

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

376

FAO-5968-2010(O&M)
Date of Decision: 08.09.2022

Damini Walia & anr.

....Appellants

VERSUS

Harnam Chander & ors.

....Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Ashwani Talwar, Advocate,
for the appellants.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.3.

JAGMOHAN BANSAL, J. (Oral)

1. The appellants through instant appeal are seeking setting aside of award dated 14.09.2010, whereby the Motor Accident Claims Tribunal, Mohali (for short 'Tribunal') has rejected claim of the appellants holding that the appellants have failed to prove that accident occurred due to rash and negligent driving of driver-respondent No.1.

2. Facts emerging from record and necessary for the adjudication of the present appeal are that Parshant Walia (deceased) on 17.09.2007 while riding on his scooter bearing registration No.UA-04C-7600 met with an accident with motorcycle bearing registration No.UA-04C-7717. The deceased in the accident suffered injuries on his head and was initially taken away to Century Pulp and Paper First Aid Centre and thereafter, referred to Neuro Surgeon. The deceased was declared dead at Krishana Hospital and Research Centre, Haldwani. He was employed in a private company as a

Computer Faculty and in a society as Project Coordinator

being B.Com and Computer Expert.

3. The wife and son of deceased filed a petition under Section 166 of Motor Vehicles Act, 1988 (for short '1988 Act'), seeking compensation on account of death of Parshant Walia.

4. On notice, respondents appeared and learned Tribunal framed different issues for its adjudication. The issue, which is directly connected for adjudication of the present appeal is as below:-

“Whether Parshant Walia died in motor vehicular accident which took place on 17.09.2007 at about 9.30 p.m in the area of Kasnj Durga Choraha Haldwani on account of rash and negligent driving by respondent No.1 Harnam Chander by motor cycle bearing No.UA-04C-7717? OPP”

5. Learned Tribunal noted that FIR was lodged by wife of the deceased and a colleague of the deceased was travelling with him on the same scooter. Thus, he was the best person to narrate the manner in which the accident took place. However, the claimant has not examined the said eye-witness. Learned Tribunal concluded that claimants have failed to prove that the alleged accident occurred due to rash and negligent driving of the offending vehicle. Learned Tribunal decided aforesaid issue against the claimants especially on the ground that the appellants have failed to examine any eye-witness especially a person, who was allegedly travelling along with deceased.

6. Learned counsel for the appellants contended that the accident took place at Haldwani-Nainital whereas the appellants are resident of Mohali. Thus, claim was filed at Mohali. The colleague of deceased is

resident of Haldwani and criminal trial is pending at Haldwani, Nainital. The appellants had no direct contact with colleague of the deceased, thus, he could not be examined as witness. However, Aishvarya Goel son of Sh. Rajiv Goel had appeared before learned Civil Judge, Junior Division, Haldwani and tendered his statement as PW-1. He further contended that CM-26770-CII of 2010 has been filed seeking summoning of eye witness.

7. Learned counsel for the insurer supported findings of learned Tribunal.

8. I have heard arguments of both sides and perused the record.

9. Concededly, the accident wherein husband of appellant No.1 died took place at Haldwani, whereas the appellants are resident of SAS Nagar, Mohali. Appellant No.1 due to reasons beyond her control could not make sure presence before learned Tribunal of Aishvarya Goel, who was accompanying the deceased at the time of accident. Aishvarya Goel appeared before the learned JMJC, Haldwani and tendered his statement. The certified copy of statement of Aishvarya Goel was brought on record as Ex.P-38 before the learned Tribunal which in its order dated 20.11.2009 noted that Sh. R.C. Gupta, Advocate, learned counsel for the claimants tendered into evidence certified copy of statement of Aishvarya Goel as Ex.P-38. However, learned Tribunal while passing impugned order did not take its cognizance and held that the appellants had not led evidence of eye-witness even though there is claim that one colleague of deceased was accompanying him.

10. I have perused Annexure A-1 enclosed with CM-26770-CII-2020 and order dated 20.11.2009 passed by learned Tribunal. I am of the considered opinion that learned Tribunal was supposed to take note of

certified copy of statement of Aishvarya Goel because statement was tendered by him before learned JMIC, Haldwani and claim petition had been filed at Mohali. There were all possibilities that appellant No.1 being widow could not make sure presence of Aishvarya Goel before learned Tribunal as Aishvarya Goel is residing at Haldwani. 1988 Act is a piece of beneficial legislation and proceedings before learned Tribunal are not governed by strict rules and procedure prescribed under CPC and Evidence Act. The object of the Act is to compensate affected parties, especially dependents of a person, who has passed away in a road accident. I am of the opinion that the matter needs to be reconsidered by learned Tribunal. Both the counsels also agree that matter needs to be remanded to learned Tribunal so that either evidence of eye-witness namely, Aishvarya Goel recorded before learned JMIC, Haldwani, may be considered or he may be summoned. Learned counsels further proposed that learned Tribunal may be directed to decide claim petition in a time bound manner as matter is more than 15 years old. Learned counsel for the appellants further prayed that learned Tribunal may be directed to consider stand of driver and owner of the vehicle.

11. In view of the facts and evidence on record as well consent of both the sides, I deem it appropriate to remand the matter to learned Tribunal with following directions:-

- I. Learned Tribunal shall decide claim petition as expeditiously as possible and in any case, within 6 months from the date of receipt of record.
- II. Learned Tribunal shall either consider statement tendered by eye-witness before learned JMIC, Haldwani or summon

Aishvarya Goel and thereafter, passed order in accordance with law.

III. Learned Tribunal shall pass order afresh after considering all the documents and evidences on record and without being influenced by observations of this Court.

The parties at first instance shall appear before learned MACT, Mohali on **28.09.2022** and thereafter as directed by learned Tribunal. The registry is directed to return the record of the learned Tribunal.

08.09.2022
monika

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No