(2022-1)205 PLR 331

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Sudhir Mittal.

NEW INDIA ASSURANCE COMPANY LIMITED – Appellant,

versus

CHAMELI DEVI and others – Respondents.

FAO No.1957 of 2019 (O&M)

Motor Vehicles Act, 1988 (59 of 1988) Section 166 – Public place – Accident took place in factory premises – For the purpose of motor accidents such a premises is a public place.

Cases referred to:-

1. 1991 ACJ 673 *Nagarathinam v. Murugesan.*

2. (2021-1)201 PLR 766, *United India Insurance Co. Ltd. v. Vaneeta.*

Mr. Paul S. Saini, for the appellant.*Ms. Neha Rana,* for respondent No.1.

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Sudhir Mittal, J. – *(15th September, 2021)* – An accident took place on 07.09.2017 in the premises of respondent No.3 resulting in the death of Rajpal. The premises of respondent No.3 is a sawmill and the accident took place while the offending vehicle (truck) was being reversed in a rash and negligent manner. An FIR dated 07.09.2017 was got registered by Vikash Chauhan (owner of respondent No.3), in which, the name of the driver was mentioned as 'Satyavir '. Thereafter, the name was changed to Sukhbir Singhrespondent No.2 after the complainant submitted an affidavit dated 15.09.2017. Claim petition was filed on 02.11.2017 and compensation of Rs.17,83,600/- has been awarded.

2. Learned counsel for the appellant has submitted that no accident in fact took place. Death occurred during the course of employment but to avoid liability, Vikash Chauhan, in collusion with the claimant got an FIR registered. Written statement filed on behalf of respondents No.2 & 3 (driver and owner) shows that the accident has been denied by them. The Tribunal was thus in error in returning a finding that the accident in fact took place. Further, it has been submitted that respondent No.2 is not proved to be the driver of the vehicle. This is evident from the fact that at the very first instance, the name of the driver was mentioned as 'Satyavir' (reference FIR registered on 07.09.2017) but the name was changed on the basis of a supplementary statement made by the complainant accompanied by an affidavit on 15.09.2017. The complainant did not appear in the witness box to prove the identity of respondent No.2. From this, it can be inferred that Satyavir did

not hold a valid driving licence and therefore, his name was replaced. PW-3-Kishori Lal was actually not an eye-witness. He was planted as such and this is proved from his cross-examination, in which, he has admitted that he has not been cited as an eye-witness in the criminal case nor he has ever been associated with the investigation. PW-3 is none other than the brother-inlaw of the deceased. The appellant was not liable to pay the compensation as the accident did not take place at a 'public place'. The factory premises is not a 'public place' and thus, the insurer cannot be held liable to indemnify the insured. He relies upon *Nagarathinam v. Murugesan and others,* [1] 1991 ACJ 673. Finally, it has been submitted that the claimant could not produce any proof of income of the deceased. The learned Tribunal has held so but has erred in calculating the compensation on the basis of monthly income of Rs.12,000/-. Minimum wages payable at the relevant time were Rs.8300/-. Compensation thus, works out to Rs.12,12,384/-.

3. Learned counsel for respondent No.1 submits that motor accident claims cases have to be decided on the basis of preponderance of probabilities. Thus, the Tribunal was not in error in returning the finding that the accident took place on account of rash and negligent driving by the driver of the offending truck. Regarding the location of the accident, he relies upon judgment of this Court in *United India Insurance Co. Ltd. v. Vaneeta and others* [2], (2021-1)201 PLR 766, in which, a factory premises has been held to be a 'public place'. No argument has, however, been raised regarding the monthly earnings of the deceased.

4. A perusal of the written statement filed on behalf of respondents No.2 & 3 (driver and owner) shows that they have denied the accident. But that does not conclude that in fact no accident took place. The owner of the truck is also the owner of the factory premises. FIR was registered on his complaint and in the said FIR, rash and negligent driving by respondent No.2 has been stated to be the cause of death. This has been corroborated by PW-3-Kishori Lal. Under the circumstances, the Tribunal cannot be faulted for holding that death took place on account of rash and negligent driving of the driver of the offending vehicle. Regarding respondent No.2 actually not being the driver on the fateful day, suffice to say that the insurer could have summoned Satyavir, who was named as the driver in the FIR and could have asked him to produce his driving licence. That having not being done and keeping in view the evidence on record in the shape of the challan Ex.P-7 in the criminal case and the statement of eye-witness PW-3-Kishori Lal, the finding of the Tribunal that respondent No.2 was the driver cannot be faulted. It has next been argued that PW-3-Kishori Lal is a planted witness. He has not been cited as an eye-witness in the criminal case nor has he been associated with the investigation of the said case. This fact has been admitted by him during the course of his cross-examination and thus, no reliance can be placed on his evidence.

Vikash Chauhan, the complainant of the FIR, did not appear in the witness box and no other witness has been cited. This argument also deserves to be rejected because non association with the criminal case would not by itself establish that PW-3 was a planted witness. In his examination-in-chief, he has mentioned that he was a co-labourer in the factory along with the deceased and this fact has not been disproved through any evidence. Thus, likelihood of his presence cannot be ruled out. If he has not been associated with the investigation and has not been cited as an eye witness in the criminal

case, the fault lies with the Investigating Officer of the said case. It is possible that the Investigating Officer felt that complainant-Vikash Chauhan was sufficient for the purposes of his investigation and he did not make any efforts beyond examining the said person. Regarding the factory premises being a 'public place', the judgment of this Court in *Vaneeta* (supra) is squarely applicable. In that case also, the accident took place in the factory premises and after examining the law on the subject it was held that for the purposes of motor accidents such a premises is a 'public place'.

Being a judgment of this Court, I prefer to follow this judgment rather than judgment of the Madras High Court in *Nagarathinam* (supra).

5. Regarding the quantum of compensation, there is no counter to the submission of counsel for the appellant that the minimum wages at the relevant time were Rs.8300/-. Thus calculated, the compensation is reduced to Rs.12,12,384/- payable with interest @ 7.5 per annum from the date of filing of the petition till actual realization.

6. The appeal is thus partly allowed.

R.M.S. – *Appeal allowed.*