

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

2023:PHHC:048348

FAO-5190-2013 (O&M)
Date of decision: 10.04.2023

Vijay Kumari and another

..Appellants

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Dinesh Mahajan, Advocate for the appellants.

Mr. Udit Garg, Advocate for the respondents.

NIDHI GUPTA, J.

CM-4400-CII of 2017

Present application is filed by the non-applicants/appellants to place on record reply on behalf of the non-applicants/appellants to the application for additional evidence (CM-7509-CII of 2016) filed by the respondents. Application is allowed and Reply is taken on record, subject to all just exceptions.

CM-7509-CII of 2016

Present application is filed by the Respondents under Order 41 Rule 27 read with Section 151 CPC for placing on record additional evidence/original documents i.e. Annexures R-1/1 to R-1/3.

Heard Id. Counsel for the parties.

For the reasons stated in the application, same is allowed and Annexures R-1/1 to R-1/3 are taken on record, subject to all just exceptions.

Main Case

Present appeal has been filed by the claimants against the dismissal of their claim petition by the Motor Accidents Claims Tribunal, Pathankot (hereinafter referred to as 'the Tribunal') vide Award dated 05.07.2013 passed in MACT case No.16 of 2010 filed under Section 166 of the Motor Vehicles Act, 1988, (hereinafter referred to as 'the Act'). Claimants/ appellants are the parents of the deceased Rishab.

Brief facts of the case are that the appellants/claimants had filed the abovesaid claim petition before the Ld. Tribunal seeking compensation on account of death of their 22 year old son Rishab in a motor vehicular accident that took place on 16.02.2009. It was the pleaded case of the claimants before the Tribunal that the deceased Rishab had died due to the rash and negligent driving of Army Truck bearing No.07D173845K ALS (hereinafter referred to as the 'offending vehicle') being driven by respondent No.3 herein.

On the basis of the pleadings of the parties, the Ld. Tribunal framed the following issues:-

- “1. Whether Rishab died in a roadside accident while driving army vehicle by respondent No.3 in rash and negligent manner? OPA
2. Whether the claimants are entitled to compensation, if so at what amount and against whom? OPA
3. Whether the petition is not maintainable? OPR
4. Relief.”

Learned Tribunal on appraisal of all the facts, pleadings, and evidence placed before it decided Issue no. 1 against the appellants and concluded that *“the claimants/appellants failed to prove that respondent No.3 had caused the death of their son by rash and negligent driving of Army vehicle on 16.02.2009. Rather it is evident from evidence that the*

accident occurred since the deceased lost control of his scooter and he struck with Army vehicle.”

Ld. Tribunal further decided Issue no. 2 also against the appellants and held that the appellants are not entitled to any compensation as they had accepted a sum of Rs.1,30,000/- from respondent No.3 as full and final settlement of their claim and therefore, they were not entitled to claim compensation again under Section 166 of the Act.

Learned counsel for the appellants assails the Award inter alia, on the ground that while deciding issue No.1, the Ld. Tribunal had failed to appreciate the ocular as well as documentary evidence led by the appellants, as a result of which, the case of the appellants has been gravely prejudiced.

It is further submitted by learned counsel for the appellants that the Ld. Tribunal has decided issue No.2 only on the basis of Affidavit Ex.R1 and compromise deed Ex. R-2 which are forged, fabricated and illegal documents and had not been proved in accordance with law and had been completely denied by the appellants, and therefore could not be relied upon by Ld. Tribunal. Learned counsel refers to para 22 of the impugned Award wherein Ld. Tribunal has recorded that *“the petitioners raised objections against the exhibition of these documents i.e. Ex.R-1 to Ex.R3 on the ground that these are Photostat copies and these documents do not bear the signatures of Prem Chand and Vijay Kumari. It has been alleged that signatures of petitioners were forged on these documents.”*

It is submitted by learned counsel that accordingly, in the face of such unequivocal denial on the part of the appellants, Ld. Tribunal

was in error in placing reliance upon the same documents while passing the impugned Award.

Learned counsel for the appellants further submits that even FIR No.5 dated 17.02.2009 had been lodged in pursuance to the accident in question. Ld. Counsel also refers to the cross-examination of RW1/respondent No.3/driver of the Army truck, to submit that RW1 has admitted in his cross-examination that he was driving Army truck at the time of accident and that he had not got the abovesaid FIR cancelled.

In response, it is submitted by learned counsel for the respondents that perusal of record of the case shows that appellants, in their cross examination, had admitted their signatures over the affidavit Ex.R-1/1, Compromise Deed Ex.R-1/2, and had only denied their signatures over the receipt Ex.R-1/3. It is submitted that therefore, in view of the admission on the part of the appellants, there was no error in the impugned award. It is further submitted that there was categorical finding of the Ld. Tribunal that the appellants had failed to prove negligence on the part of respondent No.3 and thus, there was no error in the impugned Award, and the present appeal deserves to be dismissed.

No other argument is made on behalf of the parties.

I have heard learned counsel for the parties.

Perusal of the impugned Award and record show that Ld. Tribunal had decided Issue No.1 against the appellants on the ground that as per testimony of respondent No.3/RW1 the deceased was driving his scooter without helmet, and at the time of accident his scooter was being pulled by a motorcycle rider namely Gurmeet Singh. RW1 had further deposed that he was driving the Army vehicle on the correct side of the

road at a normal speed, and that the higher Army authorities had conducted an inquiry into the incident and had found that there was no fault on the part of RW1 in causing this accident. No evidence in rebuttal was led by the appellants either before the Id. Tribunal or before this Court. Accordingly, I find no error in the findings of the Id. Tribunal in respect of Issue no. 1.

Record further reveals that the appellants had raised objection to the exhibition of documents Exs.R1 to R3 on the ground that same are photocopies, and do not bear signatures of the appellants, and that signatures contained on the said document are forged and fabricated. However, in his cross-examination AW1/ Prem Chand-appellant No.2 herein, has categorically admitted that the affidavit Ex.R1, and compromise deed Ex. R2, bears his signatures.

In Affidavit Ex.R1/ original of which is placed on record by the respondents as Annexure R-1/1, the appellants have stated as follows:

“We, Prem Chand S/o Rattan Chand and Vijay Kumari w/o Prem Chand, resident of H No. 87, Maholla Jandrian, Teh-Pathankot, Dist-Gurdaspur (Punjab) do hereby solemnly affirm and declare on oath as under:-

1. That our son Mr. Rishu, Age - 22 yrs lost his life in an road accident on 16 February 2009 on Defence Road, Pathankot, approximately 02 Kilometer short of NH-1A with Army Vehicle bearing no. BA No. 07D 173845K (ALS) driven by Army person namely No.14445811F Gnr(DMT) Sonu Sharma and an FIR No.05 dated 17 February 2009 has been lodged at Police Station Shahpurkandi, Teh – Pathankot Distt-Gurdaspur (Punjab), under circumstances beyond the control of any individual or organization.

2. *That, we are having no grudge with the No. 14445811F Gnr(DMT) Sonu Sharma, driver of the alleged vehicle for the alleged accident and is not blaming him for this act of God.*

3. *That under the above circumstances We are in our full wisdom without any influence, pressure or greed do confirm that We will not claim any compensation/file any MACT case for compensation for the death of our son Mr. Rishu in any competent court of law/Tribunal against the driver of the alleged vehicle, 315 Field Regiment. Government of India or any Army Organization in this matter. Neither shall We, pursue this matter any further in any court of law and the case may please treated as closed from our side*

4. *That We have no complaint against or anything to claim from the driver of alleged vehicle, 315 Field Regiment Government of India or any Army Organization in this regard.*

5. *That, We shall withdraw the criminal complaint under section 304-A, 279, 427 vide FIR No. 05 dated 17 February 2009 lodged at Police station Shahpurkandi against the driver of the alleged vehicle, and We further solemnly affirm that, We shall not depose/give any evidence against the driver before any competent court of law. That, We fully agree to make this affidavit without any undue influence and free will and no coercion or undue influence has been used in this affidavit. We are bound by these statements.*

We, the above named deponent do hereby declare that the statements of our above affidavit are true and correct to the best of our knowledge and nothing has been kept concealed therein.”

As noted above, the appellant no. 2 has admitted the signatures of the appellants on the above affidavit. It is further admitted that the claimants had appeared and deposed contents of the abovesaid affidavit before the Executive Magistrate, Tehsil Pathankot, District Gurdaspur.

Appellants have also admitted their signatures on Compromise Deed Ex. R-2/ original of which has been placed on record by the respondents as Annexure R-1/2. Annexure R-1/2 is duly notarized, and reads as follows:

“This compromise deed made on this 21 February 2009 at Civil Court Pathankot between Prem Chand S/O Rattan Chand and Vijay Kumari W/O Prem Chand, resident of H No 87, Maholla Jandrian, Teh - Pathankot, Distt - Gurdaspur (Punjab) (herein after called as 1st party) and No.14445811F Gnr(DMT) Sonu Sharma, 315 Field Regiment C/O 56 APO (herein after called as 2nd party), have compromised on the matter regarding FIR No 05 dated 17 February 2009 lodged at Police Station Shahpurkandi, Teh Pathankot, Distt-Gurdaspur (Punjab) on following terms and conditions:

1. That the son of 1st party, Mr Rishu, Aged 22 yrs, lost his life in an road accident on 16 February 2009 on Defence Road, Pathankot, as alleged by the 1st party, approximately 02 Kilometer short of NH-1A with Army Vehicle bearing number BA Number 07D 173845K (ALS) driven by 2nd party, as alleged by the 1st party in the averment of the F.I.R. under circumstances beyond the control of any individual or organization.

2. That the 1st party is having no grudge with the 2nd party. The 1st party is not blaming the 2nd party for the alleged accident and 2nd party is not responsible for the alleged accident.

3. That under the above circumstances the 1st party in their full wisdom without any influence, pressure or greed do confirm that they will not claim any compensation/file any M.A.C.T case for compensation for the death of their son Mr. Rishu in any competent court of law/Tribunal against the 2nd party, 315 Field regiment, Government of India or any Army Organization in this matter. Neither shall the 1st party pursue this matter any further in any court of law and the case may please be treated as closed from the side of 1st party.

4. That now the 1st party has no complaint against or anything to claim from the 2nd party, 315 Field Regiment, Government of India or any Army Organization in this regard.

5. That 1st party shall withdraw the criminal complaint under section 304-A, 279, 427 vide F.I.R NO. 05 dated 17 February 2009 lodged at Police station Shahpurkandi against the 2nd party. The party of the 1st part is fully agreed to averments mentioned in the compromise deed and this compromise deed has been executed without any undue influence and free will of the parties and no coercion or undue influence has been used in the compromise deed. Both the parties shall be bound by the terms and conditions of this compromise deed.

6. That 1st party has received suitable compensation from the 2nd party pertaining to the alleged accident and the same may be treated as full and final compensation in this regard.

7. That the party of the 1st part has also executed sworn affidavit with this regard not filing any claim before any competent court of law in India regarding this accident.

In witness whereof the parties have set their respective hands on this compromise deed in the presence of respectable and common relatives. After reading over and accepting the contents of the compromise deed as correct without any coercion and undue influence.”

A combined reading of the above said documents reveals that the appellants have inter-alia, admitted therein that :a) the deceased had lost his life in road accident “*under circumstance beyond the control of any individual or organization*”; b) “*That, we are having no grudge with the No. 14445811F Gnr(DMT) Sonu Sharma, driver of the alleged vehicle for the alleged accident and is not blaming him for this act of God.*”; c) That 1st party/ appellants “*has received suitable compensation from the 2nd party*”/ respondents herein, “*pertaining to the alleged accident and the same may be treated as full and final compensation in this regard.*”

Thus, as per the appellants’ own saying the respondent no. 3 was not rash and negligent; and appellants had received suitable compensation. Needless to say, in view of the above admitted position, the claim petition of the appellants under Section 166 of the Act is not admissible.

Accordingly, I find no error in the impugned Award. The present appeal is hereby, **dismissed**.

Pending applications, if any, stand disposed of.

(NIDHI GUPTA)
JUDGE

10.04.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No