

2023:PHHC:146661

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

(i) **FAO-903-1998 (O&M)**

United India Insurance Co. Ltd.

...Appellant

VERSUS

Ram Shabad and others

...Respondents

(ii) **FAO-904-1998 (O&M)**

United India Insurance Co. Ltd. ...Appellant

VERSUS

Bajanti and others

...Respondents

Date of Decision: November 17, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Lalit Garg, Advocate,
for the appellant.

None for the respondents.

ARCHANA PURI, J.

These two appeals have been filed by the Insurance Company thereby, assailing the Award dated 02.12.1997 passed by learned Motor Accident Claims Tribunal, whereby, consolidated Award was passed, vis-a-vis, death of Karuna Shankar Tiwari and Dharamender, in a motor vehicular accident, which took place on 23.07.1995.

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On appraisal of the evidence, brought on record, learned Tribunal had reached the conclusion that accident had taken place, on account of rash and negligent driving of canter bearing registration No.HR-06-4868, driven by respondent No.6-Balbir Singh and consequently, had granted compensation to the extent of Rs.2,30,000/- on account of death Karuna Shankar Tiwari and Rs.1,80,000/-, on account of death of Dharamender.

Feeling aggrieved by the findings, so recorded, with regard to the accident, having caused on account of rash and negligent driving of canter by respondent No.1, the insurer of the said canter i.e. United Insurance Co. Ltd., who was impleaded as respondent No.2, before learned Tribunal, has filed the present appeals.

The essential facts, to be noticed, are that, on 23.07.1995, Karuna Shanker Tiwari and Dharamender, while on scooter bearing registration No.DAD-5305, were travelling from Delhi to 20th Mile Stone on National Highway No.1. At about 3.00 a.m., a TATA canter bearing registration No.HR-06-4868 driven by Balbir Singh, came from behind at a very high speed and rammed into the scooter, which was running on the proper left side of the road. As a result of this accident, both the occupants of the scooter namely Karuna Shanker Tiwari, who was driving the scooter and pillion rider Dharamender had fallen down and sustained injuries, which proved fatal.

However, in reply, Balbir Singh, driver of the offending canter had taken a plea that he had never caused the accident. In fact, he took the plea that he was returning from Subzi Mandi, New Delhi, at night time, after

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leaving a consignment and when he reached a place beyond P.S. Rai, he was asked to stop by few persons collected there, on the road side and he was asked to take two injured persons, besides the scooter lying there and on humanitarian ground, he had transported the injured to the hospital, in his canter. He further took the plea that he does not know the manner, in which the accident had taken place. In fact, he had never caused the accident. The same was already caused, prior to his arrival at the spot.

To substantiate the plea of accident having caused by Balbir Singh-respondent No.6, the claimants had examined PW-4 Sham Lal, who has categorically stated that he is an eye witness to the accident, which took place on National Highway No.1, near 20th Mile Stone. He has explained his presence at the spot. He deposed that he was on his way from Delhi to Yamuna Nagar and he is truck driver by profession. A tyre of his truck got deflated and he discontinued his journey, at 20th Mile Stone. In the while, he also spotted a scooter coming on the proper left hand side and two persons were travelling upon the same. They were followed by canter bearing registration No.HR-06-4868, which was driven at a very fast speed and the same struck from behind, which led to death of both the scooterists. He also deposed that he had got lodged the FIR, which is Ex.P1. Besides the same, claimant Ram Shabad and Baijanti Devi, had stepped into witness box and deposed about death of Karuna Shanker Tiwari and Dharamender, in a motor vehicular accident. Even, PW-2 Krishan Kumar has proved the FIR, got recorded, qua the accident in question. Post mortem report has also been proved.

To substantiate the plea of denial of the accident, Balbir Singh-

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respondent No.6 had stepped into witness box as RW-2 and he has categorically deposed about his manner of presence at the spot. Furthermore, he had examined RW-1 ASI Raj Singh, who has deposed about being the Investigating Officer of the case in hand and further deposed about the untraced report having prepared, as the number of the truck, involved in the accident, could not be established.

In view of the aforesaid evidence, it has been assiduously submitted by learned counsel for the appellant that erroneously, learned Tribunal had reached the conclusion about the accident to have taken place, on account of rash and negligent driving of offending canter by respondent No.6-Balbir Singh. Throughout, much emphasis has been laid upon FIR having been got registered against the unknown person and about the untraced report having filed, vis-a-vis, criminal case.

However, at the very outset, it should be noted that in the FIR, though name of the person, as such, has not been mentioned, but however, it is pertinent to mention that the FIR is not encyclopedia, giving the minute details. It is only an intimation to the police authorities, about the fact of accident. RW-1 ASI Raj Singh, who is Investigating Officer, has deposed about the FIR having been lodged in the said case. Furthermore, he has stated that the case got untraced because the number of the truck, involved in the accident, could not be established. But however, his testimony, to this effect, alone is not sufficient to reach the said conclusion. It does not demolish the testimonies of PW-4 Sham Lal, who has stated about having witnessed the accident. Suggestion given about himself to be not an eye witness to the accident, has been categorically denied by the said witness.

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He has also deposed about recording of his statement by the police.

In the light of the testimony of the said witness, it was required on the part of the appellant, to have led sufficient evidence to establish about the case having concluded untraced and the untraced report, having accepted by the Court. Relating to the same, no sufficient evidence has come on record. It is only ASI Raj Singh, who has so deposed about the case having gone untraced. No untraced report, as such, has been brought on record and what is the status of the acceptance of the untraced report, as such, has also not been brought on record.

In the given circumstances, when the presence of respondent No.6-Balbir Singh and his canter, at the spot, as such, is not being disputed, in the light of the testimony of PW-4 Sham Lal, learned Tribunal had rightly concluded about the accident to be result of rash and negligent driving on the part of Balbir Singh, while driving the offending canter bearing registration No.HR-06-4868, which resulted into death of Karuna Shanker Tiwari and Dharamender.

The insurance company, by way of filing of the present appeals, has questioned the impugned Award, vis-a-vis, the negligence only, but however, it had not disputed the impugned Award on the quantum of compensation.

Considering the aforesaid, it should also be noticed that there were two appeals filed at the instance of the respective claimants. FAO-988-1998 was filed by claimants Baijanti and others, on account of death of Dharamender and FAO-989-1998 was filed by claimants-Ram Shabad, on account of death of Karuna Shanker Tiwari. However, vide separate order

passed today, the aforesaid appeals have been dismissed for want of prosecution, with the revival clause, solely, on account of appellants-claimants not making appearance and while holding that seemingly, they are not interested in pursuing the appeals for enhancement. That being so, this Court has refrained from further making an assessment with regard to the compensation, so worked upon by learned Tribunal, even in the present case.

In the light of the aforesaid observations, both the appeals, filed by the insurance company, stand dismissed.

November 17, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No