

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
124
FAO-7200-2016 (O&M)
Date of decision: 29.05.2023

Smt. Anju Aggarwal & Others

...Appellant(s)

Vs.

Sahib Singh (since deceased) through LRs & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. B.S. Mittal, Advocate
for the appellants.

Mr. Gopal Mittal, Advocate
for respondent No.3/Insurance Company.

NIDHI GUPTA, J.

Present appeal has been filed by the claimants against dismissal of their claim petition by Motor Accident Claims Tribunal, S.A.S. Nagar, Mohali (hereinafter referred to as "the learned Tribunal") vide Award dated 11.03.2016 passed in MACT Case No.RT-36 dated 20.09.2013/28.10.2014 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimants are the widow and two sons of deceased-Suresh Bansal @ Suresh Kumar Aggarwal.

2. Claim petition was filed by the appellants herein alleging that the deceased-Suresh Bansal @ Suresh Kumar Aggarwal had died due to injuries suffered by him in a motor vehicular accident that took place on 28.06.2013 due to rash and negligent driving of tractor-trolley bearing registration No.GJ-2B-8284 (hereinafter referred to as

‘the offending vehicle’) by respondent No.1, which was owned by respondent No.2 and insured by respondent No.3 herein.

3. On the basis of the pleadings of the parties, learned Tribunal formulated the following issues:

- “1. Whether death of Suresh Bansal was caused in motor vehicle accident dated 28.06.2013 due to rash and negligent driving of offending tractor No.GJ2B-8284 by the respondent No.1? OPP
2. Whether the petitioners are entitled to compensation on account of death of Suresh Bansal in motor vehicle accident, if so, to what amount and from whom? OPP
3. Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident? OPR-3
4. Whether the respondent No.2 has violated the terms and conditions of the insurance policy? OPR-3
5. Relief.”

4. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that rash and negligent driving of the offending vehicle on part of respondent No. 1 was not made out. As the learned Tribunal found that no negligence is attributable to the driver of tractor-trolley bearing registration No.GJ-2B-8284, learned Tribunal did not consider it necessary to return a finding on issues No.3 and 4.

5. It is submitted by learned counsel for the appellants:

a) that the learned Tribunal while deciding issue No.1 totally ignored that if the version in DDR and FIR is slightly different, it does not mean that the accident has not occurred due to the use of

tractor-trolley, rather in FIR it was mentioned that the tractor-trolley was driven by respondent No.1 in a rash and negligent manner. It is submitted that this fact is also supported by the statement of PW2-Balwinder Singh, who was the eyewitness of the accident but the learned Tribunal has wrongly discarded the statement of Balwinder Singh by observing that his version is not trustworthy;

b) that the learned Tribunal totally lost sight of the fact that the learned Tribunal is called upon to decide the claim petition under the Act which is a beneficial legislation, and it is not a criminal case where case has to be proved beyond reasonable doubt;

c) that the learned Tribunal further failed to appreciate that if there was delay of 16 days in lodging the FIR, it did not mean that the same was an after-thought; especially, in view of the fact that the DDR had been already lodged on the same day. It is submitted that although there may be some variation in initial version of DDR however, the same was natural because eyewitness was none other than the employee of the deceased and due to fear earlier, he reported a wrong version before the police but later on after due deliberation, the correct version was reported in the FIR;

d) that the learned Tribunal totally ignored the statement of HC Satinder Singh RW3 who clearly stated in his cross-examination that earlier as per the complaint the name of the driver of the offending vehicle was Labh Singh son of Munshi, later on after investigation, it has come to knowledge that Labh Singh was not driving

the offending vehicle. In fact, one Sahib Singh son of Harbans Singh was driving the offending vehicle and this fact was also verified from the owner of the offending vehicle that Sahib Singh was driving the offending vehicle at the time of accident;

e) that the learned Tribunal itself gave contradictory findings by observing on one hand that PW2-Balwinder Singh claimed that earlier he could not provide correct name of driver of the offending tractor but his above claim was also false because of his deposition in criminal case, where he failed to identify driver Sahib Singh but on the other hand learned Tribunal ignored the statement of RW2, where he specifically stated in his cross examination that Sahib Singh i.e. respondent No.1 was driving the vehicle and the same was verified from the owner of the vehicle i.e. respondent No.2;

f) that the learned Tribunal further noticed that the head of the deceased was crushed under the tyre of tractor trolley but even then surprisingly the learned Tribunal held that the negligence could not be attributed to the driver of tractor trolley merely on this ground. The crushing of head of the deceased under the tyre of the tractor trolley was sufficient to prove the negligence of the driver of tractor trolley i.e. respondent No.1;

g) In support, Learned counsel for the appellants relies upon judgments of the Hon'ble Supreme Court in **National Insurance Co. Ltd. Vs. Chamundeswari & Others** Law Finder Doc ID # 1888531; **Bimla Devi Vs. Himachal Road Transport Corpn.** Law Finder

Doc ID # 199027 and Dulcina Fernandes Vs. Joaquim Xavier Cruz Law

Finder Doc ID # 486884.

6. In response, it is submitted by learned counsel that there is no error in the impugned Award, and the present Appeal deserves to be dismissed.

7. No other argument is raised by learned counsel for the parties.

8. Heard.

9. The following findings of the learned Tribunal clinch the issue No.1 in respect of the alleged rash and negligent driving of the offending vehicle by respondent No.1.

“11. The perusal of record shows that Balwinder Singh [PW-2] is also author of DDR [Ex.P1] and FIR [Ex.P5]. The version contained in the DDR and FIR is contrary to each other. In DDR [Ex.P1] Balwinder Singh [PW-2] has claimed that on the fateful day, when deceased tried to overtake tractor-trolley, breaks were suddenly due to which his two-wheeler could not be controlled and slipped on the road. In FIR [Ex.P5], this witness has claimed that two-wheeler was being driven by him, whereas the deceased was pillion rider. He has also changed the position of vehicles as he has claimed that tractor-trolley has hit the two-wheeler from behind.

12. Balwinder Singh [PW-2] has not only given contrary version in DDR [Ex.P1] and FIR [Ex.P5], but his version has changed on each and every step of proceedings of the case. In FIR [Ex.P5] Balwinder Singh has claimed that tractor-trolley was being driven by Labh Singh son of Munshi Ram, but on 22.07.2013, he has got recorded supplementary statement with Police, wherein he has claimed that the offending vehicle was being driven by one Sahib Singh son of Harnam Singh, whereas Labh Singh was sitting on mudguard of tractor.

Although, this witness has claimed that he earlier could not provide correct name of the driver of the offending tractor, but his above claim is also false because in his deposition, in the Court of Sub Divisional Judicial Magistrate, Dera Bassi, in case registered vide FIR No.289 dated 17.04.2013 under Section 279, 304-A of Indian Penal Code at Police Station Zirakpur against Sahib Singh above named, this witness has stated that he cannot identify the Sahib Singh as driver of the offending tractor-trolley. This fact has been mentioned in judgment (Ex.RW1/A), passed by the Court while deciding the above criminal case.

13. After evaluating the deposition of Balwinder Singh, this Tribunal has reached a conclusion that he is not a reliable and trustworthy witness because he has not only changed the version on one point, but on every point and has given four self-contradictory versions during the progress of present case. Claimant Anant Bansal, who has witnessed the occurrence, as per the version contained in FIR [Ex.P5], did not step into the witness box, though he could have been the best witness to prove the case of claimant to the extent that offending vehicle was being driven by the respondent No.1 on the date of accident. As claimants have withheld best evidence, therefore, this Tribunal is bound to draw adverse inference against them to the extent that their contentions are not correct.

14. On the basis of discussion held in preceding paragraphs of this judgment, this Tribunal is of the considered opinion that there is no cogent evidence available on record to hold that the accident in question has been caused due to rash and negligent driving of respondent No.1. Rather, the first version available with respect to causing of accident is DDR [Ex.P1], which provides that deceased himself was negligent while driving two-wheeler bearing registration No.CH01-AG-7627 as he was over taking the tractor-trolley and lost control over his two-wheeler. Though in this DDR, it has been mentioned that the head of the deceased was crushed under the tyre of tractor-trolley, but merely on this score, the negligence cannot be attributed to driver of said

tractor-trolley and hence, owner thereof can also not be held liable for payment of any amount on account of compensation arising out of above said accident. Accordingly, both these issues are decided in favour of the respondent No.3 and against the claimant.”

10. Learned counsel for the appellants is unable to dispute, controvert, or give any plausible, let alone satisfactory explanation in respect of the above said findings of learned Tribunal.

11. The case laws relied upon by learned counsel for the appellants are distinguishable as, the facts of relied upon cases are totally different from those of the present case. No doubt, proceedings under the Act do not require the strict proof as in a criminal trial. However, in the face of such incriminating findings as above, fundamental common sense and rationality cannot be given the go-by, when it is clear that a story has been concocted by the claimants merely to get the compensation under the Act.

12. Present appeal accordingly stands, **dismissed**.

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

29.05.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No