

(2012) 12 P&H CK 0090
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 2011 of 2011

Nanhari @ Nanhi and Others

APPELLANT

Vs

Pappi and Others

RESPONDENT

Date of Decision : 13-12-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 279, 302, 304A, 323, 337

Citation : (2013) 2 ACC 430

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Sumit Sangwan, for the Appellant; Rakesh Gupta, Advocate for the Respondent Nos. 2, 3 and Mr. Neeraj Khanna, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—In both the cases, the issue involved is whether the death of two persons, who were travelling in a vehicle, which capsized when the insured's vehicle dashed against it, could be said to be resultant to the use of a motor vehicle that gives room for claim for compensation under the Motor Vehicles Act. The admitted fact was that on 9.7.2007 at about 10 p.m., the husband of the 1st petitioner in FAO No. 2011 of 2011 and the son of the 1st claimant in FAO No. 2012 of 2011 were travelling in a pickup van bearing No. HR-61 1447 along with two other persons. They were following a Dumper bearing registration No. HR 46B-4575, which was transporting cows. The pickup van was said to have come close to the truck when the driver swerved on the right that resulted in a collision with the truck that turned turtle. The son of the claimant in FAO No. 2012 of 2011 Bijender had given a complaint to the police on 10.7.2007, which was registered for offences under Sections 279/337/304A, IPC. It appears that on his death, on further investigation, the police had escalated the charge for offences under Sections 302, 323, 429, IPC against the driver of the insured's vehicle. It is a matter on record that the driver of the insured truck was found guilty and he

had been convicted for offences u/s 302, IPC. It is this judgment of the Sessions Court that turned against the claimants themselves when the Tribunal held that the accident could not be taken to be resultant to a tortious act but since the accident was the result of a criminal intent of the driver of the insured's truck, no claim for compensation before the Motor Accident Claims Tribunal was possible. It is against the dismissal of both these claims that the appeals have been filed.

2. In the complaint originally lodged by Bijender, who later died, the reference is only to the fact that the driver of the insured's truck was driving the vehicle rashly and negligently and it was by his negligent driving that the truck capsized and ultimately resulted in fatal injuries to the passengers in the vehicle. That the case was prosecuted as for offence u/s 302, IPC does not take out the element of rash and negligent driving, which is the linchpin for proof to sustain a lawful claim for compensation. There has been a gradual attempt to expand the concept of claim resulting in death or injury as arising out of use of motor vehicle through several pronouncements. The expression "use of motor vehicle" has obtained a notional expansion also situations which are not merely by the driving of the vehicle but also the actual use of motor vehicle itself has making possible a claim for compensation. In *Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another*, it was a case of person, who was last seen in an auto-rickshaw, which was later found abandoned and the person, who was travelling in the vehicle having been found murdered. The Court found that a claim for compensation before the Motor Accident Claims Tribunal was possible since the deceased was last seen in the motor vehicle and the death itself must have resulted during the use of the vehicle. Yet another expansion of the principle was applied in *Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More*, followed by *New India Assurance Company Ltd. Vs. Yadu Sambhaji More and Others*, , where several onlookers and members of the public were collecting petrol spilt from an oil tanker, which had capsized. The members of the public were not actually travelling by the truck nor were they directly connected with the transport of the goods in the vehicle. All the same when there was an explosion at the spot when they were collecting the petroleum product that resulted in death of some of them and when claims were lodged, the Court applied the extended principle for death and injuries as resulting by the use of motor vehicle. Yet another illustration was of a case in *Samir Chanda Vs. Managing Director, Assam State TPT. Corpn.*, , where some passengers in bus were grievously injured and some left dead when due to a terrorist attack by dropping of bomb in a moving bus, some persons died. It was not the act of negligent driving of the driver that caused the death. The person that perpetrated the heinous crime could have intended only to cause infinite mayhem and suffering to persons against whom the bomb was hurled. I would, therefore, find that a clear case was made for sustaining respective claims before the Motor Accident Claims Tribunal itself. The Tribunal has not considered the issue of compensation. It had not elicited the evidence of witnesses in the

judgment to assess the loss of dependency and other heads of claim which are relevant for determining compensation. I am handicapped by lack of materials to determine the compensation that would become payable. The findings rendered by the Tribunal holding that rashness and negligence of the insured's driver had not been established and that the claim petitions could not have been presented are set aside and the appeals will stand remitted to the Tribunal for consideration of the claim for compensation on the basis of evidence which are already on record and on any additional evidence relating to the income status that would become relevant for assessing the compensation for claimants. The appeals are allowed and the cases are remitted to the Tribunal at Bhiwani. The parties shall appear before the Tribunal on 30.1.2013.