

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-412-2005 (O&M)

Date of decision: 16.02.2023

Balwinder Kaur & Others

...Appellant(s)

Vs.

Raju & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. L.S. Mann, Advocate for the appellants.

Mr. D.K. Dogra, 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, Fatehgarh Sahib (hereinafter referred to as "the learned Tribunal") vide Award dated 08.09.2004 passed in MACT Case No.50T/09.04.2001/27.08.2003 filed under Section 166 of the Motor Vehicles Act (hereinafter referred to as "the Act"). The claimants are wife and children of deceased-Jagir Singh.

Learned counsel for the appellants submits that the learned Tribunal was in patent error in dismissing their claim petition as appellant/claimant No.1/PW1 had clearly stated that deceased-Jagir Singh had died due to the injuries suffered by him in a motor vehicular accident that took place on 07.02.2001 due to rash and negligent driving of tractor bearing registration No.PB-26A-2578 (hereinafter referred to as "the offending vehicle"). It is submitted that however, inadvertently, the tractor

number was mentioned as PB-26A-2578. It is submitted that accident had not been denied and even FIR dated 07.02.2001 Exhibit P26 was registered in respect of the accident in question.

It is submitted that the learned Tribunal has failed to appreciate positive and cogent evidence led by the claimants on point of quantum and therefore, present appeal deserves to be allowed.

In response, learned counsel for the respondent No.3 submits that appellants had failed to prove the accident on record and therefore, learned Tribunal had rightly dismissed their claim petition.

I have heard learned counsel for the parties.

Perusal of impugned Award shows that the learned Tribunal had framed following issues:-

“1. Whether Jagir Singh son of Kartar Singh resident of Ward No.13 Sangatpur Mohalla, Gobindgarh died on 07.02.2001 at about 7.30 pm near Gabki Puli, Khanna in a Motor Vehicle accident due to rash and negligent manner driving of the Tractor No.PB-26A-2578 by respondent No.1? OPP

2. If issue No.1 is proved to what amount of the compensation the claimant are entitled for and from whom? OPP

3. Whether the petition is not maintainable in the present form? OPR-3

4. Whether the petition is bad for non-joinder and misjoinder of necessary parties? OPR

5. Whether the driver of the offending tractor was not having a valid and effective driving licence at the time of alleged accident? OPR-3

6. Whether the offending vehicle was having no valid registration certificate route permit and fitness certificate at the time of alleged accident.

7. Relief.”

Perusal of the above shows that the onus to prove issue No.1 i.e. the deceased had died due to rash and negligent driving of respondent No.1 in the accident in question, was upon the appellants. Admittedly, in the claim petition, registration number of the offending vehicle that caused the accident has been mentioned as PB-26A-2578. Even in her testimony, appellant No.1 as PW1 has categorically stated that the accident took place due to rash and negligent driving of the offending vehicle/tractor bearing registration No.PB-26A-2578.

However, in FIR No.28 dated 07.02.2001 (Exhibit P26), which was registered on the statement of complainant-Balwinder Kaur/appellant No.1 herein/PW1, number of offending vehicle has not been mentioned; and further insurance policy (Exhibit R1) is in respect of tractor bearing registration No.PB-26A-2538.

From the above facts it transpires that: a) the whole case of the appellants has been against offending vehicle/tractor bearing registration No.PB-26A-2578; b) whereas insurance policy is in respect of tractor No.PB-26A-2538 and respondent No.2 herein is not owner of the offending tractor; and c) registration number of the offending tractor is not mentioned in the FIR.

Accordingly, in view of the above anomalous and discrepant facts, which are not explained, let alone satisfactorily explained

by learned counsel for the appellants, I find no merit in the present appeal and the same is hereby dismissed.

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

16.02.2023

Sunena

(Nidhi Gupta)
Judge

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