Markanda.

The above said claim petition was contested by the General Manager, Haryana and the State Transport Controller, Haryana on the ground that the petition was not maintainable and was hopelessly time barred as the same has been filed after a gap of 23 years of the alleged occurrence. Objections on account of *locus standi*, suppression of material facts and non-joinder of the necessary party were raised. On merits, averments of the claimants were denied and the plea of negligence was also denied. Stand was also taken that the accident in question has not taken place due to the fault of driver of the offending vehicle and accordingly

dismissal of the claim petition was prayed for.

The claimants did not file any replication.

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

- “1. Whether the deceased died in a road side accident allegedly caused due to rash and negligent driving of Bus No.HRA-4510 by respondent No.1-Sukhwant Singh as alleged? OPP*
- 2. If issue is proved in affirmative then to what amount of compensation the claimants are entitled to and from whom? OPP*
- 3. Whether the claim petition is not maintainable in the present form?OPRs*
- 4. Whether the claim petition is time barred? OPRs*
- 5. Whether the claimants have not locus standi to file the present claim petition? OPRs*
- 6. Whether the claim petition is bad for non-joinder of necessary parties? OPRs*
- 7. Relief.”*

In order to substantiate the claim, the claimants examined Banti Devi (Appellant No.1) as PW-1 and further examined one Mam Raj as PW-2 and tendered the following documents on record:-

- a) Ex.PA the application dated 20.02.2001 for giving direction to C.M.O. for issuing of copy of PMR;
- b) Ex.PB copy of FIR;
- c) Ex.PC receipt of civil hospital;
- d) Ex.PD reply dated 03.04.1978 given by the General Manager Haryana Roadways, Ambala Depot;
- e) Ex.PE the letter dated 30.11.1976 issued by Executive Engineer Mechanical Division PWD (B&R) to Chief Medical Officer for the medical of the deceased Baljit Ram;

f) Ex.PF the application given by Banti Devi to Officer Incharge ASC records (M.T.) Bangalore, Karnataka.

In order to prove Issue No.1, the claimants relied upon statement of PW-1, who stated that her husband had died in a road-side accident about 25/26 years ago and he was working in PWD (B&R) when he met with the said accident. An FIR (Ex. PB) regarding the accident was lodged at Police Station Shahabad Markanda on 07.05.1977. In her cross-examination, she admitted that she was not an eye-witness to the said accident. She further stated that she did not apply for compensation on account of death of her husband under the Workmen Compensation Act, 1923.

The claimants further examined Mam Raj as PW-2, who stated that the deceased had died in a road-side accident on 07.05.1977. However in his cross-examination, he stated that he was not an eye-witness to the said accident.

The appellants/claimants further referred to the statement of Sarwant Singh (RW-1), driver of the offending vehicle, who stated that on 07.05.1977, he was driving the offending vehicle at a normal speed of 30/35 km./hr. and near Markanda bridge, PWD work was going on; that one man (deceased) was helping the driver of PWD truck for reversing the same when all of a sudden he came on *pucca* side of the road and struck against conductor side of the offending vehicle and became unconscious. He stated that the accident took place due to fault of the deceased and he was not at fault in causing the accident. He further stated that he was challaned by the Police at the instance of PWD and was acquitted in the trial of said criminal case. It was further stated that the claim petition was false and time barred.

In his cross-examination, he stated that when he saw the deceased giving signal to the aforesaid truck driver, he had slowed down the speed of the offending vehicle at a distance of 20/25 meters prior by applying brakes and then stopped the offending vehicle. He denied the allegations of rash and negligent driving of the offending vehicle and causing the accident. He further stated that he had no knowledge whether the injured died at the spot due to him striking with the offending vehicle.

Considering the evidence and material brought on record of the case, the Tribunal recorded the findings that no eye-witness of the accident had been examined by the claimants to prove the cause of said accident and negligence of driver of the offending vehicle. The Tribunal further observed that merely tendering of the FIR is not a substantive piece of evidence to establish the negligence or rashness on the part of driver of the offending vehicle. In fact the author of FIR had not been examined to prove its contents. The Tribunal also considered the fact that the State Transport Controller, Haryana admitted the accident but it denied the plea of negligence on the part of driver of the offending vehicle in causing the accident. The Tribunal further considered the statement of RW-1, who had stated that he was not rash and negligent in driving the offending vehicle and was not at fault in causing the accident.

It is a matter of record that no Post Mortem Report or medical evidence has been placed on record to prove that deceased succumbed to the injuries sustained in the accident. Even the Death Certificate of the deceased was not placed on record to establish the cause of his death. Further, the Appellants-claimants gave up the claim petition against Sarwant Singh, the driver of the offending vehicle.

Considering totality of the circumstances, the Tribunal decided Issue No.1 against the claimants by holding that there was no cogent evidence brought on record by the claimants to prove the plea of negligence on the part of driver of the offending vehicle.

Under Issue No.2, the Tribunal considered the fact that no Salary Certificate of the deceased was placed on record to show his salary at the time of his death and further that there was no evidence on record to establish the age of deceased as 30 years at the time of accident. Accordingly, in the absence of said material information, the Tribunal could not access the dependency and it simply held that *“had Issue No.1 been answered in favour of the claimants, they would have been entitled for the compensation of Rs.50,000/- on account of death of the deceased”*.

Under Issue No.3, the claim petition was held to be maintainable and under Issue No.4, the petition was held to be not time barred. Further under Issue No.5, it was held that the claimants had the *locus standi* to file the petition. Even Issue No.6 was held against the respondents in the claim petition.

On the basis of above referred findings, the Tribunal proceeded to dismiss the claim petition filed by the claimants vide order dated 02.11.2004, which has been impugned in this appeal.

I have heard learned counsel for the Appellants and perused the paper book.

It is the contention of the Appellants that once the driver of offending vehicle had admitted the accident and even a copy of FIR was placed on the record; accordingly the Tribunal had erred in law and facts in dismissing the claim petition.

A perusal of the file shows that although the accident is admitted to have taken place on 07.05.1977, however there is no cogent evidence available on the record to substantiate that the said accident was the result of rash and negligent driving of the offending vehicle, which was being driven by Sarwant Singh. Further, the author of FIR was not examined. In fact, Sarwant Singh (driver of the offending vehicle) stated that he was acquitted in the criminal case. Even the Death Certificate of the deceased has not been placed on record to establish the cause of his death. There is no Post Mortem Report or any other medical evidence on record to show the cause of death of the deceased or to prove that his death was on account of the injuries sustained by him in the said accident.

It is a well settled principle of law that proof of rashness and negligence on the part of driver of the offending vehicle is a *sine qua non* for maintaining an application under Section 166 of the Act and the onus to prove all the ingredients on part of the offending vehicle/its driver is always upon the claimants and in the absence of any cogent evidence, the liability cannot be fastened upon the owner/driver of the offending vehicle.

In this case, the alleged accident is stated to have occurred on 07.05.1977 and the claim petition was filed in the year 2001, i.e. after almost 23 years. Thus simply on account of involvement of the bus in the accident cannot make the respondents liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of driver-respondent No.1. Rather, the Appellants gave up the claim petition against Sarwant Singh (driver of the offending vehicle).

No other point was argued.

Thus, in view of the aforementioned facts and circumstances, no interference is called for in the impugned award and the appeal is accordingly dismissed being devoid of any merit.

23.09.2022

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No