

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO No.1845-2010 (O&M)
Date of decision: 31.01.2023**

Saroj Devi & Another

...Appellant(s)

Vs.

Ajeet Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pawan Hooda, Advocate for the appellants.

Mr. Dinesh Arora, Advocate for respondent No.1.

NIDHI GUPTA, J.

Present appeal has been filed by the appellants/claimants No.2 and 3 against dismissal of their claim petition by Motor Accident Claims Tribunal, Rohtak (hereinafter referred to as "the learned Tribunal") vide Award dated 25.05.2009 passed in MACT Petition No.3 of 2006 filed under Section 163-A of the Motor Vehicles Act (hereinafter referred to as "the Act"). Claimants before the learned Tribunal were the widow, and parents of deceased-Surender Singh. Appellants before this Court are the parents of the deceased.

Brief facts of the case are that on 20.7.2005, Surender (now deceased) along with his brother Monu had gone to PGIMS, Rohtak for checkup and thereafter, were returning from Rohtak to their village on Scooter No.DL-9-SQ-3248. At about 10:30 a.m., they reached near Dev Colony Mor, Rohtak, when driver of an auto rickshaw, after crossing them, took his auto towards right hand side and the scooterist (since deceased) to

save his scooter from striking with auto, took the scooter towards right hand side, as a result of which front wheel of scooter went towards other side in the cut of divider of road. In the meantime, a tractor Escort No.HR-10A-1423, connected with water container/tank, driven in a rash and negligent manner and at high speed by its driver, arrived from Sampla side and struck against the scooter, due to which scooter turned turtle and fell down and accordingly, Surender Singh and Monu suffered injuries. Both injured were taken to PGIMS, Rohtak and due to fatal injuries, Surender Singh died on the same day at PGIMS, Rohtak. FIR No.365 dated 20.7.2005 under Sections 279, 337 and 304-A IPC was lodged in this regard.

Appellants claimed that deceased was employed as Field Boy in K.C. Roadlines Ltd. 323 village Shalimar Bagh, Delhi and was earning Rs. 3,200/- per month. Deceased-Surender was 25 years old at the time of his death and the claimants were fully dependent upon the earnings of deceased. The claimants spent an amount of Rs. 50,000/- on transportation and last rites of deceased. They claimed compensation of Rs.6 lacs along with interest at the rate of 18% per annum from the respondents.

Upon notice, respondent No.1/driver of the tractor appeared and filed written statement inter alia stating therein that he had no concern with the said tractor or the accident in question and he had been falsely implicated in the matter.

Vide order dated 24.08.2006, respondents No.2 and 3 being owners of the tractor were proceeded against ex-parte.

Details of Insurance Company with which the said tractor was insured, if any, were not disclosed by the respondents.

Learned Tribunal on the basis of pleadings and evidence brought before it concluded that claimants had failed to prove that the accident in question occurred due to the negligence of respondent No.1. Accordingly, the claim petition was dismissed.

It is submitted by learned counsel for the appellants that the learned Tribunal failed to appreciate that FIR No.365 dated 20.07.2005 had been lodged regarding the incident. It is submitted that however, inadvertently, the said FIR was lodged against vehicle No.HR-10-1423. It is submitted that this error occurred due to the fact that in the number plate affixed on the tractor, letter "A" was missing and therefore, registration number of the tractor was mentioned as HR-10-1423 in the FIR, due to genuine error. This mistake came to the knowledge of police when they went to impound the vehicle and saw registration number of the said tractor wherein the same was found to be HR-10A-1423. It is further submitted that engine number and chassis number of the tractor No.HR-10-1423 as incorrectly mentioned in the FIR, is the same as engine and chassis number of tractor No.HR-10A-1423 which was impounded by the police. It is further submitted that the accident is of the year 2005 when high security number plates were not in practice. It is further submitted that the Ahlmad has appeared and testified that the respondent No. 1 is facing trial.

It is submitted that accordingly, the learned Tribunal was in patent error in dismissing claim petition of the appellants.

Per contra, it is submitted by learned counsel for respondent no.1/ driver, that the whole claim petition of the appellants is in respect of

tractor bearing registration No.HR-10A-1423 whereas, FIR has been registered against vehicle bearing registration number HR-10-1423. It is admitted by learned counsel for the respondent No.1 that he is facing trial in a case involving tractor No.HR-10-1423 whereas present petition has been filed against tractor No.HR-10A-1423. It is submitted that both the vehicles are different and vehicle No.HR-10A-1423 has been mentioned in the claim petition only to claim compensation. It is submitted that if the appellants could file an application for appointment of local commissioner, it is not clear as to why they did not amend their claim petition. In fact, no effort was made on part of the Appellants to amend their claim petition.

No other argument is made on behalf of the parties.

I have heard learned counsel for the parties.

Perusal of record of the case shows that respondents No.2 and 3 being owners of tractor No.HR-10A-1423 were proceeded against ex-parte before the Id. Tribunal vide order dated 24.08.2006. Order sheets of this Court reveal that notices to owners of tractor No. HR-10A-1423/ respondents No.2 and 3 in the present case, could not be issued for want of correct address. Vide order dated 01.04.2016, counsel for the appellants was granted time to furnish correct address of respondents No.2,3, 4 (Insurance Company), and 5, however, as the needful was not done, accordingly, vide order dated 21.8.2018 this Court had dismissed the present Appeal qua Respondents no. 2 to 5. Therefore, it follows that at present, this appeal is being contested only by respondent No.1/driver of tractor No.HR-10-1423.

Besides above lacuna in the present appeal, findings of learned Tribunal as contained in Paras 9 and 10 of the impugned Award are indisputable. These paras are reproduced hereinbelow:-

*“9. On the other hand, learned counsel appearing on behalf of respondents argued that the claimants have miserably failed to prove that respondent no. 1 had caused the accident. Even as per the evidence led by claimants, there are two different vehicles bearing no. HR-10A/1423 & HR-10/1423. Both these vehicles are tractors and the engine and chassis number of both the vehicles are different. Even if for the sake of arguments, it is accepted that respondent no. 1 had caused the accident but even then the respondents are not liable to pay compensation to the claimants as **respondent no. 1 is facing trial in case vehicle involving tractor no. HR-10/1423 whereas the present petition has been filed against tractor no. HR-10A/1423 only**. Even in the FIR EX.P1, offending vehicle mentioned is HR-10/1423.*

10. Though learned counsel for claimants has stated that the FIR has been registered against vehicle no. HR 10/1423 but in fact, respondent no.1 was driving vehicle no. HR- 10A/1423 and the word 'A' was missing from the number plated but the claimants have miserably failed to prove their case. They have not led any evidence to show that word 'A' was missing from the number plate of offending vehicle. No doubt, respondent no.1 is facing trial under Sections 379, 337 & 304-A IPC but he is facing trial for causing accident with vehicle no. HR-10/1423. even the other witnesses examined by claimants do not support their case as PW2 Jogender Kumar, Registration Clerk, Registering Authority, Sonapat, has specifically mentioned that there are two different tractors bearing no. HR-10/1423 & HR-10A/1423. Respondents No.2 & 3 are registered owners of tractor no. HR-10A/1423 bearing chassis no.3243779 and engine no. 22717-W; and registered owner of vehicle no. HR-10/1423 is one Anand son of Pirthi resident of Shekhpura Tehsil Ganaur District Sonapat and the engine and chassis number of this vehicle is 521200006224 and 12110128137. So, from the testimony of PW2, it is clear that both these vehicles are different simply because respondent no.1 is facing trial for causing accident does not mean that he has caused accident while driving vehicle no. hR-10A/1423 when even the witnesses examined by claimants have stated that a case is pending

against the petitioner for causing the accident while driving vehicle no. HR-10/1423. During the pendency of claim petition, learned counsel for the claimants had moved an application for appointment of local Commissioner so that he may go in Police Station to check that the engine and chassis number of vehicle no. HR-10A/1423 which is offending vehicle in this case, is the same as that of vehicle no. HR-10/1423 and that application was dismissed vide order dated 5.3.2009 passed by Tribunal. Revision petition filed against this order was also, as per counsel for claimants, got dismissed as withdrawn. Therefore, order dated 5.3.2009 attained finality and now it cannot be stated by claimants that the accident had in fact occurred with vehicle no. HR-10A/1423 but police has wrongly registered FIR against vehicle no. HR-10/1423. Though in petition under Section 163-A of Motor Vehicle Act, the only requirement is to prove the factum of accident but claimants have miserably failed to prove that respondent no. 1 while driving tractor no. HR-10A/1423 rashly and negligently caused the accident therefore, this issue is decided against claimants and in favour of respondents." (Emphasis supplied)

Learned counsel for the appellants is unable to controvert the above findings.

Accordingly, I find no error in the impugned Award, and the present Appeal, is hereby dismissed.

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

31.01.2023

Sunena/Joshi

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No