

FAO 2278/1999(O&M)
2023:PHHC:038059

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2278/1999(O&M)
Date of decision:02/03/2023

Smt. Sewa Devi and others

.....Appellants

Vs.

Suraj Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Sukriti Gupta, Advocate for
Mr.Sandeep Virmani, Advocate for the appellants.

Mr. Rahul Noorie, Advocate for
Mr. Abhimanyu Singh, Advocate for respondent no.1.

Nidhi Gupta, J.

CM 12843-CII/1999

1. Since there is delay of 23 days in refiling the present appeal, aforesaid application has been filed, duly accompanied by an affidavit of Clerk of the counsel for the appellants.

2. For the reasons stated in the application, the same is allowed and delay in refiling the appeal is condoned.

CM 12844-CII/1999

3. Since there is delay of 1 day in filing the appeal, aforesaid application accompanied by an affidavit of Clerk of the counsel for the appellants has been filed.

4. For the reasons stated in the application the same is allowed and insignificant delay of one day in filing the appeal is condoned.

5. Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.50,000/- granted towards 'no fault liability' by the Motor Accident Claims Tribunal, Gurgaon (hereinafter referred to as 'the Tribunal') vide Award dated 16.1.1999 passed in MACT 42/18.2.1995 filed u/s 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'). Claimants before the Tribunal were parents and two minor sisters of the deceased Mahesh Sharma. Brahm Dutt, father of the deceased, has since, expired. Accordingly, appellants before this Court are the mother and two sisters of the deceased.

6. Ld. Tribunal on the basis of pleadings and evidence before it concluded that deceased Mahesh had died due to injuries suffered by him in a motor vehicular accident that took place on 10.11.1994. Ld. Tribunal, however, upon consideration of the evidence before it concluded that no rash and negligent driving on the part of respondent no.1 herein/ driver of truck-trolley bearing no. HRU-3883, was made out. Accordingly, ld. Tribunal granted Rs.50,000/- to the appellants under no fault liability.

7. It is submitted by the ld. Counsel for the appellants that deceased was only 20 years of age at the time of his death and it has been proved on record that he was working as a TV Mechanic and earning Rs.1800/- per month. It is stated that this is borne out from the salary certificate Ex. P1, as also from the testimony of PW3/claimant no.3. It is submitted that deceased was the only earning member of the family. It is further submitted that the deceased at the time of accident was driving scooter bearing registration no. DDS-4692 and PW2 Surinder Singh was pillion riding behind the deceased. It is the pleaded case of the appellants before the Tribunal that the accident took place on a cold and dark winter

evening at about 7 pm as the tractor-trolley bearing registration No. HRU-3883 was standing parked on the side of the road without any indicator or parking lights, as a result of which the deceased hit into the said tractor-trolley resulting in his death. It is also stated that when the deceased was driving, a truck came from the opposite direction flashing its head lights because of which deceased was unable to see ahead, and therefore, struck against the standing tractor trolley HRU-3883.

8. It is vehemently submitted negligence and carelessness of the said tractor-trolley is borne out from the fact that it was parked without any indicator and therefore, the respondents could not have been absolved of their liability. In support, Id. Counsel relies upon judgment of Bombay High Court in **Mohini Mohanrao Salunke vs. Ramdas Hanumant Jadhav 2022 Live Law (Bom) 428.**

9. In response it is submitted by the Id. Counsel for respondent no.1-driver of the tractor trolley that as per testimony of eye witness PW2 Surinder Singh who was pillion riding behind the deceased, it is admitted that they were unable to see the tractor-trolley which was parked on the side of the road as a vehicle came from the front/ opposite side with its lights flashing because of which it reflected in the eyes of the deceased and they could not see the tractor-trolley and dashed against it. Learned counsel also refers to cross examination of PW2 eyewitness who has admitted that photographs Mark A-1 and A-2, and Mark A-3 and A-4 which were later on exhibited as Ex.RW2/3 and Ex.RW2/4, which show that at the time of accident there was a cigarette in the hand of the deceased, and one bottle which is not visible in the photograph. PW2 has admitted these photographs as correct.

10. Ld. Counsel further submits that RW1 Dhuni Ram, respondent no.2/owner of the tractor-trolley HRU-3883 who has since expired, had stated on oath that one Narinder Kumar son of Ganga Sahai resident of Duna Mandi, Dehradun, was the driver of the said trolley. Even copy of the Driving Licence of the said Narinder Kumar has been placed on record as Ex. R1. It is accordingly, submitted that Narinder Kumar was driver of the said tractor-trolley, and not the respondent no. 1 herein.

11. No other argument has been raised on behalf of the parties.

12. Heard ld. Counsel for the parties.

13. The undisputed facts that emerge from the above discussions are that the deceased was driving scooter bearing registration No. DDS 4692 when a truck came from the opposite side with flashing headlights due to which deceased who was driving the scooter was blinded and was not able to see ahead on the road, and therefore, struck against the stationary truck-trolley No. HRU-3883. Further, learned counsel for the appellants has been unable to controvert the facts in the form of photographs Mark A-1 to A-4/ Exhibits RW2/3 and Ex.RW2/4. In the said photographs, even if the bottle purported to be in the hand of the deceased but not visible in the photograph, is discounted, it has nonetheless, been admitted by PW2 eyewitness pillion-rider behind the deceased, that there was a cigarette in the hands of deceased while he was driving the scooter. Furthermore, as per the uncontroverted testimony of RW1 Dhuni Ram, owner of the tractor-trolley No. HRU-3882, it is clear that respondent no.1 was not driving the tractor in question.

14. Further, Ld. Counsel for the appellants cannot derive any benefit from the relied upon judgment in case of **Mohini Mohanrao**

Salunke (supra) as, in the cited case the offending tempo therein was standing “*in the middle of the road*” whereas, in the present case admittedly, the tractor trolley in question was parked correctly on the left side of the road. Accordingly, I find no error in the conclusion of the Id. Tribunal that the accident took place due to light reflected in the eyes of the deceased from the headlights of the vehicle coming from opposite direction, as a result of which he dashed into the stationary tractor-trolley. In fact, it is likely not far from the truth that the deceased was at great speed to have hit the standing tractor trolley with such great force to result into his death.

15. Accordingly, finding no merit, the present appeal is hereby, dismissed.

16. Pending application(s),if any, stand disposed of.

02/03/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No