

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

**FAO No.2322 of 2004
Date of decision: 22.07.2015**

Smt. Saroj and others

....Appellants

Versus

Ram Niwas and others

....Respondents

CORAM: HON'BLE MR. JUSTICE K.C. PURI.

Present: Mr. Akshay Bhan, Sr. Advocate
with Mr. Gurinder S. Sidhu, Advocate
for the appellants.

K.C. PURI J. (Oral)

This is an appeal directed by claimant against the award dated 03.02.2004 passed by Sh. R.K. Sondhi, Motor Accident Claims Tribunal vide which the claim petition was dismissed.

Briefly stated, Saroj-widow, Rahul and Monika-minor daughter and Kamla Devi mother of deceased Shish Pal filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation to the tune of Rs.25,00,000/- on account of death of Shish Pal in a motor vehicular accident on 16.06.2002.

It is pleaded that on 16.06.2002, Shish Pal was coming from Himatpura to Tohana on a scooter bearing registration No.HR-23-A-5619 and at that time one Dharampal Singh was going on his scooter from Tohana to Himatpura. When Shish Pal

crossed the railway crossing and moved towards Tohana, in the meantime, a white Maruti Car 800 which was being driven by respondent No.1 rashly and negligently at a very high speed came from Tohana side and struck against the scooter of the deceased. As a result, the deceased-Shish Pal fell down alongwith his scooter and suffered multiple injuries. The driver of the car stopped his car for a moment and then fled away alongwith his vehicle. Dharampal witnessed the occurrence and could not see the registration number of the car but recognized the driver. Dharampal conveyed a message at the house of the deceased and the brother of the deceased-Ramesh Chand. Ramesh Chand reached at the spot and they brought the injured to a private doctor from where he was referred to Hissar, but on the way he succumbed to his injuries. The matter was reported to the police by Dharampal and an FIR No.128 dated 16.06.2002 was registered under Section 279 and 304-A IPC.

The claimants alleged that the accident has taken place due to rash and negligent driving of respondent No.1 who was driving Maruti Car 800 bearing registration No.DL-3C-0977 owned by respondent No.2.

Respondents No.1 and 2 filed joint written statement in which they have denied the accident and pleaded that they are not liable to pay the amount of compensation. It is pleaded that false case has been registered against respondent No.1 just to

claim compensation. In fact, the deceased was knocked down by a bus and not by the car. However, it is further pleaded that the car was insured with respondent No.3-insurance company.

United India Insurance Company Limited filed its written statement taking preliminary objection that there is a collusion between respondents No.1 and 2 and claimants. No accident has taken place with the car in question. Neither the name of respondent No.1 as driver nor the registration number of the offending car has been mentioned in the FIR. A false story has been introduced in collusion with the remaining respondents to claim compensation. It is pleaded that there is a violation of terms and conditions of policy including the fact that driver was not holding a valid driving licence.

From the pleadings of the parties, following issues are framed:-

- 1. Whether the deceased Shishpal died in a road accident on 16.06.2002 because of rash and negligent driving of respondent No.1 while driving Maruti car bearing No.DL-3C-0977? OPP.*
- 2. If Issue No.1 is proved in affirmative to what amount of compensation the petitioners are entitled and from whom? OPP.*
- 3. Whether at the time of accident the car in question was in use of higher and reward against the terms and conditions of the policy, if so its effect. OPR.*
- 4. Relief.*

In order to prove its case, claimant examined PW-1-Dharampal, PW-2-Saroj Rani (claimant), the claimant also examined Tarsem Kumar, Senior Technical Assistant, Income-tax Office as PW-3 and Ramesh Chander-brother of the deceased as PW-4 and closed the evidence.

In rebuttal Ram Niwas appeared as RW-1 and denied the factum of accident. United India Insurance Company Limited closed the evidence after relying certain documents.

The learned Tribunal after appraisal of the evidence returned the findings on Issue No.1 against the claimant. In view of finding on Issue No.1, Issue No.2 was also determined against the claimants. Issue No.3 was held to become redundant in view of finding on Issues No.1 and 2. Consequently, the claim petition was dismissed vide impugned award dated 05.02.2004.

Learned counsel for the petitioner has submitted that from the statement of PW-1, the accident stands proved and the negligence was also stands proved. Mere fact that Om Parkash has not been examined is not a ground to discard the testimony of Dharampal-PW-1. The stand taken by respondents No.1 and 2 that accident has taken place with the bus is not correct.

I have considered the submissions made by learned counsel for the parties but do not find any force in that submissions.

Learned counsel for the appellant during the course of

arguments is fair enough to concede that respondent No.1 has been acquitted in the criminal case. The only stress of the claimant is on the testimony of PW-1-Dharampal. No doubt he has tried to improve the version while appearing in the Court but in the FIR the name of the driver, car number or any other particulars have not been mentioned except that the vehicle was white Maruti car. The offending vehicle was not a white Maruti car, but was a milk grey car. The FIR was registered in the month of June 2002 but the name of respondent No.1 has not been cropped-up till the month of October 2002. Om Parkash who is stated to have disclosed the name of driver has not been examined. The learned Tribunal has rightly appreciated the statement of Dharampal-PW-1. In case his testimony is re-appraise, no ground for interference in the present appeal is made out. There are number of circumstances which militate against the case of the claimants. The name of the driver, car number, etc. are not mentioned in the FIR. According to the claimants, the name of the driver has been disclosed by Om Parkash, but he has not been examined. There is no other connecting evidence in respect of the car in question. So, in view of the above discussions/findings of the Tribunal and all the issues stands affirmed. Consequently, the appeal is without any merit and the same stands dismissed.

22.07.2015*yakub***(K.C. PURI)
JUDGE**