

FAO No. 3917 of 2008 (O&M)

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

**FAO No. 3917 of 2008 (O&M)
Date of Decision : 10.08.2015.**

Vikas Kumar

...Appellant

Versus

Smt. Bohti and others

...Respondents

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

Present: Mr. J.S. Cooner, Advocate for the appellant.

Mr. Deepak Sharma, Advocate for respondents No. 1 to 4.

K.C. Puri, J.(Oral)

This is an appeal directed by Vikas Kumar, owner of Scooter No. CH-01-2066(T) Bajaj (Chetak) against the Award dated 01.09.2008 passed by Ms. Aaradhna Sawhney, Motor Accident Claims Tribunal, Ambala, vide which the claim petition preferred by the widow, Bohti, son Ram Pal and minor daughter, Babli of Gurnam Singh (deceased) was partly accepted and respondents Om Parkash and Vikas Kumar were directed to pay a sum of Rs. 2,72,000/- along with interest @ 9% per annum from the date of filing of claim petition till its realization.

Briefly stated, claimants i.e. Bohti, widow, Ram Pal son and

Babli, minor daughter of Gurnam Singh filed a claim petition under Section 163-A of Motor Vehicle Act claiming compensation to the tune of Rs.15 lacs on account of death of Gurnam Singh in a motor vehicular accident, which had taken place on 15.07.1998.

The case set up by the claimants in the claim petition is that on 15.07.1998, respondent No. 1 Om Parkash took away deceased Gurnam Singh on a Scooter bearing Registration No. CH-01-2066(T) for some personal work, however, Gurnam Singh (deceased) did not return till night. Claimant No. 1, Bohti got worried and started enquiring about the whereabouts of her husband, Gurnam Singh. She went to police post Saha from where she came to know that on the night of 15.07.1998, an unknown person in injured condition was got admitted in Civil Hospital, Ambala Cantt. by one Mahinder Singh son of Shri Shiv Ram, who has also got lodged an FIR bearing No. 209, under Sections 279, 337 and 304-A of the Indian Penal Code. Hospital Authorities of Civil Hospital, Ambala Cantt. informed claimant No. 1 that the said unknown person had been referred to PGI, Chandigarh on account of his serious medical condition. Claimant No. 1, Bohti along with her relatives reached PGI, Chandigarh, where she was informed about the death of her husband, Gurnam Singh, on account of injuries received by him in a road side accident. His dead body was identified by claimant No. 1, Bohti and

other relatives. Since, Gurnam Singh had died in suspicious circumstances, claimant No. 1, Bohti suspected foul play and made representations to Senior Superintendent of Police to take suitable action against the accused but no action had been taken. Claimant No. 1, Bohti had filed a CRM-M No. 243344 of 1998, wherein, this Court had directed the Superintendent of Police, Ambala to enquire into the matter afresh and give report as to the cause of death of Gurnam Singh. Investigation was entrusted by the Superintendent of Police, Ambala to SI/SHO, Police Station Mullana, who had submitted his report that respondent No. 1, who pointed out that he had taken Gurnam Singh along with him on 15.07.1998, was a pillion rider on a Scooter and when they reached near FCI Godown on Saha-Sehzadpur Road, deceased fell down, sustained injuries and ultimately, died on 21.07.1998 in PGI, Chandigarh. The Claimant No. 1 was not satisfied with the aforesaid investigation and filed another CRM-M No. 9230 of 2000, which was disposed of vide order dated 25.10.2000 affirming the earlier investigation made by the police. Thereafter, claimant filed MACT petition against the respondent. Since an eye witness to the accident, Shri Pal, Ex-Sarpanch resiled from his statement, given to the police before learned Magistrate ensued of the matter, claimants were compelled to withdraw the claim petition with permission to file fresh

one. It was pleaded that Gurnam Singh died on account of use of vehicle by respondent No. 1, who on 15.07.1998 was driving Scooter No. CH-01-2066(T), rashly and negligently; Gurnam Singh was working as labourer and was earning Rs. 3200/- per month, so a sum of Rs. 15 lacs was claimed.

Respondents No. 1 and 2 filed written statement taking preliminary objections of maintainability, cause of action etc. On merits, the factum of accident was denied. They have alleged that they have been falsely implicated in the case and also pointed out that respondent No. 1 has already been acquitted vide judgment dated 04.02.2005 passed by Ms. Ranjana Aggarwal, Judicial Magistrate Ist Class, Ambala Cantt.

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

- “1. Whether the accident in question took place, as alleged? OPP.*
- 2. If issue No. 1 is proved, whether Gurnam Singh died as a result of injuries suffered by him in the accident in question. If so, what amount of compensation, the claimants are entitled to? OPP.*
- 3. Relief.”*

In support of their claim, claimant No. 1, Bohti Devi appeared as PW1 and closed the evidence after tendering certain

documents.

In rebuttal, respondent No. 1, Om Parkash appeared as RW1 besides examining one Karan Pal as RW2 and closed the evidence after exhibiting certain documents.

The learned Tribunal has returned findings of issues No. 1 and 2 in favour of the claimants and against the respondents and the claimants were held entitled to claim compensation of Rs. 2,72,000/- from the respondents along with interest @ 9% per annum from the date of filing of the claim petition till its realization.

Aggrieved by the award dated 01.09.2008, Vikas, owner of Scooter No. CH-01/2066(T) has directed this appeal.

Learned counsel for the appellant has submitted that claimants earlier filed Claim Petition No. 38 of 14.02.2005/28.07.2005 under Section 166 of Motor Vehicles Act alleging the income of deceased as Rs. 6000/- per month but the same was dismissed as withdrawn on 01.11.2006 on the ground of some formal defect and have filed the present petition under Section 163-A of Motor Vehicles Act, which is not maintainable. Learned counsel for the appellant has further submitted that Driver Om Parkash has been acquitted and proceedings under Section 182 Cr.P.C. have been initiated against claimant No. 1, Bohti Devi as the claimant has failed to prove the factum of accident.

Learned counsel for the claimant has supported the award and has submitted that in authority, '*Sudama Devi and others Vs. Kewal Ram and others*', 2008(2) CRC(Civil) 72, it has been held that where the FIR is registered against the driver and in silence on the part of the driver, is fatal. So, it is submitted that other evidence is sufficient to prove that deceased died due to use of the vehicle No. CH-01/2066(T).

I have considered the said submissions but do not find any force in the same.

The moot point for consideration in the present lis is whether the claimants have been able to prove that deceased Gurnam Singh died due to use of offending vehicle i.e. Scooter No. CH-01/2066 (T). From the testimony of claimant No. 1 Bohti Devi, it is revealed that deceased Gurnam Singh was accompanied Om Parkash on Scooter No. CH-01/2066(T). Thereafter Gurnam Singh received injuries in a motor vehicle accident and was later on shifted to Civil Hospital Ambala Cantt. and from where he was referred to PGI, Chandigarh. During investigation, the case of respondent No. 1 Om Parkash was that deceased Gurnam Singh died while travelling as a pillion rider on the offending Scooter No. CH-01/2066(T). There are other documentary evidence on the file proving that Gurnam Singh died due to use of vehicle. Under Section 163-A of the Act the claimants are required to

prove death of deceased due to use of the offending vehicle. The acquittal of Om Parkash in a criminal case is of no consequence. To prove the offence under Section 304-A IPC, the prosecution has to prove that accident has taken place due to rash and negligence driving of the vehicle. The sole eye witness is stated to have been won over and as such acquittal of Om Parkash was obvious in those circumstances. Appellant being owner and Om Parkash being driver of the offending vehicle have been rightly held liable to pay the amount of compensation.

In authority *Sudama Devi and others' case (supra)*, it has been held that in case driver does not complaint to police regarding false implication in that case that fact goes against him. The withdrawal of petition under Section 166 of the Motor Vehicles Act does not debar the claimants to file the claim petition under Section 163-A of the Motor Vehicles Act.

No other point has been raised before this Court. So, in view of the above discussion, the appeal is without any merits and the same stands dismissed.

August 10, 2015.
kanchan

(K.C. PURI)
JUDGE