

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO-1941-2005 (O&M)  
Date of Decision: May 10, 2023

Balwinder Kaur and another  
...Appellants

VERSUS

Nazar Singh and others  
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.S.Jammu, Advocate  
for the appellants.

Mr.Mayank Mahla, Advocate  
for respondent No.2.

Mr.R.C.Gupta, Advocate  
for respondent No.3-insurance company.

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ARCHANA PURI, J.

The present appeal has been filed by appellants-claimants Balwinder Kaur and others, thereby, assailing the Award dated 01.11.2004, whereby, the claim petition filed for seeking compensation, on account of death of Netar Singh, in a motor vehicular accident, was dismissed.

On appraisal of the evidence adduced, learned Motor Accident Claims Tribunal reached the conclusion that claimants failed to prove that Netar Singh had died on 11.03.2001, due to rash and negligent driving of respondent No.1-Nazar Singh, while driving the offending truck bearing registration No.PB-10R-3695 and consequently, the claim petition was

dismissed.

As per the version of the claimants, on 11.03.2001, Netar Singh was going towards his house from the bank of Canal and at about 7.00 p.m., a truck bearing registration No.PB-10R-3695 came from Khanna side and struck against the scooter driven by Netar Singh. As a result of this accident, Netar Singh fell down and sustained multiple injuries and he succumbed to the injuries, while he was being taken to the hospital.

The accident had taken place on 11.03.2001. Undisputedly, no post-mortem was conducted on the dead body of Netar Singh. Even, no MLR, as such, has come on record.

Even, if this be the position, then also, the accident could be deduced as the cause of death, from other evidence, brought on record, if it sufficiently establish about the fact of accident and imputation of rashness and negligence, on the part of the driver and involvement of the offending vehicle, as such, in the accident in question and consequential sustaining of injuries by the victim, which proved fatal. However, it is not so in the case in hand.

In this regard, it is pertinent to mention that appellant-claimant No.1-Balwinder Kaur, who is widow of Netar Singh, herself stepped into witness box as CW-1 and also further examined CW-2 Dalbara Singh, who is alleged eye witness to the accident in question, CW-3 Karnail Singh, AG III, FCI Khanna, CW-4 Dr.Amarbir Singh and CW-5 ASI Major Singh.

It should be noted that CW-2 Dalbara Singh, is the most crucial witness, so examined by the appellants. He has allegedly witnessed the accident in question. While in the witness box, the said witness had stated

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that on 11.03.2001, at about 7.30 p.m., while he was coming from Khamano to Khanna, on his scooter and reached village Chadi, a scooter was going ahead of him. In the meantime, a truck bearing registration No.PB-10R-3695, came from Khanna side, in a rash and negligent manner and struck against the scooter bearing registration No.PB-492185. He further deposed that the truck driver did not stop the truck and fled away from the spot. After the accident, he had also left the spot, where Netar Singh was lying unconscious. This entire evidence is relating to his having witnessed the accident in question. However, it should be noted that no FIR was got lodged, soon after the accident.

No doubt, as so pointed out by learned counsel for the appellants-claimants that registration of the FIR, *ipso facto*, is not essential, so as to establish the fact of accident, but however, the circumstances, so spelt out from the testimonies of various witnesses, ought to be taken into consideration to note the manner in which the FIR was got registered. CW-2 Dalbara Singh, in his further examination-in-chief has also stated that he had visited the shop of Netar Singh on 22.10.2001, for repair of electrical starter and he was informed by Netar Singh's father that Netar Singh has since died. On further enquiry by him, he was informed that Netar Singh had died in the accident in the village Chadi. Then, the said witness informed father of Netar Singh that he had witnessed the accident and he also told the registration number of the truck. He also deposed that the accident had taken place due to rashness and negligence, on the part of the truck driver.

This information, as it is, so deposed by the witness, was

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disclosed to father of Netar Singh on 22.10.2001 and on the basis thereof, FIR was registered on 03.11.2001.

May it be so, but however, the act and conduct of CW-2 Dalbara Singh, soon after the alleged accident, is the most unnatural. In his cross-examination, the said witness had further stated that he knew Netar Singh personally for the last seven years, prior to the accident in question. He also stated that he had gone near the scooter of Netar Singh and had seen Netar Singh, who was lying on the ground. However, if it be so and if Netar Singh was his acquaintance, then, conduct of the said witness is most unnatural. No human being will go away, without attending the injured, as done by the said witness.

He further deposed that he had disclosed about the manner of accident and having witnessed the same, to the father of Netar Singh, in the month of October 2001. There was long silence during the interregnum period, at the instance of CW-2 Dalbara Singh. Had he witnessed the accident and was acquaintance of Netar Singh for the last seven years, then definitely, as the normal human conduct, he would have informed the police authorities or would have taken injured to the hospital or in the minimum, would have informed the family members of Netar Singh, particularly, when he knew about the shop of deceased and used to visit the same, off and on. However, no steps were initiated at the instance of CW-2 Dalbara Singh. As such, his testimony is rendered doubtful.

Not only this, it is pertinent to mention that FIR of the accident in question, which was got registered after 7½ months, though speaks about the disclosure of the manner of accident to the father of the deceased, but

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however, the particulars of the person, who made disclosure, has not been given in the FIR. This FIR was got registered, on the basis of DDR No.7 dated 03.11.2001 i.e. on the same day, when the FIR was got registered. As per CW-2 Dalbara Singh, he had disclosed about the manner of accident to the father of Netar Singh, in the month of October 2001. Despite the several days having passed by, prior to the FIR in question, after the such disclosure also, the name of the person, who made disclosure, as such, has not been mentioned in the FIR, which also sufficiently, does not connect about the disclosure so made by the said witness to the father of the deceased.

Furthermore, CW-4 Dr.Amarbir Singh was examined before learned Tribunal. The said witness deposed about having personally examined Netar Singh on 11.03.2001 and deposed that he was suffering from acute abdomen injury and he died at 11.00 p.m., on the same day, due to internal bleeding caused by the injury. This witness identified his signatures on Ex.P1, which is certificate issued by him. However, the issuance of this certificate is doubtful. Firstly, it does not mention about the case to be a road side accident and furthermore, though, the said witness is conscious of the fact that he is required to inform the police authorities, but no such information was given. Not only this, he had not brought the register of 11.03.2001 and also, he stated that entry regarding the patient was not made in the register. Why so, for this, there was no reason, as such, assigned. In the cross-examination, he further specifically stated that he had not kept the official record regarding Ex.P1. CW-4 has further stated about conducting of scanning of patient Netar Singh, but relating to the same also, he stated that separate record of the scanning of patient was not maintained

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by him. Considering the same and when no information was given to the police, no sustenance can be drawn from certificate Ex.P1. The chances of certificate Ex.P1 having maneuvered later on, as such, cannot be ruled out.

CW-5 ASI Major Singh is the Investigating Officer. Though, he had deposed about taking into possession the truck bearing registration No.PB-10R-3695 and about having arrested respondent No.1-Nazar Singh, the alleged driver of the offending truck, but however, simply conducting of such proceedings by the Investigation Officer, do not establish about the imputation of rashness and negligence, on the part of Nazar Singh, while driving the offending truck.

CW-3 Karnail Singh, AG III, FCI has been examined, who brought the Weigh Bridge register of FCI, Khamano, from 11.03.2001 to 12.03.2001 and has proved about the same to be containing the recital of truck bearing No.PB-10R-3695, on 11.03.2001 and the said relevant entries, relating to said date is Ex.P4 and Ex.P5. May it be so, these entries, so proved, simply, at the maximum, can be taken to establish the mobility of the aforesaid truck, on the relevant date, but however, it, in no manner, establish about the involvement of the said truck, at the spot of accident, on the relevant date i.e. 11.03.2001. Moreover, in these documents, it is nowhere specified that the said truck was driven by Nazar Singh, at the relevant time.

Considering the same, the aforesaid documents, proved to be of not much relevance, to establish the involvement of the offending truck in the accident in question and rashness and negligence, on the part of respondent No.1-Nazar Singh.

Considering the aforesaid circumstances, even, in the absence of post-mortem examination report and MLR, if not coming on record, the involvement of the offending truck, in the accident and imputation of rashness and negligence, on the part of respondent No.1, as such, does not stand established and therefore, findings of learned Tribunal, qua issue No.1, are hereby affirmed. Consequently, learned Tribunal has rightly dismissed the claim petition.

As such, the present appeal sans merit and is hereby dismissed.

May 10, 2023  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No