

(2012) 08 P&H CK 0254

High Court Of Punjab And Haryana At Chandigarh

Case No: FAO No. 3769 of 2010 (O and M)

Sher Singh and Others

APPELLANT

Vs

Santra Devi and Others

RESPONDENT

Date of Decision: Aug. 21, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27

Hon'ble Judges: M. Jeyapaul, J

Bench: Single Bench

Advocate: J.P. Sharma, for the Appellant; Rajneesh Chadwal, Advocate For Respondents No. 1 to 4 and Ms. Vandana Malhotra, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

M. Jeyapaul, J.

The present appeal is filed by the driver and owner of the ill-fated vehicle which caused the accident. In the appeal the appellants also filed an application C.M. No. 16286-CII of 2010 invoking the provision under Order 41 Rule 27 of the CPC seeking permission to adduce evidence on the side of the appellants. The claimants have presented the petition before the Tribunal alleging that respondent No. 1 Sher Singh who was driving his tractor bearing No. HR35C-1347 offered lift to deceased Attar Singh and his son Sunil Kumar and they boarded his tractor. Respondent No. 1 drove the tractor at a break-neck speed exhibiting rashness and negligence and as a result of which the accident took place in which Attar Singh who fell down from the tractor on the road was crushed by the wheels of the tractor and died on the spot. The first information report was lodged by Sunil Kumar son of Attar Singh. He also figures as one of the claimants in the claim petition.

2. Prior to 27.2.2010, one witness was examined on the side of the claimants and on 27.2.2010, three witnesses were present and they were examined on the side of the claimants. The Tribunal closed the evidence on the side of the claimants on the said

date and posted the case for evidence of the respondents on 8.3.2010. As no witness was present on the side of the respondents on 8.3.2010, the case was posted to 11.3.2010. On 11.3.2010 also there was no witness present on the side of the respondents the case was again adjourned to 12.3.2010. On that day only one witness on the side of the insurance company was examined. As no witness was produced on the side of the other respondents, the evidence on the side of the respondents was closed and the case was adjourned to 23.3.2010 for arguments. On hearing the arguments, the matter culminated in pronouncing of the award by the Tribunal.

3. Learned Counsel appearing for the appellants, namely, the driver and owner of the vehicle would submit that the Tribunal failed to accord proper opportunity to the driver and owner of the vehicle. It is his submission that the son of the owner of the vehicle was admitted to the hospital for treatment and as a result of which he could not lead evidence substantiating the plea taken in the written statement. He would further submit that within a span of 12 days the entire trial was completed and the judgement was pronounced by the Tribunal. Therefore, it is his submission that one opportunity will have to be given to the driver and owner of the vehicle which met with the accident.

4. Per contra, Learned Counsel appearing for the insurance company would submit that despite sufficient opportunity accorded to the driver and owner they had not cared to lead any evidence. It was only the representative of the insurance company who went into the box and gave evidence. The opportunity unfolded to the driver and owner had not been availed of by them, it is submitted. Learned Counsel appearing for the claimants also would submit that no application was filed seeking adjournment for leading evidence on the side of the driver and owner, nor was the closure of the evidence by the Tribunal was challenged by way of filing revision before this Court. Therefore, it is his submission that the present appeal merits no consideration.

5. The minutes of proceedings recorded by the Tribunal would go to show that sufficient opportunity was afforded not only to the insurance company but also to the driver and owner of the vehicle, not once but thrice. But it was only the insurance company who has come forward to lead some evidence through its representative. Neither the owner nor the driver of the ill-fated vehicle came forward to lead any evidence on their side. For all the three hearings the matter was posted for their evidence. They had also not filed any application seeking some adjournment to lead any evidence. The Tribunal was left with no other option except closing the evidence on either side and post the matter for arguments.

6. Only at this appellate stage the driver and the owner have come out with some story that the son of the owner was hospitalized and as a result of which he was not in a position to lead any evidence before the Tribunal. Of course, some certificate also is produced to show that his son was hospitalized. It is found that the

hospitalization had taken place only after the closure of the evidence by the Tribunal. At any rate, I find that sufficient opportunity was infact afforded to the driver and the owner of the vehicle. They having failed to avail the opportunity have now come forward with the present appeal to introduce a new version from that of the ocular version.

7. Therefore, I do not find any merit either in the application filed under Order 41 Rule 27 of the CPC or in the appeal which attacks the verdict of the Tribunal on the ground that sufficient opportunity was not afforded to the driver and the owner of the vehicle. Therefore, the appeal as well as the application stand dismissed. There is no order as to cost.