

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4709-2013 (O&M)
Date of decision : 10.05.2022

Saran Kumar and others

..... Appellants

versus

Satish Kumar and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajesh K. Sharma, Advocate
for the appellants.

Mr. Ashish Grewal, Advocate
for respondent No.3.

Mr. Satpal Dhamija, Advocate
for respondent No.4-Insurance Company.

PANKAJ JAIN, J. (Oral)

Claimants are in appeal impugning the award dated 15.03.2013 passed by learned Motor Accident Claims Tribunal, Panchkula (hereinafter referred to as 'Tribunal') whereby claim petition preferred under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'Act') has been dismissed holding that claimants have not been able to prove that the accident was caused on account of negligence of respondent No.1.

2. As per claim petition, deceased Rita was driving her scooty bearing registration No.PB-65-A-6308. When she reached near Chaudhary Farm House at Panchkula, a Hyundai Accent Car bearing registration No.HR-02-L-9396 being driven in rash and negligent manner struck the scooty. Resultantly, the deceased fell down. It was further pleaded that respondent No.1 stopped the car after covering some distance but on seeing the serious condition of the

deceased, he fled away. The deceased was taken to nearby General Hospital where she was declared broad dead.

3. The claim petition was contested by respondent No.1-Driver. The stand of respondent No.1 was of total denial. The alleged owner i.e. respondents No.2 and 3 filed a separate written statement stating that respondent No.2 has already sold the vehicle to respondent No.1.

4. Be that as it may, it is not denied that the vehicle was insured. Respondent No.4 i.e. the insurer filed written statement pleading that the driver of the car i.e. respondent No.1 was not holding valid and effective licence and thus it was not liable to pay any claim owing to the breach of the conditions of insurance policy by respondent No.1.

5. Learned Tribunal framed the following issues:-

- “(1) Whether Smt. Rita Rani @ Rita Sharma w/o Saran Sharma, died on account of the accident in question which took place due to rash and negligent driving of Maruti Car bearing registration No.HR-02-L-9396 by respondent No.1? OPP
- (2) Whether the claimants are entitled to compensation, if so to what amount and from whom? OPP
- (3) Whether the car in question was being driven against the terms and conditions of the insurance policy as well as provisions of Motor Vehicles Act, if so to what effect? OPR4
- (4) Relief.

6. After deciding issue No.1 against the claimants, the claim petition was dismissed.

7. Counsel for the appellants/claimants contends that in order to prove the accident, the claimants stepped into the witness box and also proved FIR dated 30.08.2010 which was recorded on the date of accident. In the contents

of the FIR, the description as well as registration number of the vehicle finds mention which has been completely ignored by the Tribunal. He further claims that since respondent No.1 avoided to step into witness box, an adverse inference ought to have been drawn. Ignoring all these facts, the Tribunal erred in passing the impugned award which is purely conjectural in nature and based on surmises.

8. Per contra, counsel for respondent No.4-insurance company submits that photograph of the accident proved on record as Ex.R-2 holds the key which would show that in fact no collusion took place. Ex.R-2 would show that deceased was driving scooty on wrong side without wearing helmet and while overtaking the vehicle, she got nervous, resulting in her fall from the scooty. Counsel thus claims that the award has been passed after analyzing the evidence on record which deserves no interference.

9. I have heard learned counsel for the parties and have carefully perused the record.

10. Learned Tribunal while deciding issue No.1 recorded the following facts:-

“It is settled that acquittal or conviction by the criminal court is not sufficient nor pendency of the criminal case an indicator of the culpability of the driver. The Tribunal has to independently examine the evidence and find out the real facts. It is not disputed that the deceased was Pardhan of Block Youth Congress. Her husband Saran Kumar works with Jai Shree Agro Industries, Sultanpur. According to him, the complainant had taken short leave and had come to Chaudhary Farm House, Mattanwala and after finishing his work, he was waiting for a vehicle to return, when his wife was seen coming on a Scooty. It was also mentioned that the car was left on the spot. The photograph

placed on record by the insurance company shows that the car had come on the kaccha berm and had struck against a tree. The photograph shows that the Scooty was lying on the extreme right side of the road, if one comes from Panchkula side. The car was coming from Mattanwala side. It is not clear whether the deceased was wearing any helmet. There are skid marks on the road few feet from the kachcha road which shows that the Scooty came on the wrong side and the car driver suddenly applied brakes and turned left and there are skid marks on the road. The mechanical report of the scooter was not made available by the claimant. It appears that when the car came from the opposite side, the Scooty driver got nervous and fell down. Had the car hit the scooter, the scooter would have been thrown away. Had the car been at a high speed, the scooter would not have fallen where it is shown to have been fallen in Ex.R2. The scooter was not damaged. The post mortem report shows that there was only one injury on the head and a abrasion on the knee. The body was not crushed. No document was produced to show that Saran Kumar had taken his wife to the hospital. His presence on the spot is doubtful. Had he been present, there would have been some record showing his presence. Whenever an injured is taken to the hospital, a record is prepared in the hospital and the person accompanying the injured deceased, is always noted and it would have been done in this case as well. There are serious doubt regarding the presence of Saran Kumar. The manner in which the accident is described does not appear to be correct. It is held that the claimants have not been able to prove that the accident was caused on account of negligence of respondent No. 1. The issue is answered against the claimant.”

11. A bare perusal of the aforesaid reasoning recorded by the learned Tribunal would show that the same is not based on any evidence on record but

is merely conjectural.

12. Documentary evidence i.e. FIR dated 30.08.2010 which carries the details of the accident as well as the details of the offending vehicle is on record, yet Tribunal has not even bothered to go into the contents thereof.

13. Once the claimants have discharged the initial onus by stepping into witness box and by proving FIR, the onus to rebut the same shifted on to the respondents. It is respondent No.1 only who could have rebutted the aforesaid evidence led by the claimants. Respondent No.1 having opted not to step into the witness box, adverse inference ought to have been drawn. Resultantly, issue No.1 ought to have been decided only after appreciating FIR dated 30.08.2010 Ex.P-2 and copy of the report filed under Section 173 Cr.P.C Ex.P-5.

14. Consequently, as a sequel of the discussion held hereinabove, finding on issue No.1 is set aside. The matter is remanded back to the Tribunal to decide the said issue afresh in light of evidence on record. Parties shall appear before the Tribunal on 30.05.2022. Owing to the fact that the claimants are facing ordeal of litigating for last 12 years, the Tribunal is directed to decide the claim expeditiously preferably within a period of six months from the date of receipt of certified copy of this order.

15. Appeal stands disposed off in the abovesaid terms.

16. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

10.05.2022

Dinesh

Whether speaking/reasoned

Yes

Whether Reportable :

No