

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

FAO No.5417 of 2005 (O&M)

Date of decision : 26.08.2016

Bimla and others

.....Appellants

Versus

Kuldeep and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Anil Shukla, Advocate for appellants.

Mr. Anil Kumar Rana, Advocate for respondent No.2.

Mr. Tejpal Singh Dhull, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 22.03.2005 passed by the learned Motor Accidents Claims Tribunal, Faridabad (hereinafter called the “Tribunal”), vide which the appellants-claimants have been awarded compensation to the tune of Rs.50,000/- as no fault liability on account of death of Dharamvir in the motor vehicular accident, which took place on 19.08.1999.

2. The present appeal has been preferred by the appellants-claimants for enhancement of amount of compensation.

3. I have heard learned counsel for the parties and gone through the paper-book carefully.

4. Learned counsel for the appellants contended that Satpal the witness of occurrence appeared as PW-2. He has categorically deposed that

deceased Dharamvir has diverted his tractor to the left side of the road in order to give a pass to the bus coming behind. When he tried to take back his tractor on the road, respondent No.1 Kuldeep dashed his tractor in a rash and negligent manner with the tractor of Dharamvir from the backside. As a result of which, the tractor of Dharamvir turned turtle and he suffered the fatal injuries. Thus, he contended that from the above statement of Satpal it is established that present accident has occurred due to rash and negligent driving of his tractor by respondent No.1 Kuldeep. So, the claimants were entitled to grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) and the learned Tribunal has wrongly awarded only Rs.50,000/- under no fault liability.

5. On the other hand, learned counsel for the respondents contended that PW-2 Satpal has made the statement to the police on the basis of which the First Information Report about this accident was lodged, wherein he has categorically stated that the tractor of deceased Dharamvir was not hit by any vehicle, rather it has turned turtle as he has lost the control of the tractor. They contended that no other witness on the mode of accident has been examined. So, no fault can be found with the findings recorded by the learned Tribunal.

6. I have duly considered the aforesaid contentions.

7. The appellants-claimants have filed the claim petition under Section 166 of the Act. It is settled principle of law that in order to maintain the claim petition under Section 166 of the Act, it is incumbent upon the claimants to establish the negligence of the driver of the alleged offending

vehicle. To support this view, reference can be made to case ***Oriental Insurance Co. Ltd. Vs. Prem Lata Shukla and others 2007 (4) PLR 93 (SC)***.

8. In the instant case, on the mode of accident the claimants have examined only PW-2 Satpal. He is the person, who has lodged the report with the police with respect to this accident. In his report lodged to the police, he has mentioned that Dharamvir has taken his tractor to one side of the road to allow the bus to pass. He lost control on account of which the tractor became unbalanced and fell up side down. Dharamvir got buried beneath the same and on that account breathed his last at the spot. The police even carried out the proceedings under Section 174 of the Code of Criminal Procedure, 1973. Even in those proceedings, the statement of PW-2 Satpal was recorded by the police. On the basis of the statements recorded during inquest proceedings, the police came to the conclusion that the tractor driven by deceased Dharamvir was not hit by any other tractor, rather the deceased suffered the injuries as the tractor which he was driving turned turtle and he was buried thereunder.

9. As already mentioned, the claimants have only examined PW-2 Satpal on the mode of accident. He is not a reliable witness as he has given a totally divergent version to the police wherein he has stated that the tractor being driven by Dharamvir deceased has turned turtle as Dharamvir has lost control while he was giving pass to the bus, which was the first version of the accident narrated by PW-2 Satpal, whereas when he stepped into the witness box he has attributed the negligence to respondent No.1

Kuldeep. PW-2 is the signatory to the inquest proceedings wherein also it was found that the tractor being driven by deceased Dharamvir was not hit by other tractor and the accident was caused because of the tractor of deceased Dharamvir having been turned turtle. There is also no corroboration from any other source to the statement of PW-2 Satpal. The sole statement of such a witness who has given two different versions of the accident cannot be relied upon. So, the appellants-claimants have not been able to establish that the present accident has taken place due to rash and negligent driving of the tractor by respondent No.1 Kuldeep.

10. Thus, I do not find any legal infirmity in the impugned award dated 22.03.2005 passed by learned Tribunal.

11. Consequently, the appeal filed by the appellants-claimants being without any merit, is hereby dismissed.

26.08.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No