



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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FAO-1975-2007 (O&M)

Date of Decision: March 18, 2025

Smt. Savitri

.....Appellant

Vs.

Om Parkash and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ram Kumar Saini, Advocate for the appellant.

Mr. Robin Lohan, Advocate for respondents No.1 and 2.

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 05.11.2006 passed in the claim petition filed under Sections 163-A and 167 of the Motor Vehicles Act, 1988 by the Tribunal (for short 'The Tribunal') vide which the claim petition filed by the appellant/claimant for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 28.12.2002, Dhoop Singh son of Sadhu Ram of village Bhongra, Tehsil Narwana, Distt. Jind was driving the tractor No. HR-Q-9954, which was owned by respondent No.1-Om Parkash son of Mai Ram. The aforesaid Dhoop Singh was driving the tractor as an employee of respondent No.1 (Om Parkash). He was transporting the wooden logs on Bitan Minor forest from one side to the other side of the Minor in aforesaid tractor on the instructions of respondent



No.1. The tractor had turned turtle and Dhoop Singh had come under it. He died on account of the grievous injuries sustained by him.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether Bhup Singh, died on 21.12.2002 while driving the Tractor No. HR-Q-9954 by respondent no.1 ?OPP

2. Whether the petitioner is entitled to compensation if so to what amount and from whom? OPP

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

4. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence, the claimant/appellant filed the present appeal for grant of compensation.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the claim petition was filed under Section 163-A of the Act which was dismissed only on the ground that the appellant/claimant could not prove that the accident in question had taken place by use of tractor bearing No.HR-Q-9954. He further contends that death of Dhoop Singh had taken place by use of offending tractor as he was employed on the said tractor by respondent No.1 Therefore, he prays that the present appeal be allowed and compensation be granted to the appellant/claimant.



7. *Per contra*, Ld. Counsel for the respondents argue on the lines of the award and contends that the claim petition has rightly been dismissed by the Ld. Tribunal. Therefore, he prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

“ISSUES NO.1 AND 2

8. Both these issues are inter linked, hence, for the sake of convenience the same are being taken up together. The petitioner Smt. Savitri claiming herself to be widow of Dhoop Singh, has filed this claim petition claiming compensation on account of death of her husband Dhoop Singh son of Sadhu Ram in the accident in question which had allegedly taken place on 28.12.2002 in the forest area of Reservoir No.3 on Bitan Minor. The onus to prove that, her husband Dhoop Singh had died on 28.12.2002 (wrongly mentioned as 21.12.2002 in the issues) while the Tractor No. HR-Q-9954 owned by respondent No.1 Om Parkash. When the deceased Dhoop Singh was employed under respondent No.1 on the aforesaid tractor the onus to prove was on the petitioner that she was entitled to compensation on account of the death of her husband Dhoop Singh. In order to discharge the burden besides examining herself as PW2 she has examined Rajinder Singh, ASI author of rapat No.15 dated 28.12.2002 Ex. P1 as PW1 and Ishwar Singh, SI had verified the investigations on the death of the person in the accident in question as Ex. P3 and Gopi Ram son of Neki Ram as PW4. As per the version in the Rapat No.15 dated 28.12.2002 Ex.P1 one Pataso Devi wife of Gopi Ram son of Dillu Ram had got recorded her statement to Rajinder Singh, ASI, P P Mandi, Safidon to the effect that she was married to Gopi Ram son of Dillu Ram about 23/24 years back



and out of the wedlock one Krishan Kumar now aged about 22 years and two daughters namely Santosh and Maya were born. All of them were married. Earlier they used to reside in Panipat and now for the last 9 years they were residing in the new Anaj Mandi at Safidon. His son Krishan was however residing at Panipat. Her husband Gopi Ram had gone to Reservoir No.3 where felling of trees was going on. Her husband had gone there with a tractor. At about 5 PM Balbir son of Amar Singh came to her and he told her that her husband Gopi Ram had met with an accident while driving the tractor at the Reservoir No.3 and he had sustained injuries and was admitted in the hospital at Safidon. On this she went to hospital at Safidon and there she found her husband Gopi Ram lying dead. She stated that her husband Gopi Ram had died due to the injuries sustained by him while driving the tractor on the reservoir. The aforesaid ASI had received a medical ruqqa from the hospital and on receiving the same he had reached Civil Hospital, Safidon where he found dead body of deceased Gopi Ram and near his dead body Pataso Devi who had got recorded her aforesaid statement. He thereafter proceeded for recording the proceedings under Section 174 Cr. PC. The aforesaid Rajinder Singh, ASI has appeared as PW1 on behalf of the petitioner and he has deposed on the similar lines about receiving the medical ruqa from the hospital at Safidon, going to hospital Safidon where he found the injured Gopi Ram and she got recorded her statement on the basis of which he recorded Rapat No.15. he had brought the original rapat rojnamcha and he proved its copy as Ex. P1. He has deposed that he had recorded the version as was got recorded by Smt. Pataso and after accepting the same to be true. He has further deposed that after recording the statement he had handed over the same to Ramesh Kumar to take it to P P Mandi, Safidon for recording the rapat and he remained busy in the proceedings under section 174 Cr. PC. He deposed that he, however, cannot tell as to whether Ishwar Singh, SI/SHO further conducted investigations or not. He deposed about conducting Post Mortem



on the dead body of Gopi Ram. The petitioner also examined the aforesaid Ishwar Singh SI as PW3 who has deposed that he had verified the investigation on 29.1.2003 and in the investigation he had found the real name of the deceased to be Dhoop Singh who had died on 28.12.2002 in an accident of tractor. He deposed that during the investigation he had recorded the statement of Krishan son of Arjun and he attested the signatures. Krishan Kumar on his statement, a copy of which has been placed on record as Ex.P2 and he also deposed about the report regarding verification of the copy of which has been placed on record as Ex. P3. He further deposed that he had got corrected the name of the deceased from the doctor in the post mortem report Gopi Ram to Dhoop Singh. However, in the cross examination, he deposed that he cannot tell the date on which Rajinder Singh, ASI has got corrected the name of the deceased in the post mortem report and he deposed that he had never visited village Bhongra nor he had verified from the ration card or the voter list whether the deceased was the husband of the petitioner Savitri or that a lady named Pataso when the matter was reported to the police. The petitioner has also examined Gopi Ram son of Neki Ram who was stated to have died in the accident in question by Smt. Pataso, as PW4. He deposed that Pataso is his wife and he deposed that he was having three children. However, he has not deposed anything about the alleged accident or about the claim petition. They are not brought their ration card in the court. In order to substantiate her the petitioner Savitri had appeared in the witness box as as PW2 and she have corroborated the version as has been given in the claim petition.

9. *From the aforesaid evidence on record the learned counsel for the petitioner contended that it is duly proved that in the accident in question in fact Dhoop Singh husband of the petitioner Savatri had died and one Smt. Pataso had wrongly got recorded the name of her husband Gopi Ram to have died in the accident and during the verification PW3 SI Ishwar Singh had got corrected the name of the deceased to be Dhoop Singh i.e. the husband of the*



petitioner. But to my mind the contention of learned counsel for the petitioner carries no substance in it. Moreover, the petitioner has failed to prove on record that the person who had died in the accident in question was her husband Dhoop Singh and she has miserably failed to prove the aforesaid two issues. The burden of proving of these issues was upon her. The petitioner herself has examined Rajinder Singh, SI as PW1 who has deposed about the statement of Pataso wife of deceased Gopi Ram. The SI Ishwar Singh (PW3) has deposed that he had got corrected the name of the deceased in the post mortem report through Rajinder Singh SI to be Dhoop Singh but Rajinder Singh, ASI as PW1 has deposed that in the postmortem report the name of the deceased was written as Gopi Ram and he has nowhere deposed that he had got corrected the name in the post mortem report. Further the petitioner has placed on record as Ex. P4. From a perusal of the certified copy it is not clearly evident that the name was got corrected from the doctor to be Dhoop Singh of the deceased. It is well settled law that exhibition of a document on record does not absolve its proof. The petitioner should have examined the doctor who had conducted the post mortem examination on the dead body. The petitioner has also not examined the doctor who could have deposed that subsequently on the basis of the verification by PW Ishwar Singh SI he had corrected the name of the deceased to be Dhoop Singh. It is further important to note that PW3 Ishwar Singh, SI has deposed that he had recorded the statement of one Krishan son of Arjun during his investigation in which he had verified the name of the deceased to be Dhoop Singh i.e. the husband of the petitioner but not examined the aforesaid Krishan son of Arjun as her witness. On the other hand the respondents have examined the aforesaid Krishan son of Arjun as RW3 who has deposed that the police had got his signatures on some blank papers and he had no knowledge about the case. Thereafter, he further deposed that respondent No.1 Om Parkash never employed him as his servant and he categorically deposed that no accident



had taken place with the tractor in question, he further deposed in the cross examination that Ishwar Singh SI had investigated and before whom he had made a statement that deceased was Dhoop Singh and was not Gopi Ram. Thus, simply because Ishwar Singh, SI as PW3 had deposed that he had verified about the deceased and he had found the deceased to be Dhoop Singh is not sufficient. Furthermore in the Rapat Ex. P1 it has been stated that accident in question was witnessed by one Balbir Singh who had come to Pataso to inform that her husband Gopi Ram had met with an accident and it is important to note that the aforesaid Balbir Singh was cited as a witness on behalf of the petitioner because on 5.4.2004 when the case was fixed for the evidence of the petitioner, the aforesaid Balbir Singh had appeared in the court but he has not examined on behalf of the petitioner on the ground that Rajinder Singh, ASI had not brought the record, therefore, this witness i.e. Balbir Singh could not be examined. Therefore, he was discharged on that day but it is important to note that on the subsequent date of hearing i.e. 7.6.2004 when the aforesaid Rajinder Singh, ASI, appeared in the witness box, the petitioner did not try to examine the aforesaid Balbir Singh, present in the Court and he was given up as being unnecessary by the learned counsel for the petitioner. From this it can be assumed that the aforesaid Balbir Singh was intentionally given up as if examined he would not have supported the version of the petitioner. As he was the best witness to tell the truth and as he was given up, therefore, an adverse inference shall be drawn against the petitioner. The petitioner Smt. Savitri stated herself to be widow of the deceased Dhoop Singh but in the para No.1 of the petition she has stated that she applies for compensation on account of death of husband Daya Singh being his legal representative who had died in a motor cycle accident. Thus, the petitioner herself is not sure about the name of the deceased. Further, she has not placed on record any ration card or voter list which may show that she



was the widow Dhoop Singh who had allegedly died in the accident in question.

10. Further it was incumbent upon the petitioner to prove that her husband Dhoop Singh was employed on the tractor of the respondent no.1 and simple bald statement of the petitioner as PW2 is not sufficient to prove this fact. It has been mentioned in the claim petition that the tractor in question was registered in the name of respondent no.2 and the respondent no.1 had employed the deceased husband of the petitioner on the tractor for carrying the wooden logs from one corner of reservoir to the other. Whereas the respondent has led sufficient evidence on record which shows that it was not within the power of respondent no.1 who was an employee of the Forest Department. Further the documents which have been placed on record although shown that felling of trees was going on the place in question on the day when the alleged accident had occurred but the name of the deceased husband of the petitioner nowhere figures in it which could show that he was working on behalf of the Forest Department in carrying the wooden logs. The respondents have examined the higher officers of the Forest Department namely Hari Ram. Forester as RW5. Navdeep Singh, DFO Karnal as RW6 who have deposed that as per their record work of cutting trees was done in the Forest Department on the date of alleged accident and they have deposed that as per their record the carriage was done by one Suresh son of Mange of the Wooden logs when the work of cutting of trees was in a particular area. Moreover, the petitioner had to stand her own legs in order to prove her claim and she cannot draw any benefit out of the shortcomings in the defence of the respondents and as the petitioner miserably failed to prove on record that her husband had died on 28.10.2002 in the accident in question, therefore, she is not entitled to any compensation from the respondents. The case law on which reliance has been placed on behalf of the petitioners Sayra and others Vs. Balmukund and others, 2006 ACJ 593, Neelam Jha Vs. Manju Devi and another



2005 ACJ 610, Rakesh Soni and anr.Vs. Manager, Krishan Lal and anr. 1995 (2) LJR 505, Branch New Delhi Assurance Co. Ltd. Vs. Siddappa and others 2004 ACJ1639. Oriental Insurance Co. Ltd.Vs. Vijay Kapur and others 2003 ACJ 1730 and United India Insurance Co.Ltd. Vs. Annakutty and another is of no help to the petitioner as the facts of all the aforesaid cases are different. Thus, both these issues are decided against the petitioner.”

10. A perusal of the impugned award reveals that the learned Tribunal has correctly dismissed the claim petition on the ground that the claimant/appellant failed to establish that the accident in question was caused by use of the offending tractor bearing registration number HR-Q-9954, allegedly driven by respondent No. 1. Under Section 163-A of the Motor Vehicles Act, the burden of proof lies on the claimant to prove that the accident occurred due to use of a particular motor vehicle, and in the present case, the claimant/appellant has failed to discharge the burden.

11. A perusal of the record further reveals that no First Information Report (FIR) was lodged regarding the alleged accident. Instead, only a general daily entry (Rapat No. 15 dated 28.12.2002) was recorded, which states that one Pataso Devi reported her husband, Gopi Ram, as the deceased in the accident. However, the claimant/appellant states that the name of her husband is Dhoop Singh, who died in the accident. This contradiction casts doubt on the veracity of the claimant/appellant's case.

12. Further, the claimant/appellant examined PW-3 Ishwar Singh, Sub-Inspector, who deposed that after due investigation, it was found that the real name of the deceased was Dhoop Singh, who had died on 28.12.2002 in an accident by use of tractor. He also deposed that he had recorded the statement of Krishan, son of Arjun, and attested Krishan Kumar's signatures on his



statement, a copy of which was proved as Ex. P2. Additionally, he relied on a verification report, Ex. P3, and claimed that he had got corrected the name of the deceased from Gopi Ram to Dhoop Singh in the post-mortem report from the concerned doctor. His testimony does not inspire confidence of this Court. In his cross-examination, PW3-SI Ishwar Singh admitted that he could not recall the date on which ASI Rajinder Singh allegedly made the correction in the post-mortem report. Furthermore, PW3-SI Ishwar Singh conceded that he never visited Village Bhongra to verify whether the claimant was indeed the widow of the deceased or not.

13. Significantly, the respondent examined Krishan son of Arjun as RW3, who categorically deposed that the police had obtained his signatures on blank papers and that he had no knowledge about the case. This testimony creates serious doubt regarding the reliability of PW-3's (SI Ishwar Singh) deposition and diminishes its probative value.

14. Moreover, there is a complete lack of evidence to establish that the offending tractor was involved in the accident. The claimant has failed to produce any independent witness or documentary evidence to prove that the offending vehicle was at the scene of the incident or that it caused the accident in question. Additionally, no substantive proof has been brought on record to demonstrate that the deceased Dhoop Singh, was employed on offending tractor by respondent No. 1 who is the registered owner of the same.

15. Mere assertion that the deceased-Dhoop Singh who was engaged in transporting wooden logs for the Forest Department is not substantiated by any documentary proof, such as a payment record, employment letter, or testimony from an official of the department. On the contrary, RW-6 Navdeep



Singh, Divisional Forest Officer (DFO), Karnal, categorically stated that respondent No. 1, being only a Forest Guard, had no authority to employ the deceased-Dhoop Singh as a driver, as such appointments were within the jurisdiction of higher authorities.

16. The documents on record do indicate that work of tree felling was taking place at the site on the date of the alleged accident, the name of the deceased-Dhoop Singh does not appear in any official record as someone engaged in the transportation of wooden logs for the Forest Department. This omission further weakens the claimant/appellant's case, as there is no evidence to substantiate that the deceased-Dhoop Singh was working at the place of accident in any capacity.

17. In the light of the foregoing discussion, the Ld. Tribunal has rightly concluded that the claimant/appellant failed to prove the involvement of the offending tractor in the accident in question. Since the claimant/appellant has not been able to discharge the initial burden of proof required under Section 163-A of the Motor Vehicles Act, there is no legal basis to interfere with the findings recorded by the learned Tribunal in its award and claim petition was rightly dismissed.

18. Accordingly, this Court finds no legal infirmity in the impugned award dated 05.11.2006, and the same is hereby affirmed. Consequently, the present appeal is ***dismissed*** being devoid of any merit.

19. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

March 18, 2025

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Whether speaking/reasoned:
Whether reportable

Speaking
Yes / No