

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

1) FAO 853 of 2005 (O&M)
Date of decision : 2.2.2023

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Rajpal and another

.....Appellant

VS.

M/s MGF Service Ltd. New Delhi and others

.....Respondents

2) FAO 854 of 2005 (O&M)

...

Rajpal

.....Appellant

VS.

M/s MGF Service Ltd. New Delhi and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Ashok Arora, Advocate for the appellants
in both cases.

Mr. Suman Jain, Advocate for respondent No.4 - Insurance company

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H. S. Madaan, J.

1. Vide this order, I intend to dispose of two appeals bearing FAO 853 of 2005 titled as 'Rajpal and another vs. M/s MGF Service Ltd. New Delhi and others' and FAO 854 of 2005 titled as 'Rajpal vs. M/s MGF Service Ltd. New Delhi and others', as both these appeals have arisen out of the same award.

2. Briefly stated, facts of the case are that on 18.4.1998, appellant – Rajpal, while driving scooter No. HR 16-A-7646, on

which his daughter Usha Rani was pillion riding, was going from Meham to Mandan Heri, near the bridge of village Singhwa. Appellant – Rajpal gave signal with his hand and turned the scooter. In the meanwhile, a commander jeep driven by respondent no.2 – rashly and negligently, came from behind and hit the scooter. Resultantly, both the riders fell down and suffered multiple injuries. Usha Rani had died at the spot. After hitting the scooter, the jeep driver sped away his vehicle. The appellant-injured Rajpal was taken to PGI, Rohtak and was admitted there. He had filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 against M/s MGF Service Ltd., New Delhi - owner, Lakhmi Singh – driver, Kameer Singh – subsequent owner and National Insurance Company, Hisar – insurer of the jeep No. FJ-10C/1577, Engine No. DW 253146, Chassis No. DW 253146, as well as National Insurance Company Bhiwani – insurer of scooter, besides M/s Supreme Mobile, Hisar. Another claim petition had been filed by Rajpal and his wife Kamla Devi, against that very defendants, seeking compensation on account of death of their daughter Usha Rani in a motor vehicular accident.

3. Notice of the claim petitions was given to the respondents. Respondents No. 1 and 2 did not appear despite service, as such they were proceeded against ex parte. Respondent No.3 was given up by the claimants. Whereas respondents no. 4 and 5, as well as respondent no.6 had put in appearance through counsel.

4. After contest, both the petitions were disposed of by

Motor Accidents Claims Tribunal, Hisar, vide a single award dated 2.1.2004, in as much as, both the claim petitions were dismissed, leaving the claimants aggrieved and they have approached this Court by way of filing the present appeals, notice of which was given to the respondents. However, only respondents No. 4 and 6 had put in appearance.

5. I have heard learned counsel for the parties, besides going through the record.

6. It may be mentioned here that before the case of the claimants could be considered for grant of compensation, it was incumbent upon them, to show that petitioner – Rajpal had suffered injures, whereas Usha Rani had suffered fatal injuries in a road side accident, which took place on 18.4.1998 at 4.30 P.M., in the area of village Singhwa on account of rash and negligent driving of commander jeep, bearing Engine No. DW 253146 and Chassis No. DW 253146, Model 630/CMR/1998, by respondent no.2 Lakhmi Singh.

7. However, the Tribunal, considering the pleadings of the parties and on analysis of evidence adduced by them has arrived at the conclusion that the petitioner-claimants have failed to establish that. With regard to statement of petitioner – Rajpal, appearing as PW-2, who had provided the eye witness account of the accident, he had stated that commander jeep had hit the scooter and its driver was booked for rash and negligent driving, vide FIR, copy Exhibit P-5, the Tribunal had observed that Exhibit P-5 was just a photostat copy, which had not been certified or got proved by

examining its author. Even otherwise, it was registered against an unknown person and particulars of the jeep involved in the accident or its driver were not found to be mentioned there. As such there was not even an iota of evidence on file to show that the accident had taken place on account of rash and negligent driving of commander jeep by respondent no.2 Lakhmi Singh. For that reason, the claim petitions had been dismissed.

8. After hearing learned counsel for the parties and going through the record, I do not see any reason to disagree with the Tribunal on this point. In the absence of cogent and convincing evidence brought on record by the claimants to show involvement of jeep in question in the accident and to establish that Lakhmi Singh – respondent No.2 was author of the accident by his rash and negligent driving, resulting in injuries to Rajpal and fatal injuries to Usha Rani, the claimants could not be awarded any compensation, making the owner, driver and Insurance company of the jeep in question liable to pay the same.

9. Thus I do not find any merit in the appeals.

10. Both the appeals are dismissed accordingly.

2.2.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No