

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-8072-2016 (O&M)

Date of decision: 09.03.2023

Radha

...Appellant(s)

Vs.

Amninder Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sagar Aggarwal, Advocate for the appellant.

Mr. N.S. Dhillon, Advocate for respondent No.1.

Mr. V. Ramswaroop, Advocate for respondent No.2.

NIDHI GUPTA, J.

Present appeal has been filed by the claimant against dismissal of her claim petition vide Award dated 20.09.2016 passed by Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as "the learned Tribunal") in MACT Petition No.117 of 2015 filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Claimant is the widow of deceased-Balkar Singh.

2. Brief facts of the case are that learned Tribunal on the basis of pleadings and evidence placed before it concluded that the appellant has been unable to prove that deceased-Balkar Singh had died due to injuries suffered by him in the motor vehicular accident that took place on 16.09.2015, stated to be due to rash and negligent driving of car bearing registration No.HR-09D-9585 (hereinafter referred to as "the

offending vehicle”) being driven and owned by respondent No.1, and insured by respondent No.2.

3. Learned counsel for the appellant assails the impugned Award inter alia, on the ground that;

a) that deceased had died due to injuries suffered by him in a motor vehicular accident that took place on 16.09.2015 due to rash and negligent driving of offending vehicle being driven and owned by respondent No.1;

b) that immediately after the accident, eyewitness Maghar Singh s/o Dayal Singh had made statement to the police at the spot of accident itself. On the basis of statement of PW2-Maghar Singh, FIR No.179 dated 16.09.2015 was registered against respondent No.1 under Sections 279 and 304-A IPC. It is submitted that therefore, the finding of the learned Tribunal that the accident in question was not proved, is contrary to the record;

c) that even mechanical report of the offending vehicle was placed on record as Mark-A which shows that offending vehicle was badly damaged in the accident. It is submitted that accordingly, learned Tribunal was in error in dismissing claim petition of the appellant.

4. In response, it is submitted by learned counsel for respondent No.2-Insurance company that case of the appellant is based on statement of PW2-Maghar Singh/complainant. Eyewitnesses Maghar Singh and Karam Singh in their respective statements (Exhibit R5 & Exhibit R6) recorded before learned Judicial Magistrate (First Class), Guhla, in the

criminal case registered against respondent No.1, had admittedly, not identified respondent No.1 as culprit, and had also failed to give any details of the offending vehicle. Accordingly, respondent No.1 had stood acquitted vide judgment Exhibit R1. It is submitted that therefore, statement of PW2 made before the learned Tribunal was un-reliable as PW2 had given two contradictory statements - one before the learned Tribunal, and second in the criminal trial.

5. Learned counsel also refers to deposition of PW3-Sub Inspector Sahab Singh, Investigating Officer, who has admitted in his cross-examination before the Sessions Court that name of driver of offending vehicle was not mentioned in the FIR and he had come to know name of the driver from Sub-Divisional Magistrate office, Guhla. However, PW3 has simultaneously conceded that name of driver of offending vehicle is not available with the record of SDM office.

6. In rebuttal, it is submitted by learned counsel for the appellant;

a) that admittedly, FIR was lodged on same day on the basis of statement of PW2, and driver had left the offending vehicle at the spot and run away. Therefore, there was no way for PW2 to ascertain name of driver of offending vehicle, or to reveal it in the FIR;

b) that number of offending vehicle is duly mentioned in the FIR; and in pursuance to the FIR, even challan was filed; and mechanical test report Mark-A is on record;

c) that acquittal in criminal proceedings was irrelevant and all that needs to be established in the present proceeding was rash and negligent driving on part of respondent No.1.

7. No other argument is raised on behalf of the parties.

8. I have heard learned counsel for the parties.

9. Perusal of the record shows that few months prior to appearing before the learned Tribunal, PW2-Maghar Singh/eyewitness/complainant, had recorded his statement in criminal case on 10.12.2015 (Exhibit R5), before the SDJM, Guhla. As per certified copy of said statement dated 10.12.2015 (Exhibit R5), learned Tribunal has recorded that PW2 has stated therein that *“on the ill fated day, when he was going on his motorcycle with one Karam Singh, an unknown vehicle collided against a motorcyclist but he could not identify the accused present in the court.”* Though PW2 was cross-examined at length by Public Prosecutor in the criminal trial, yet he did not change his above stand.

10. A few months thereafter, PW2 appeared before learned Tribunal as witness, and stated that *“he had given correct statement before learned SDJM Guhla and that respondent No.1 was acquitted on his statement. He stated that his affidavit Ex.PW2/A was prepared by counsel for the claimants Sh. Daljit Singh Advocate. Ex.R6 is the certified copy of statement of Karam Singh, yet another eyewitness examined by learned SDJM, Guhla on 18.12.2015. He too, stated that unknown driver of an unknown vehicle collided against a motorcyclist but he could not see number of the vehicle nor could identify him in the court.”*

11. Based upon the above statement, learned Tribunal recorded the following findings and concluded as follows:-

“17. Apparently, conduct of PW2 Maghar Singh is not above board. As per his cross-examination, he had given correct statement before learned SDJM, Guhla which implies that his statement before the Tribunal is false. This apart, Ex.PW2/A appears to be a photocopy of affidavit and not the original, which was got prepared not by the witness but by counsel for the claimant. Therefore, examination-in-chief of PW2 by way of affidavit is to be excluded from consideration. There is a clear attempt on part of claimant’s witness Maghar Singh to mislead the Tribunal to extract compensation from the Insurance Company. The Court cannot permit such fraudulent conduct to extract compensation.

18. PW3 SI Sahab Singh is the Investigating Officer, who investigated the criminal case registered against respondent No.1. In cross-examination, he conceded that name of driver of offending vehicle was not mentioned in the FIR and he came to know about name of driver of offending vehicle from SDM Office, Guhla. He also conceded that name of driver of any vehicle is not available with the record of SDM Office.

19. From the statement of Investigating Officer as well, it cannot be discerned how and for what reason, respondent No.1 was involved in the criminal case, when no eye witness stated about his involvement.”

12. I am in concurrence with the above said findings of the learned Tribunal. From the above facts it clearly emerges that appellant was unable to prove rash and negligent driving on part of respondent No.1. Undisputedly, the whole case of the appellant is based on statement of PW2-Maghar Singh eyewitness/complainant and author of FIR. However, admittedly, PW2 has completely resiled from his purported earlier stance. FIR may have been registered on basis of statement of PW2, however, appellant can derive no benefit from the same. Moreover, mechanical report Mark-A remains unproven. As a result, appellant is unable to prove negligence on part of the respondent No.1.

13. Accordingly, I find no error in the impugned Award.

Present appeal hereby stands, **dismissed**.

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

09.03.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No