



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

205

FAO-2117-2006 (O&M)

Date of Decision: February 10, 2025

Asma and others

.....Appellant(s)

Vs.

Mukut Gupta and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kul Bhushan Sharma, Advocate
for the appellant(s).

Mr. Vinod Kumar, Advocate for
Mr. Rajesh Lamba, Advocate
for respondent No.1.

Mr. Lalit Garg, Advocate
for respondent No.2-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

1. The present appeal has been preferred against the award dated 12.09.2005 passed in the claim petition filed under Sections 166/167 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants 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 23.11.2002, Shaheed, (Since deceased) while employed as driver on truck No. HR 55-A-1716 had after unloading gravel at Hamidpur started his return journey. At about 8 p.m., one Umar Mohammed was following the said truck in another truck. When these two trucks reached near G.H. Palwal,



Shaheed statedly gave lift to some unknown person on his described truck but around 11.30 a.m. or 12 0' clock when the other truck driven by Umar Mohammed was on its way back for making the second round, he noticed that the above described truck bearing registration No. HR-55-A-1716 was parked in the middle of the road with its head lights on and upon his stopping near the said truck, he noticed Shaheed, lying dead in the truck in a pool of blood, whereupon, the police was informed. Regarding this, a case under Section 302 IPC was registered. It is claimed that the death of Shaheed had occurred at the hands of unknown person during course of stealing the above described truck driven by him on the date and time in question.

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:-

i. Whether the accident in question has occurred due to rash and negligent driving of truck bearing No.HR-55-A-1716 by respondent No.1 ? OPP

ii. If issue No.1 is proved, to what amount of compensation the petitioners are entitled and from whom? OPP

iii. Whether the respondent No.1 was not holding a valid driving licence at the time of alleged accident. If so its effect? OPR2

iv. Relief

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



SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contend that the claim petition has wrongly been dismissed since deceased was employed by respondent No.1 as driver and during the course of his employment, he was murdered. Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants/claimants. He further contends:-

ii) That the deceased who was husband of appellant No.1 was murdered during the course of his employment and during the use of the vehicle by some unknown person having intention of stealing the truck.

iii) Learned counsel for the appellants/claimants has also relied upon the judgment passed by Hon'ble the Apex Court in case titled as ***Rita Devi and others Vs. New India Assurance Co. Ltd. and another (2000 ACJ 801)***.

7. *Per contra*, Ld. Counsel for the respondents argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Tribunal. Therefore, they pray for dismissal of 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:-

“Issue No.1

Qua both these issues being interconnected this issue, the claimant father of the deceased Shaheed while appearing as PW 1 has testified that on 24.11.2002 he had received information from the police regarding his son having been killed by some unknown person. He testified inter alia that his son was killed while on duty as truck driver. However, this part of his testimony cannot be acted upon because he



has nowhere claimed that he had been travelling with his son at the time of his murder. Even Umar Mohammed who as para no. 24 of the claim petition in hand had been following in own truck, the deceased who was statedly driving another truck bearing registration No. HR 55 A 1716, has not been examined to substantiate the plea raised that Shaheed had been killed by some unknown person who had statedly been given lift in the above described truck by Shaheed.

7. The testimony of PW 2 Pooran Mal also does not help the claimants in any manner in as much as merely proved the copy of FIR No.568 dated 24.11.2002, registered at Police Station Sadar Palwal offence under Section 302 I.P.C. During his cross-examination he admitted that no challan has been filed in court in pursuance of said F.I.R. against any person or vehicle, even the said F.I.R. lodged by Umer Mohammed, above named, cannot be considered to be proved in face of non-examination of the above named the informant Umar Mohammed and therefore the recital therein that he had noticed the dead body of Shaheed with knife injuries in his abdomen in the said truck whose head lights were on cannot be acted upon.

8. Learned counsel for the claimants has cited the case titled Rita Devi and others Vs. New India the Assurance Company Limited and another reported in 2000. Accidents Claims Journal page 801 wherein the Hon'ble Supreme Court has held that the murder of auto rickshaw driver by passengers carried therein tantamounted to "accident arising out of use of vehicle" and claimants therein, were thus held entitled to compensation and on the same analogy the claimants in the case are entitled to compensation. However, it be noticed that in para 14 of the said judgment it was observed by the Hon'ble Supreme Court that the deceased therein, a driver of the auto rickshaw, was duty



bound to have accepted the demand of fare paying passengers to transport them to the place of their destination and during the course of this duty, if the passengers had decided to commit an act of felony of stealing the auto rickshaw, and in the course of achieving the said object of stealing the autorickshaw, they had eliminated the driver of the autorickshaw, then it cannot but be said that the death so caused to the driver of the autorickshaw was an accidental murder and that stealing of the autorickshaw was the object of the felony and the murder that was caused in the said process of the autorickshaw is sealing only incidental to the act of stealing of the autorickshaw thus entitling the petitioners to claim compensation. In the case in the hand however there was neither any requirement on the part of the truck driver to give lift to some unknown person as so claimed by the petitioners, and nor was the truck stolen like Ritu's case (supra) wherein the auto-rickshaw of the deceased driver had been stolen and had never been recovered in view of the foregoing discussion, this issue is decided in favour of the respondents and against the claimants.”

10. A perusal of the award reveals that the learned Tribunal has rightly adjudicated the present case. The tribunal correctly concluded that the case pertains to murder rather than an accident, a finding reinforced by the registration of FIR No. 568 dated 24.11.2002 under Section 302 of the Indian Penal Code. The tribunal's reasoning is firmly grounded on the evidence on record, which substantiates that the claimants failed to establish the occurrence of an accidental death arising out of the use of the vehicle.

11. Crucially, the claimants failed to establish the essential nexus between the use of the vehicle and the alleged incident. The mere fact that the



deceased was a truck driver and was killed while on duty does not, in itself, render the death, as a case of accident arising out of the use of the vehicle. The tribunal rightly noted that there was no evidence to suggest that the vehicle played any causal role in the incident. Rather, the record indicates that the deceased was allegedly murdered by an unknown person who had purportedly been given a lift, an assertion that remains unsubstantiated due to the non-examination of key witnesses, particularly Umar Mohammed, the informant and author of the FIR. The non-production of such a material witness severely weakens the claimants' case.

12. Additionally, PW2-Pooran Mal, who produced the record, categorically stated that no charges were framed pursuant to the FIR, further corroborating the tribunal's conclusion .

13. The tribunal also appropriately distinguished the present case from ***Rita Devi & Ors. v. New India Assurance Co. Ltd. (2000 ACJ 801)***. In *Rita Devi* (supra), Hon'ble the Supreme Court held that the murder of an auto-rickshaw driver by passengers intending to steal the vehicle constituted an "accident arising out of the use of the vehicle." However, the tribunal correctly observed that the facts of the instant case are materially different. Here, there was no compelling necessity for the deceased to offer a lift to an unknown individual, nor was there any element of theft or unlawful appropriation of the vehicle, as was central to the ***Rita Devi*** (supra) ruling. In ***Rita Devi*** (supra), the auto-rickshaw was stolen and never recovered, whereas, in the present case, the truck remained in its original possession, negating any claim of an incidental felony tied to vehicular usage.



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14. In light of the foregoing, it is evident that the Tribunal's findings are based on sound legal reasoning and a meticulous appreciation of the evidence on record. The conclusions drawn do not suffer from any legal infirmity or perversity, thereby warranting no interference by this Court.

15. In sequel of the above, the present appeal is *dismissed* being devoid of any merits.

16. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Lalit Garg, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

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

(SUDEEPTI SHARMA)
JUDGE

February 10, 2025
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes / No