

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-5146-2002 (O&M)
Date of decision: 20.02.2023

Mangli Devi & Another

...Appellant(s)

Vs.

Balbir Singh (since deceased) through LR & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Neeraj Khanna, Advocate for the appellants.

Ms. Amarjeet Kaur, Advocate for
Mr. Puneet Pali, Advocate for respondent No.2.

Ms. Suman Jain, Advocate and
Mr. Rishabh Jain, Advocate for respondent No.3.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants against dismissal of their claim petition by Motor Accident Claims Tribunal, Ambala (hereinafter referred to as "the learned Tribunal") vide Award dated 24.08.2002 passed in MACT Case No.216 dated 04.10.2000 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act"). Claimants are parents of deceased-Anil Kumar, who was 19 years of age at the time of death and a student of Sohan Lal DAV College, Ambala City.

2. Brief facts of the case are that it was alleged by the appellants that deceased-Anil Kumar had died due to injuries suffered by him in a motor vehicular accident that took place on 09.07.2000 due to rash and negligent driving of three-wheeler bearing registration No.HR-37A-9177 (hereinafter referred to as "the offending vehicle") being driven by

respondent No.1/driver, owned by respondent No.2 and insured by respondent No.3.

3. On the basis of pleadings and evidence placed before it, learned Tribunal concluded that appellants had not been able to prove that accident in question had occurred due to negligence on part of respondent No.1. Accordingly, their claim petition was dismissed by learned Tribunal.

4. Learned counsel for the appellants submits that;

a) deceased was riding in the offending vehicle which was being driven by respondent No.1 in a rash and negligent manner as a result of which it turned turtle. Due to the accident, occupants of the three-wheeler received injuries and deceased-Anil Kumar died in hospital;

b) it has been admitted by respondents No.1 and 2/driver and owner of offending vehicle respectively, that deceased was travelling in the offending vehicle at the time of accident;

c) in pursuance to the accident, even an FIR was registered in which respondent No.1 is facing trial;

d) appellants had even examined Siri Ram-PW3, from whose evidence it is proven on record that deceased had died due to rash and negligent driving of respondent No.1. It is submitted that in these circumstances, learned Tribunal has wrongly dismissed the claim petition of the appellants.

5. No other argument is raised on behalf of the appellants.

6. I have heard learned counsel for the appellants.

7. Perusal of record of the case shows that FIR in pursuance to the accident in question was registered on the basis of statement of complainant-Mohinder Singh who was an eyewitness to the whole incident. However, said Mohinder Singh has not been examined by the appellants before the learned Tribunal. Moreover, there was unexplained delay of one day in registering the FIR as the accident in question is of 09.07.2000, whereas FIR was registered on 10.07.2000.

8. Further, great reliance has been placed by the appellants upon testimony of PW3-Siri Ram who is stated to be an eyewitness to the accident. However, a) said Siri Ram does not find mention in the FIR; b) version of events as stated by Siri Ram, purported eyewitness, is different to the version of events as given by complainant-Mohinder Singh and as recorded in the FIR; c) as per PW3-Siri Ram, 5-6 persons were travelling in the offending vehicle when a car suddenly appeared in front and respondent No.1 did not know what to do as a result of which three-wheeler fell on left side. However, said version is different from the one as given in FIR; d) Postmortem report indicates that deceased-Anil Kumar was taken to the hospital by Phul Dass s/o Padam Dass and Chet Ram s/o Ram Lal whose signatures are also borne against their names on the postmortem report. However, name or signatures of PW3-Siri Ram were not present at the spot; and e) in fact, there is no evidence on record to show that PW3-Siri Ram was present at the spot.

9. Further, registration of FIR against the owner or driver of offending vehicle has been held to be neither conclusive nor binding in claim petition cases under the Act. In this regard, reference may be made

to judgment of this Court passed in ***FAO-3787 of 2018 titled as “MAGMA HDI General Insurance Co. Ltd. Vs. Nirmala Devi & Others”*** wherein, it has been held as under:-

“In the considered view of this Court, the Tribunal while passing the impugned award has rightfully held that the judgment of a criminal court determining the guilt or innocence of a driver is neither conclusive nor binding on the Tribunal dealing with a claim petition. It is by now well settled that while adjudicating claim petitions regarding motor accident claims, the principle that is to be followed is preponderance of evidence. The standards of proof of a criminal case are different from claims set up for accident victims and the Tribunal while considering the issue of negligence adduced before it as to proceed un-influenced by the fact of pendency of a criminal case or judgment of acquittal given by the criminal court.”

10. In view of the factual and legal position as noticed above, I find no ground is made out to interfere in the impugned Award. Present appeal therefore stands, dismissed.

11. Pending application(s) if any also stand(s) disposed of.

20.02.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No