

FAO-3759 of 2006 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-3759 of 2006

Decided on: 07.05.2024

Kitabo and another

...Petitioners

Versus

Anil Kumar and others

...Respondents

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Ram Ratti and another

...Petitioners

Versus

Anil Kumar and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Karan Singh, Advocate
for the appellants.

Mr. Sunil Saharan, Advocate
for the respondents No.1 and 2.

RITU TAGORE, J.

1. These are partially burnt cases.



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2. Learned counsel for respondents tendered on record the photocopy of the impugned award, the evidence and the pleadings of the parties, which are taken on record, subject to just exceptions.

3. The counsel for the parties have agreed and consented to decide the present appeals on the basis of paper book, available record and other documents mentioned above, tendered today by counsel for the respondents.

4. This judgment shall dispose of the above connected appeals, arising from one and same accident dated 25.04.2002, and from the same judgment dated 07.06.2006 passed by Motor Accident Claims Tribunal, Hisar, in case petition No.48-MACT dated 29.07.2002 titled ‘Smt. Ram Rati and another Vs. Anil Kumar and others’ and petition No.49-MACT dated 29.07.2002 titled ‘Smt. Kitabo and another Vs. Anil and others’ .

5. The parties shall be referred to as per their original status before the learned Tribunal.

6. The relevant facts necessary for adjudication of these appeals are as under:-

On 25.04.2002, deceased Meenu and Virender along with Anil were going on a motorcycle from village Rajpura to village Asan. The motorcycle was being driven by Anil, respondent No.1. When the motor cycle reached Moth minor, respondent No.1 saw a Marshal Jeep coming from opposite side and applied the hand brake; as a result, the motor cycle took a somersault and fell down and the occupants were thrown 18 feet away from the motor cycle. In this accident, Meenu and Virender succumbed to



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their injuries. According to the pleadings, accident was witnessed by Joginder resident of Rajpura. It is alleged that accident occurred on account of sudden application of brakes by respondent No.1, who lodged a false report with the police alleging rashness and negligence on the part of the driver of Marshal jeep in taking place of the accident with an ulterior motive to avoid his liability.

7. The claimants being parents filed the petitions under Section 166 of Motor Vehicles Act, 1988 for the deaths of Meenu and Virender, pleading that the deceased were agriculture labourers and milk vendors, and each were earning Rs.10,000/- per month from the aforesaid avocation. It was also claimed that deceased Meenu was 21 years and Virender 28 years old at the time of their deaths.

8. Anil Kumar, respondent No.1 (driver), upon notice did not appear and was proceed *ex parte* before the learned Tribunal. Respondent No.2 the owner of the motorcycle filed the reply and denied the assertions of the petitioners, further pleaded that he was not owner of the offending vehicle at the time of the accident. Similarly, respondent No.3 pleaded that he was neither the owner nor in possession of the offending motorcycle, having sold the same to Rajesh son of Ram Chander in the year 2002. On the aforesaid averments, the respondents prayed for dismissal of the petition.

9. From the pleadings of the parties, learned Tribunal framed the following consolidated issues:-



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“1. Whether the accident took place due to rash and negligent driving of Motor Cycle No.HR-21/7749 by the respondent No.1 Anil Kumar? OPP

2. Whether Smt. Ram Ratti (MACT Case No.48 of 2002) is entitled to compensation on account of death of Meenu @ Balwant, if so how much and from whom?OPP

3. Whether Smt. Kitabo etc. (MACT case No.49 of 2002) is entitled to compensation on account of death of Virender, if so, how much and from whom? OPP

4. Whether the petition is not maintainable in the present form? OPR

5. Relief.”

10. The Tribunal invited the parties to present their evidence. The parties led the evidence as detailed in the impugned award/judgment. On appraisal of the pleadings and evidence, learned Tribunal dismissed both the petitions holding that the claimants failed to establish that accident was caused by respondent No.1 by leading any cogent and reliable evidence. Accordingly, issue No.1 was returned against the claimants. Consequently, both the petitions were dismissed.

11. Being aggrieved by the judgment, claimants filed the instant appeals.

12. Learned counsel for the appellants stated that it is proved from the evidence that both the deceased Meenu and Virender were travelling on motor cycle of Anil, when met with accident, caused by respondent No.1, by applying sudden breaks. It is stated that sole eye witness Joginder Singh (PW-3), categorically deposed about manner of the accident caused by Anil-



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respondent No.1, the driver of the motor cycle. The learned counsel stated that taking place of accident with motor cycle and resultant deaths of Meenu and Virender, is proved from the contents of FIR (Ex.P-2), and PMRs proved by PW-2 . Learned counsel stated that learned Tribunal gravely erred in overlooking the fact that Anil-respondent No.1, gave false version of the manner of accident and did not appear in the witness box to rebut the evidence of claimants. It is also stated that learned Tribunal faltered in discarding the statement of Joginder Singh (PW-3) an eye witness on conjectures and surmises. Learned counsel made a prayer to reassess the evidence on issue No.1. It is also urged that determination of compensation is on lower side.

13. On the contrary, learned counsel for respondents No.1 and 2 defended the findings of the learned Tribunal by urging that they are based on sound appreciation of facts and law. Joginder Singh (PW-3) the sole witness to the accident failed to substantiate the cause and manner of the accident. Learned counsel submits that from his admissions, it is not established that he was present at the spot at the relevant time and did not witness the actual happening of the accident. He admitted that he never approach the police and lodged the complaint against Anil-respondent No.1 for causing the accident. It is stated that learned Tribunal has rightly held his testimonial account superfluous to establish the version of the claimants. Learned counsel submits that there is no merit in these appeals and they should be dismissed.



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14. I have gone through the paper book and documents (detailed above), provided by the counsel for the respondents with valuable assistance of the learned counsel for the parties.

15. As per the pleaded case of the claimants on 25.04.2002 deceased Meenu and Virender were going from village Rajpura to Asan, on the motor cycle driven by respondent No.1, Anil.

16. Per, further version of claimants, the accident occurred on account of rash and negligent driving of Anil, respondent No.1 and the accident was witnessed by Joginder Singh (PW-3). The claimants also examined ASI Sube Singh (PW-5) who proved the copy of FIR (Ex.P-2) lodged by Anil regarding the accident.

17. To prove the cause and manner of accident, there is solitary statement of Joginder Singh (PW-3). The learned Tribunal has dealt with the evidence of this witness in para 9 of the judgment, which is reproduced herein, for ready reference, as under:-

“The onus of this issue was upon the claimants and they have examined Joginder PW-3. Joginder had disclosed that on 25.04.2002 at about 7:30/ 8:00 P.M. he was coming from village Narnaund and was going to village Rajpura and was on his cycle. He had crossed Moth minor canal. Anil, Virender and Meenu were coming on a motor cycle which was driven by Anil. He stated that he heard a noise and then went towards that direction and Anil told him that on account of his mistake the accident had occurred as he had applied the front brakes as a Marshal jeep was coming from the opposite side. Joginder is the real brother of Virender and this fact was admitted by him. He stated that he had not seen the respondent and had not made any statement to the police and was



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making the statement for the first time in the Court. He stated that he had not seen Virender and Meenu falling down.”

18. No other eye witness has been examined by the claimants, on the manner of accident except tendering the copy of the FIR (Ex.P-2). The perusal of the copy of FIR (Ex.P-2) gives a total different account of the accident. FIR (Ex.P-2) was lodged by Anil, the respondent No.1 stating that he along with Meenu and Virender were going on the offending motor cycle, being driven by him, when a unknown Marshal jeep came from opposite side being driven in a rash and negligent manner and at a high speed from Narnaund and struck against their motor cycle. As a result, all occupants on motor cycle alongwith motor cycle fell on the road and he fell unconscious. After some time, Mange Ram son of Harchand reached at the spot and took them to hospital in a jeep. He mentioned that accident in question was caused by unknown vehicle.

19. The onus to establish causing of accident by Anil Kumar, respondent No.1 while driving motor cycle No.HR21-7749 in a rash and negligent manner was upon the claimants, who failed to present any cogent and reliable evidence in this regard. The solitary statement of Joginder Singh (PW-3) failed to establish that he, indeed, witnessed the accident. As per his version, on hearing noise, he proceeded towards the said direction. He stated that, he had not seen Virender and Meenu falling down. It is Anil, who disclosed him that sudden application of brakes by him led to the accident. He stated that accident occurred due to his mistake. Thus, from the material admissions made by Joginder Singh (PW-3), it is not made out that he infact



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saw the accident, taking place due to negligence of Anil, respondent No.1. His statement is nothing but hearsay, of Anil's version. The alleged disclosure made by Anil as to manner of accident, is not inconsonance with the recitals contained in FIR (Ex.P-2), lodged on statement of Anil. This creates doubt on the statement of Joginder Singh (PW-3).

20. Further, the statement of Joginder Singh (PW-3) that before him Anil admitted his mistake in causing the accident, is not worthy of reliance for the reasons he admitted that he gave no statement to police regarding the admission made by Anil and also his witnessing the accident. He admitted that he came to depose regarding accident for the first time in the Court. He also admitted that Virender (deceased) was his relative. So his conduct post the accident and further he did not report to police and is related to the deceased, makes his version unworthy of reliance being an interested and relative of the deceased. Mange Ram son of Harchand, who reached at the spot and took injured to hospital in a jeep is not examined by the claimants with no explanation of such non-examination.

21. Further statement of Joginder Singh (PW-3) is contrary to the contents of FIR (Ex.P-2). Moreover, his statement, disclosing the manner of accident, as disclosed to him by Anil, does not suggest that Anil was rash or negligent in driving the vehicle. Application of sudden brakes by Anil, on seeing a vehicle coming from opposite side does not suggest that he was negligent in driving vehicle. Learned MACT has rightly observed that statement of Joginder Singh (PW-3) is unworthy of reliance for returning



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the issue No.1 in favor of claimants. The contents of FIR (Ex.P-2) do not establish any negligence on the part of Anil.

22. It is settled position of law that claimant is to stand on his own legs and is required to establish the negligence of the driver of the offending vehicle by leading cogent evidence. The claimant cannot take advantage of no case or weakness in the case of the respondent. Thus the non-contest of the petition by Anil (respondent No.1), the driver of the offending vehicle, by itself does not establish his negligence. The initial onus is always on the claimant to prove the negligence of the driver of the offending vehicle, which he failed to discharge, per the discussion made above.

23. Having considered the entire evidence on record, this Court does not find to have a different view than expressed by learned Tribunal. The findings of learned Tribunal are based on sound appreciation of facts and do not appear to have fallen to error of misappreciation or misreading or misunderstanding of the evidence. There is no illegality or perversity in the findings of the learned Tribunal.

24. Per discussion, findings of learned Tribunal are upheld and affirmed. Consequently, it is held that claimants failed to prove the issue No.1 in their favor. Since material issue has been ruled against the claimants, there is no necessity to dilate upon the issue of determination of compensation.

25. Accordingly both appeals are dismissed.

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26. Pending applications, if any, also stands disposed of, accordingly.
27. A photocopy of this order be placed on the connected case file numbered above.

(RITU TAGORE)

JUDGE

07.05.2024

Rimpal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No