

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

**FAO No.4661 of 2011 and
XOBJ No.48-CII of 2011
Date of decision : April 22, 2022**

Krishan Kumar

....Appellant

Versus

Vipin and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. V.P. Arora, Advocate
for the appellant.

Mr. Suvir Dewan, Advocate
for respondent No.3.

Mr. B.R. Gupta, Advocate
for respondent No.4/cross-objector.

PANKAJ JAIN, J.

This is an appeal filed against the Award passed by Motor Accidents Claims Tribunal, Panipat (for short, 'the Tribunal') in MACT Case No.24 of 2010. Driver of the alleged offending vehicle is in appeal aggrieved against finding recorded by the Tribunal on Issue No.2 whereby he has been saddled with liability of 40% of the compensation awarded by the Tribunal jointly and severally with owner of the vehicle i.e. respondent No.4.

2. The present claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation on account of death of one Rakesh in a motor vehicular accident dated 11th

March, 2009.

3. As per the claim petition, deceased Rakesh along with Guddu son of Phagu Ram resident of Arjan Nagar Kabri Road and Vipin son of Mahender (respondent No.1) were going from Arjan Nagar on Hero Honda Motor Cycle bearing Regd. No.HR-06R-8335 which is registered in the name of Bintu son of Mahender-respondent No.2. When they had reached near round about near Industrial Area. Then, in the mean time a Hero Honda Passion Motor Cycle bearing Regd. No.HR-05L-4656 came from the opposite side. Respondent No.1 Vipin hit the motor cycle driven by him (HR-06R-8335) directly with the motor cycle No.HR-05L-4656 which was coming from front side and driven by respondent No.4 namely Krishan son of Ramdhari. As a result thereof both the motor cycles and their riders fell down on the road and all sustained multiple and grievous injuries Rakesh since deceased was taken to Civil Hospital Panipat. The doctors there had referred him to PGI MS Rohtak on the same day and there he remained admitted up to 27th March, 2009. On 27th March, 2009 he expired. His post mortem was conducted on the same day. It has been pleaded that the claimants had incurred Rs.50000/- on treatment, transportation and last rites of deceased Rakesh. A criminal case resulting from FIR No.76 dated 12th March, 2009 under Sections 279, 337, 304-A IPC was registered. It has claimed that accident had occurred due to use of motor cycle bearing No.HR-06R-8335 and bearing Regd. No.HR-05L-4636. Deceased Rakesh

was using the motor cycle No. HR-06R-8335 as he was a pillion rider on it. Respondent No.1-Vipin was driving the said motor cycle No.HR-06R-8335 rashly and negligently. Deceased Rakesh as per pleadings was 21 years of age and a labourer by occupation with a monthly income of Rs.3300/-. He was sole bread earner for the family.

4. The appellant contested the claim petition pleading that the accident took place owing to negligence on the part of Vipin, who was driving the other vehicle involved in the accident i.e. motor-cycle No.HR-06R-8335. Ld. Tribunal found that there was no negligence on behalf of respondent No.4-Krishan i.e. the appellant. While deciding Issue No.2 though the Tribunal observed that, “*..May be, there is no negligence on the part of respondent No.4 but the question of negligence is not to be seen in these proceedings under Section 163A of the Act. Respondent No.5 is the registered owner of the vehicle No.HR-05L-4656. It is also clear in his cross examination when he appeared as RW1...*” but held the appellant along with respondent No.4 liable to pay 40% of the awarded compensation jointly and severally.

5. Ld. Counsel for the appellant has challenged the aforesaid finding. Respondent No.4 Satish Kumar has also filed cross-objections in the present appeal bearing Cross Objections No.48-CII of 2011. The ground of challenge raised by the Cross-objectors is that the said motor cycle had been sold by the cross-objector to the appellant Krishan Pal on

17th September, 2007 for consideration an affidavit Ex.R.4 had been brought on the record to prove this fact. He submits that learned Tribunal went wrong to burden the cross-objector/respondent with liability along with Krishan (appellant).

6. Ld. Counsel for the parties have been heard and with their able assistance record of the case has been carefully perused.

7. The findings recorded by the Ld. Tribunal in Para No.19 cannot be sustained being mutually contradictory. It is not disputed that it is the appellant on whose statement FIR No.75 dated 12th March, 2009 was registered. There was no delay in registration of the FIR. As per the contents of FIR, whole of the negligence was imputed to respondent No.1. Once Tribunal itself returned finding that it was respondent No.1, who was instrumental to the cause of accident resulting in the death of rider of the said vehicle, it is only respondents No.1 to 3, who could be held liable for the awarded amount.

8. The finding recorded by the Tribunal on Issue No.2 cannot be sustained and, thus, same is reversed.

9. In view of the discussion made herein above, respondents No.1 to 3 are held to be liable for payment of the compensation awarded by the Tribunal in full i.e. to the extent of 100%.

10. As a sequel of the aforesaid discussion, the appeal is allowed. Since relief claimed in appeal as well as in cross-objections is the same,

cross-objections are also allowed in terms of this order. Respondents No.4 and 5 are both exonerated from their liability.

11. Since the main appeal has been allowed, the pending misc. applications, if any, also stand disposed off.

April 22, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No