

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

**FAO No.1572 of 2013 (O&M)
Date of decision: 17.11.2015**

Birmati and others

.....Appellants

Versus

Ravinder Kumar @ Ballu and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: None for the appellants.

Mr. Jagjit Singh Chatrath, Advocate,
for Mr. Ashwani Talwar, Advocate,
for respondent No. 3-Insurance Company.

Ritu Bahri, J.

This appeal has been filed against the Award dated 09.08.2012 passed by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal'), whereby claim petition filed by the claimants-appellants under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') seeking compensation on account of death of Ram Kishan in a motor vehicle accident, has been dismissed. Appellant No.1 is widow and appellant Nos. 2 and 3 are the sons of deceased-Ram Kishan.

Brief facts of the case are that on 18.09.2009, at about 2.30 A.M., Ram Kishan left his house on foot for Dohwa-Pahar. When he crossed bus-stand of Jhojhu Kalan, a car bearing registration No. HR-19-C-0925 being driven by Ravinder Kumar @ Ballu-respondent No.1 in a rash and negligent

manner, came there and struck against him, as a result of which, he received

multiple and grievous injuries on various part of his body. Thereafter, he was taken to General Hospital, Dadri, where he was declared dead. With regard to the accident, FIR No.255 dated 18.09.2009, under Sections 279/304-A IPC was registered at the instance of Balwan Singh. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

Upon notice, respondent Nos. 1 and 2 filed their joint written statement. It was denied that the Maruti car, owned by respondent No.2, was involved in any accident.

In its written statement, respondent No.3-Insurance Company had alleged that it was a case of hit and run accident and the FIR did not contain the registration number and type of the offending vehicle.

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

1. Whether accident on 18.09.2009, at about 2.30 P.M., in the area of village Jhojhu-Kalan took place on account of rash and negligent driving of car bearing registration No. HR-19-C-0925 by respondent No.1, which resulted into death of Ram Kishan?
OPP
2. If issue No.1 is proved in affirmative, what amount of compensation the petitioners are entitled to and from whom?
OPP
3. Whether the respondent Insurance Company is not liable to pay the amount of compensation, as alleged? OPR-3
4. Relief.

On the basis of evidence led by the parties, the Tribunal has

returned a finding on issue No.1 against the claimants-appellants and held that the claimants have failed to examine any witness to prove that respondent No.1 was rash and negligent while driving the offending vehicle. This finding has been recorded on the basis of challan (Ex.P3). The occurrence had taken place on 18.09.2009 and the FIR was registered on the same date. Thereafter, investigation had been conducted by the police and ultimately, an untraced report was filed on 26.11.2009. However, the case was re-opened on a supplementary statement made by Balwan Singh. Before the police, Balwan Singh had stated that respondent No.1 had caused the accident by driving the offending car. However, while appearing in the witness box, he did not depose about this fact in his testimony. Moreover, respondent Nos. 1 and 2 are residents of the same village, to which the deceased was belonging and the legal heirs of deceased, in connivance with respondent Nos.1 and 2 filed this false case.

The very fact that Balwan Singh, who had made supplementary statement before the police, did not support the version of claimants while appearing in the witness box, was sufficient to return a finding on issue No.1 against the claimants. Further, the claimants-appellants did not examine any other witness to show that respondent No.1 was driving the offending car rashly and negligently and had caused the alleged accident. Moreover, the FIR did not contain the name and type of the vehicle, which was involved in the accident.

After going through the impugned Award, this Court is of the view that in the absence of any cogent and convincing evidence with regard to involvement of the offending car in the alleged accident, the Tribunal had rightly dismissed the claim petition. The evidence has been appreciated in

the right perspective. No ground is made out to interfere in the impugned Award.

Resultantly, the present appeal is dismissed.

17.11.2015
ajp

(RITU BAHRI)
JUDGE