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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 5946 of 2014 (O&M)
Date of Decision:20.07.2023

Kusam Lata & Ors.

... Appellants

Versus

Zile Singh and Ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Ms. Kamaldeep Kaur, Advocate, for
Mr. Adarsh Jain, Advocate,
for the appellants.

Mr. V.Ramswaroop, Advocate
for respondent No.3-Insurance Company

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SANJIV BERRY, J.

C.M.16508-CII- of 2014

1. For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed. Delay of 2520 days in refiling of the present appeal is condoned.

2. CM stands disposed of.

FAO No. 5946 of 2014

1. Instant appeal has been preferred by the claimants-appellants against the award dated 24.02.2007 passed by the Motor Accident Claim

Tribunal, Faridabad (hereinafter referred to as 'Tribunal') whereby the petition preferred by the claimants was dismissed.

2. The facts relevant to the present lis are that the claimants, who are wife, children and parents of the deceased, had filed the claim petition stating therein that on 23.07.2003 at about 7:00 p.m., the deceased Khubi Ram was going to his village Sihi on motor cycle and his brother-in-law Narender Kumar was on the pillion seat, when they reached near Kuslipur Chowk on G.T. Road, Palwal, then the offending tractor No. HR-52/3149 driven by respondent No.1 in a very rash and negligent manner came from behind and hit the motor-cycle of the deceased, as a result Khubi Ram sustained injuries on his person and was taken to General Hospital, Palwal where he succumbed to injuries. Narender Kumar had witnessed the incident and on his statement FIR was registered at Police Station City, Palwal.

3. On notice on the claim petition, the respondent No.1 being Driver and respondent No.2 owner of the tractor in question did not contest the petition and were proceeded against ex-parte.

4. However, the petition was contested by respondent No.3 Insurance Company by filing written statement, denying the alleged occurrence and it was contended that the petition has been filed as a result of collusion between the claimants and respondents No.1 and 2 and as such, it is liable to be dismissed.

5. From the pleadings of the parties the learned Tribunal framed following issues:-

1. *Whether the accident took place due to rash and negligent driving of tractor No. HR-52-3149 by respondent No.1 Zile Singh?OPP*
2. *Whether the respondent No.1 was not holding a valid and effective driving licence at the time of accident in question, if so, to what effect?OPR*
3. *If issue No.1 is proved, to what amount of compensation the petitioners are entitled on account of death of Khubi Ram and from whom? OPP*
4. *Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR*
5. *Whether the petition is not maintainable? OPR*
6. *Relief.*

6. In order to prove their case the petitioners examined PW1 Narender Kumar, eye witness, PW2 Chameli Devi and PW-3 Kusam Lata, claimants, whereas respondent No.3 adduced documentary evidence.

7. After hearing the arguments and appreciating the evidence on record the learned Tribunal dismissed the petition vide the impugned award and aggrieved by the same appeal has been preferred.

8. Arguments advanced by learned counsels representing the appellants and respondent No.3- Insurance Company have been heard and with their assistance the record has also been perused.

9. It is the contention of the learned counsel for the appellants that the learned Tribunal had failed to appreciate the evidence on record and has wrongly concluded that the alleged accident had not ever taken place. It is submitted that the learned Tribunal has misread the evidence in arriving at

such conclusion and infact the claimants had proved the fact that Khubi Ram sustained multiple injuries in the accident caused due to rash and negligent driving of respondent No.1 in driving the offending Tractor which stood insured with respondent No.3 and therefore, the claimants being his legal heirs were entitled to compensation as such. It has been submitted that the impugned award be set aside by allowing the present appeal.

10. Per contra learned counsel for respondent No.3-Insurance company has assailed these arguments by submitting that the appellants had miserably failed to prove their case by leading any cogent evidence so as to establish the involvement of tractor in question or even the fact that the same was driven by respondent No.1 at the time of alleged accident. He submitted that infact the petition had been filed in collusion with respondent No.1 and 2 with the sole objective of procuring compensation, however the learned Tribunal had correctly appreciated the evidence and dismissed the petition as the claimants could not prove the alleged accident having taken place due to the negligence of respondent No.1 and as such, prayed for dismissal of the appeal.

11. The main contention in the present appeal is the finding given by learned Tribunal on issue No.1, aggrieved with which the appellants have preferred the present appeal.

12. After hearing the respective arguments and perusing the record with the assistance of learned counsel for the parties, it transpires that the onus of proving the alleged accident having taken place due to rash and negligent driving on the part of respondent No.1, was on the petitioners-

claimants. In order to discharge the onus the petitioners examined the alleged eye witness, Narender Kumar as PW1 while the petitioner Kusam Lata stepped in the witness box as PW2.

13. It is the case of the claimants that the deceased Khubi Ram was driving motor-cycle on the fateful day on which PW1 Narender Kumar was pillion rider. PW1 Narender Kumar happens to be the brother of the wife of deceased Khubi Ram. It is also on the basis of the statement of PW1 that the FIR was registered in the case. PW2 Kusam Lata happens to be the widow of the deceased. However, perusal of their respective testimonies, leads to the conclusion that their statements are not in conformity and there are discrepancies in their versions which create doubt regarding genuineness thereof. As per PW1 immediately after the accident, the tractor driver had run away from the spot along with the tractor and this version is even mentioned in the FIR Ex-P1. Whereas, according to PW3, she had gone to the hospital along with her brother Narender Kumar PW1 and mother in law along with the Tractor driver who had also accompanied them. She further stated that the Tractor driver had accompanied them from the place of accident to civil hospital and then Diamond Hospital, Palwal. So much so that PW3 has gone to the extent of testifying that the owner of the tractor was also with them at that time. If, the driver of Tractor had run away from the spot along with tractor as per the version given by alleged eye witness Narender Kumar while appearing as PW1 and even so narrated in the FIR Ex-P1, then how come the driver of the tractor had accompanied PW1 and also PW3 Kusam Lata from the place of accident to the Civil Hospital and then Diamond Hospital Palwal, coupled with the fact stated by PW3 that

even owner of the tractor was there, are the circumstances which create suspicion regarding the genuineness of the version put forth by the said eye witness.

14. It doesn't end here, as the PW1 has even gone to the extent of admitting in his cross-examination that he came to know of the name of respondent No.1 driver of the tractor as it was so proclaimed while running away from the spot and even the tractor Number was so told by the tractor driver while running away along with the tractor. He further in his cross-examination that the name of the tractor driver was also told by him to the police and even recorded in the FIR, whereas in the FIR it is not so mentioned. Even otherwise this version put forth by the alleged eye witness is not at all probable because why would the driver of the offending vehicle while running away from the spot along with the vehicle would inform PW1 about his name and particulars and also the number of the offending vehicle and furthermore there being no mention of the name of respondent No.1 in the FIR although PW1 claimed to have mentioned the same to the police while recording the FIR shatter the entire version of the claimants regarding the alleged accident having been caused by the Tractor in question allegedly driven by respondent No.1. Moreover, if PW1 was aware of the name of the tractor driver prior to lodging of the FIR, as has come in his version (supra) then the same would have been mentioned in the FIR itself, where it is hopelessly missing.

15. It has further come in evidence of PW1 that in the accident the front portion of the motor cycle driven by Khubi Ram and rear portion of the

tractor in question got damaged. This itself controverts the version given in the petition, wherein it is alleged that the driver of the tractor by driving it in rash and negligent manner had caused the accident by striking the tractor in the motor cycle from behind. The learned counsel for respondent No.3 has also pointed out other discrepancies in the version put forth by aforesaid material witnesses. It is mentioned in the petition that the deceased was driving the motor cycle number HR50-3530 whereas according to PW1 the number of motor cycle was HR50-5810 and according to PW3 it was HR3149. According to PW3 her brother Narender (PW1) had gone alone to lodge report to the police, whereas according to PW1 he had gone along with his another brother-in-law Deep Chand. Further, as per PW-1 he lodged complaint at police post Palwal Camp at 9:00 a.m. on 24.07.2003 whereas according to FIR it was lodged at 7:20 pm, that too in Diamond Hospital. As per PW1 he had given written complaint to the police for lodging the FIR whereas the FIR (Ex-P1) mentions it to have been lodged on the statement of PW1 Narender Kumar. Even as per PW3 the deceased was taken to the hospital by PW1 Narender Kumar, whereas PW1 claimed that he had not shifted the deceased to hospital but he was shifted to hospital by police personnel. All these afore- referred discrepancies coupled with unexplained delay in lodging of the FIR create serious doubt regarding the genuineness of the version put forth in the claim petition. In conclusion, the claimants have miserably failed to prove their case qua the accident having taken place due to rash and negligent driving on the part of respondent No.1.

16. Thus, in the light of the above discussion, it is observed that the learned tribunal had correctly and judiciously appreciated the evidence on

record in deciding issue No.1 and finally the claim petition. I find no infirmity or illegality in the impugned award so as to interfere therein in the present appeal.

17. Resultantly, finding no merit in the appeal the same is hereby dismissed.

(SANJIV BERRY)
JUDGE

20.07.2023

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |