

(2006) 09 P&H CK 0311

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Swaran Kanta and Others

APPELLANT

Vs

Sudesh Kumar and Others

RESPONDENT

Date of Decision: Sept. 8, 2006

Citation: (2007) 1 ACC 655

Hon'ble Judges: Arvind Kumar, J

Bench: Single Bench

Judgement

Arvind Kumar, J.

This is an appeal by the claimants against award dated 12.11.1998 passed by the Motor Accident Claims Tribunal, Amritsar, whereby their claim petition has been dismissed.

2. Briefly, the facts of the case are that on 27.11.1985, Chatur Bhuj Gupta along with his family consisting of his wife and two minor sons along with one of their neighbours, namely, Meena Rani, were going from Ram Tirath to Amritsar in an auto-rickshaw being driven by Pardeep Kumar, respondent No. 2. Pardeep Kumar was driving the vehicle in a rash and negligent manner when on seeing a bus coming from the opposite direction, took the same on the kacha portion of the road. In that process, the auto-rickshaw turned turtle resulting in serious multiple injuries to Chatur Bhuj Gupta. He was rushed to hospital where he succumbed to the injuries. His family members, namely, his wife and two minor sons filed claim petition claiming compensation on account of his death.

3. Upon notice of the claim petition, respondent Nos. 1 to 3 in their separate written statement filed, denied that the accident took place due to rash and negligent driving by auto-rickshaw driver Pardeep Kumar. It was stated that the bus which was coming from the opposite direction had hit the auto-rickshaw and, therefore, they cannot be held liable to pay compensation. A rejoinder was then filed by the claimants to the written statement thereby denying the averments made in the written statements of respondent Nos. 1 to 3 and reiterating those contained in the

claim petition.

4. On the pleadings of the parties, following issues were framed by the Tribunal:

(1) Whether the claimants are entitled to any compensation and if so to what amount and from whom? OPA

(2) Whether the accident was caused due to the rash and negligent driving of respondent No. 2? OPA

(3) Whether the application is bad for non-joinder of necessary parties? OPR

(4) Relief.

5. The learned Tribunal after appreciating the evidence so led, dismissed the claim petition. Hence, the present appeal by the claimants.

6. Counsel for the parties have been heard.

7. At the outset, it has been noticed that the learned Tribunal has decided issue Nos. 1 and 2 together but unfortunately it did not discuss the evidence on record in order to give a finding as to what amount of compensation would the appellants be entitled to and from whom in case the accident were to be held to have been occurred due to negligence of the driver of the auto-rickshaw. In my opinion, in all the motor vehicle cases irrespective of the finding on the question of negligence of the driver of the vehicle recorded by them, Tribunals should invariably give a finding as to the quantum of compensation to which the claimant are entitled because an appeal against that award lies to this Court and this Court as an Appellate Court can have an advantage of the findings of the Tribunal on the quantum of compensation without remitting the case to the Tribunal for decision on the quantum of compensation and decide the appeal on all issues if it sets aside the finding of the Tribunal on negligence of the driver. Since the Tribunal has failed to give finding on the quantum of compensation to be awarded to the claimant and to be payable by whom, the matter is remitted to the District Judge, Amritsar, who shall entrust the same to successor Tribunal of Mr. I.C. Aggarwal, Motor Accident Claims Tribunal, Amritsar. The successor Tribunal shall then proceed with to determine the afores-stated question on the basis of the evidence and the documents on the record, of course after hearing Counsel for the parties, and send its report to this Court two months from the date the matter is entrusted to it.

8. Parties through their Counsel are directed to appear before the District Judge, Amritsar, on 25.9.2006.

9. The record of the MACT along with a copy of this order be sent to the District Judge, Amritsar, forthwith.

10. List again on 20.12.2006.