



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5038-2010 (O&M)
Date of Decision: July 30, 2024

Deepo and others
...Appellants

VERSUS

Godha Ram and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.H.P.S.Ghuman, Advocate
for the appellants.

Mr.Jaswinder Singh Rana, Advocate for
Mr.Sandeep Arora, Advocate
for respondents No.1 and 3.

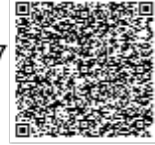
Mr.Gaurav Gupta, Advocate
for respondent No.2.

ARCHANA PURI, J.

The appellants-claimants have filed the present appeal, thereby assailing the judgment of dismissal of the claim petition filed under Section 163-A of the Motor Vehicles Act, for seeking compensation, on account of death of Girdhari Masih, in a motor vehicular accident, which took place on 20.11.2000.

The material facts, to be noticed, are as herein given:-

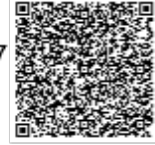
That, on 20.11.2000 at about 9.30/10.00, Girdhari Masih, while driving Maruti Van bearing registration No.DL-2CC-5751, was coming from Amritsar towards his village Khursopur. He was accompanied by his

**FAO-5038-2010****-2-**

son Yusuf Masih. After crossing Kartarpur, when they reached near Vidhipur railway crossing, Jalandhar, a high speed truck came from the opposite side, which struck against the front side of the van, as a result whereof, the van was completely damaged. Girdhari Masih suffered extensive grievous and multiple injuries, on various parts of his body. Girdhari Masih was asserted to be working as a driver. He was taken to Sacred Heart Hospital, Maqsoodan. A DDR was also got lodged at Police Station Kartarpur. Girdhari Masih succumbed to his injuries and died on 25.11.2000. The accident occurred during the course of employment of Girdhari Masih with respondent-Yash Pal. It was further asserted that in fact, Girdhari Masih was employed as Driver by Godha Ram. As Godha Ram is an influential person, hence, the facts were twisted in the DDR. Soon after the accident, the truck driver had ran away from the spot along with his truck.

In pursuance of the notice issued, the respondent No.1 made appearance and filed written statement thereby asserting about Girdhari Masih to have never been employed as driver by the answering respondent and that vehicle No.DL-2CC-5751 never met with any accident. It was denied that vehicle in question was being driven by Girdhari Masih on 20.11.2000, at the time, when it allegedly met with an accident, while coming back from Amritsar to village Khusropur.

Also, further it is pertinent to mention that initially, Godha Ram was impleaded as owner of the aforesaid Maruti van. However, subsequently, it came to the notice of the claimants that Maruti van was, in fact, owned by Yash Pal, son of Godha Ram and thereupon, amendment was sought, which



was allowed and Yash Pal was impleaded as party. He had also filed reply, thereby taking similar objections and also asserted about Girdhari Masih to have never worked with him as Driver and that the car never met with an accident. It was also denied that on 20.11.2000, while driving the said Maruti van, Girdhari Masih had met with an accident and succumbed to his injuries. In fact, it was asserted that accident never took place, out of the use of the above-said Maruti van nor Girdhari Masih died, during the course of employment with him.

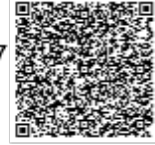
A separate written statement was also filed by the insurance company, wherein, besides taking preliminary objections, regarding maintainability of the claim petition, also it was asserted that Girdhari Masih was not holding valid and effective driving licence. The claim petition under Section 163-A is not maintainable. The plea of estoppel was also raised and all other contents were denied.

Issues were framed and evidence was adduced.

Deepo, appellant-claimant No.1, who is widow of deceased, stepped into witness box as PW-1 and evidence was closed. The insurance company examined its Accounts Officer Satish Kumar Sharma as RW-1 and closed the evidence. However, Godha Ram and Yash Pal never stepped into witness box and on their behalf, the evidence was also closed.

On appraisal of the evidence, brought on record, learned Tribunal, while concluding about the occurrence of motor vehicular accident, in itself to be doubtful and necessary ingredients of Section 163-A of ibid Act, are wanting, the claim petition was dismissed.

Being aggrieved with the dismissal of the claim petition, the



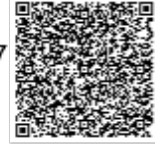
present appeal has been filed by the appellants-claimants.

In pursuance of the notice issued, respondents made appearance through their respective counsel.

Learned counsel for the parties heard.

As already observed aforesaid, Girdhari Masih, while in the capacity of being driver of Godha Ram, to drive alleged Maruti van, by its owner Yash Pal, had allegedly met with an accident with speeding truck, which collided with the van and he had sustained injuries. This accident had allegedly taken place on 20.11.2000, but however, Girdhari Masih succumbed to his injuries on 25.11.2000.

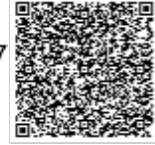
Looking at this manner of asserting about the accident to have taken place, it is also pertinent to mention that both Godha Ram and Yash Pal have denied employment of Girdhari Masih as a driver on the aforesaid Maruti van as well as taking place of the accident. In the given circumstances, it is all the more important to appraise testimony of appellant-claimant Deepo, who is widow of deceased Girdhari Masih. She has undisputedly not witnessed the accident. Only DDR Ex.PX, which was allegedly lodged at P.S. Kartarpur by Yusuf Masih s/o Girdhari Masih, has come on record. It is pertinent to mention that even Yusuf Masih, being an eye witness to the accident and despite, being son of Girdhari Masih deceased, has not stepped into witness box. Though, an observation has been made by learned Tribunal about counsel for the claimant, having submitted that Yusuf Masih had died, but however, there is no such evidence, coming on record. Even, Deepo, mother of Yusuf Masih has not stated about the death of her son Yusuf Masih.



In the light of the aforesaid, also it is necessary to take into consideration that accident had taken place on 20.11.2000. The claim petition was filed after a gap of 7 years on 07.03.2007. There is no reason, as such, assigned for not taking prompt action, soon after the accident or in the minimum, soon after the death of Girdhari Masih. No post-mortem report of the deceased has come on record. The delay in filing of the claim petition itself speaks volumes about the hollowness of the version, now set up by the claimants. This is all the more important to note as Godha Ram and Yash Pal have also denied about the employment of Girdhari Masih as driver with them and also about taking place of the accident, with the Maruti Van in question.

The sole document relied upon by the appellants-claimants is DDR, which is Ex.PX, which was got lodged, at the instance of Yusuf Masih. It has been correctly observed by learned Tribunal that from the contents of Ex.PX, it is evident that Yusuf Masih and his father were running a private business of workshop of welding at village Khusropur. Godha Ram and his Yash Pal are resident of Jalandhar Cantt. Even though, there is categorical denial of employment of Girdhari Masih with Godha Ram and Yashpal, but still, if Girdhari Masih was employed as driver as asserted by the claimants, then also, it is pertinent to mention that in the DDR Ex.PX, there is specific mention made about Girdhari Masih and Yusuf Masih were returning home to village Khusropur.

If Girdhari Masih was employed as a driver by Godha Ram or Yash Pal, then the question arises, why he should be directly going along with the Maruti van to his house at village Khusropur and not to Jalandhar Cantt, the



place of residence of his employers. Relating to the same, there is no satisfactory explanation coming forth.

Furthermore, it is also necessary to mention that vague assertion has also been made about distortion of facts, at the instance of Godha Ram, who is an influential person, at the time of recording of DDR, but however, this submission is bereft of merits. The vehicle in question was comprehensively insured and that being so, what could be the reason for Godha Ram to distort the facts, when his claim would have to be satisfied by the insurance company. In this regard, suffice to make mention that the copy of the insurance policy has been proved as Ex.R1, through RW-1 Satish Kumar Sharma.

Not only, the post-mortem report has not been proved, even the treatment record of admission of Girdhari Masih in Sacred Heart Hospital, soon after the accident, till his death, as such, has not been produced.

Taking into consideration all the aforesaid cobwebs, in the version set forth by the appellants, definitely, a doubt is raised about the truthfulness of the version qua taking place of the motor vehicular accident in question. Even if, for the sake of arguments, it is assumed that accident had taken place in the manner, as now asserted, then also, in view of the categorical denial of employment of Girdhari Masih as driver, by the owner of the vehicle, at the maximum, deceased Girdhari Masih could be taken as borrower of the vehicle in question and taking it to be so, he could not be treated as third party. Being borrower of the Maruti van, deceased Girdhari Masih stepped into the shoes of the owner of the vehicle and therefore, Section 163-A of the Motor Vehicles Act cannot apply, wherein, the owner



FAO-5038-2010

of the vehicle himself is involved.

In view of the aforesaid discussion, learned Tribunal has correctly appraised the evidence and dismissed the claim petition.

Hence, the appeal sans merit and the same is hereby dismissed.

July 30, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No