

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-386-2009 (O&M)
Date of Decision: March 12, 2024

Suman @ Somna and others
...Appellants

VERSUS

Kana Ram Jat and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Jitender Nara, Advocate
for the appellants.

Mr.Vinod Chaudhri, Advocate
for respondent No.2-insurance company.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants to assail the judgment of dismissal of the claim petition filed to seek compensation, qua death of Ghanshayam.

The facts germane, to be noticed, are as follows:-

That, on 05.11.2006, Rakesh Punia brought marble sheets in truck bearing registration No.RJ-142G-3919 and employed some labourers to unload the marble sheets from the aforesaid truck, at the residence of one Prem. The labourers, namely, Daulat Ram, Dharamender, Satpal, Tejpal and Karambir were unloading the marble sheets, at about 10.30-11.00 a.m. In the meanwhile, Ghanshayam (mistri) and Rakesh Punia had also joined Daulat Ram etc. (other labourers) for unloading the marble stone from the

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aforesaid truck. In the meantime, Rakesh (owner of Shiv Marble House) lifted the support from the marble sheets and marble sheets fell down on the persons of Ghanshayam and Rakesh, as a result of whereof, both of them died at the spot.

As such, widow as well as parents of deceased Ghanshayam filed the claim petition under Section 163A of the Motor Vehicles Act, for seeking compensation from the respondents.

In pursuance of the notice issued, the insurance company had filed the reply, thereby, contesting the claim petition on the ground that it was incomplete, vague and did not disclose any cause of action and also disputed the maintainability of the petition, in the present form, as alleged accident was not covered under the terms and conditions of the insurance policy. Besides the same, it was averred that Ghanshayam was working as Mason and was not unloading the marble sheets nor he was employed by the owner of the offending vehicle. He had no relation with the owner or driver of the offending vehicle. Furthermore, the driver of the offending vehicle-respondent No.1 was not having valid and effective driving licence, at the time of accident. Further, plea of collusion was also raised.

On merits, it was asserted that respondent No.2 is entitled to contest the petition on merits and if the accident in question had occurred, the same was due to negligence of the deceased himself and no FIR was got registered qua the accident in question. However, DDR No.23 was lodged in the police station, where it was mentioned that Ghanshayam was a Mason for constructing the house of Prem. Further also, it was asserted that the petition is bad for mis-joinder and non-joinder of necessary parties.

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After framing of the issues, the evidence was adduced by the rival parties.

On appraisal of the evidence, brought on record, vide impugned judgment dated 18.09.2008, the claim petition for seeking compensation, was dismissed.

Feeling aggrieved by the aforesaid judgment of dismissal, the appellants-claimants filed the present appeal.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the appellants that fact of accident and involvement of the offending vehicle stands amply established from the documents Ex.P3 and Ex.P4, which are statement of Dinesh and DDR got lodged, on the basis thereof. However, the insurance company could not be allowed to escape from its statutory duty to indemnify the owner against the third party risk. It is submitted that essential ingredients to allow petition under Section 163A of the ibid Act, stands amply established and the Tribunal ought to have allowed the claim petition.

On the contrary, learned counsel for the respondent-insurance company assiduously submitted that inadequate evidence is there to establish the fact and manner of the accident and involvement of the offending vehicle. Thus, in the light of the same, learned Tribunal has appraised the evidence in correct perspective and has rightly dismissed the claim petition.

To establish the claim under Section 163A of the Act, in the minimum, it is required to prove the fact of accident, as a result of the use of

motor vehicle and the fact of death/injury (as the case may be).

Undisputedly, in the case in hand, two witnesses were examined by the appellants-claimants before learned Tribunal. PW-1 is Ravrani is one of the claimants, who is mother of the deceased. Her affidavit is Ex.P1. She also tendered into evidence, copy of post-mortem report Ex.P2 and copy of police proceedings Ex.P3. Besides the same witness, another witness examined by the appellants-claimants is PW-2 Head Constable Satender Kumar, who had brought the DDR register and proved the entry of said DDR, which is Ex.P4. No other evidence had been led.

It is not disputed that Ravrani, so examined, is not an eye witness to the accident in question. She has also only tendered into evidence photostat copy of the statement of Dinesh, alleged to be one of an eye witness, on the basis whereof, DDR was got lodged, copy whereof is Ex.P4, which has been proved by PW-2 Head Constable Satender Kumar.

Learned counsel for the appellants has laid much emphasis upon DDR, having proved in due course and submits that it establish the factum of accident and involvement of the offending vehicle.

However, the aforesaid submission is not tenable. It is pertinent to mention that though the claimants asserted about there to be several labourers to be present, at the time of taking place of the accident, such like, Daulat Ram, Dharamender, Satpal, Tejpal and Karambir, but however, none of them has been examined by the appellants-claimants. It is pertinent to mention that Head Constable Satender Kumar, on the basis of the register, though may have proved the DDR, but however, the contents of the DDR could only be proved by the author of the said DDR i.e. Dinesh or at the

maximum, by way of examination of the person, who pen-down the DDR, but however, both of them, have not been examined. Without providing an opportunity of cross-examination of the author of the DDR or the person, who pen-down the DDR, the involvement of the offending vehicle in the accident and also the manner of accident, as such, does not stand established, though, factum of DDR may be taken into consideration. There is no explanation, coming forth, at the behest of the appellants for not examining eye witnesses, whose particulars were known to them. Things would have been different, had any eye witness been examined and the same could be appraised in the light of the contents of the DDR also.

In the given circumstances, when no witness, who had witnessed the accident or who made the statement before the police for lodging of the DDR, as such have been examined, the DDR cannot solely be taken into consideration, to conclude about the manner of taking place of the accident and about involvement of the vehicle in question. In the given circumstances, learned Tribunal has correctly reached the conclusion about the claimants, having failed to bring sufficient evidence, in support of version of their claim petition, about the accident to have occurred, on account of use of the alleged offending vehicle, as a result whereof, Ghanshayam had died.

Hence, the appeal sans merit and is hereby dismissed.

March 12, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No