

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 736 of 2006 (O&M)
Date of Decision : 01.03.2016

Rati Pal and others

....Appellants

Versus

Jagdeep Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sham Lal Bhalla, Advocate,
for the appellants.

Mr. R.N. Singal, Advocate
for respondent no. 4-Insurance Company.

Surinder Gupta, J.

This is appeal filed by claimants Rati Pal and others against the award passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (later referred to as 'the Tribunal'), whereby claim petition filed by claimants under Section 166 of the Motor Vehicles Act, claiming compensation for death of Sundra Rani wife of claimant no. 1 and mother of claimants no. 2 to 5, was dismissed.

2. Case of claimants, in brief, is that on 23.06.2002, Sundra Rani alongwith her ailing daughter, was going on cycle of his husband Rati Pal. At about 06.00 p.m., when they reached near over bridge, Sirhind, a car bearing registration no. HR-26-E-4883, came from behind and hit the cycle from behind as a result of which Sundra Rani and daughter of claimant no. 1 fell on the road. Sundra Rani received serious injuries and died at the spot while Neelam Devi (daughter of claimant no. 1) and claimant no. 1 received injuries on their head and leg. Neelam Devi and Sundra Rani were taken to Civil Hospital, Fatehgarh Sahib, where Sundra

Rani was declared brought dead. Claimants alleged that accident was caused by respondent no. 1-driver of the offending vehicle due to its rash and negligent driving.

3. Respondents no. 1 and 2 i.e. driver and owner of the offending vehicle filed joint reply denying the accident and all the averments of claimants.

4. Insurance Company in its separate written statement also denied the accident and its liability to pay any amount of compensation.

5. On appraisal of evidence, the Tribunal concluded that claimants have failed to prove that the accident was caused by the offending vehicle and the vehicle which caused the accident remained unidentified.

6. The above observation was made in view of the statement of claimant no. 1-Rati Pal, who appeared as CW-1. The Tribunal took note of his statement that he had not seen the offending car, which caused the accident and was not aware if the same was coming at a high speed or normal speed. He had also not noted the number of car at that time. He was apprised about number of the offending vehicle after 4-5 days of the accident by the police. In the FIR, which was recorded after the accident, neither car number, make of the car or name of the driver was mentioned.

7. Learned counsel for the appellants has argued that in a claim petition, claimants have not to produce strict proof of accident. They have merely to establish their case on the touchstone of preponderance of the probability. Claimant no. 1

while appearing as CW-1 has given number of the offending vehicle and name of its driver. His statement is unrebutted as none of the respondents have dared to step into the witness box to depose that the accident was not caused by the offending vehicle. Even if, number of the offending vehicle and name of driver is not mentioned in the FIR, the Tribunal has committed grave error by ignoring the statement of claimant and dismissing the claim petition. He has relied on observations of the Apex Court in the case of **Kusum Lata and others vs. Satbir and others, 2011 (3) SCC 646.**

8. I agree with the submissions of learned counsel for the appellants that in claim petition standard of proof beyond reasonable doubt are not to be applied and claimants have to prove their case on the touchstone of preponderance of probability. The only question is as to whether statement of claimant no. 1 is reliable in the facts and circumstances that have come on record. Firstly, number of the offending vehicle was not mentioned in FIR; secondly, name of the driver was not given in the FIR; thirdly, claimant no. 1-Rati Pal while appearing as only eye-witness of the occurrence has stated that he did not note the number of offending car; fourthly, claimant no. 1-Rati Pal has stated that he has not seen the car coming, as such, could not say whether it was coming at a normal speed or fast speed; and above all, conduct of claimant no. 1 turning hostile while appearing in criminal case shows that he is not a truthful witness. While acquitting respondent no. 1-driver, in case bearing FIR No. 150 dated 23.6.2002, registered at Police Station Sirhind, relating to

the accident in question, learned Additional Chief Judicial Magistrate, Fatehgarh Sahib in his judgment, place on record as mark 'C', has observed that Rati Pal (claimant no. 1) had resiled from his statement in his cross-examination and was declared hostile. This shows that CW-1 Rati Pal has tried to make different statements in different proceedings and his testimony is not worth reliance. The question in this case is not of relying or not relying the testimony of CW-1 Rati Pal, the only eye-witness. The fact that he had tried to hoodwink the Court and the Tribunal while making different statements regarding the same accident, has rightly led the Tribunal to discard his statement. There is no other evidence on file to support the testimony of claimants.

9. In view of my above discussion, I find no legal or factual infirmity in the award passed by the Tribunal calling for any interference. This appeal has no merit and the same is dismissed.

March 01, 2016

jk

**(SURINDER GUPTA)
JUDGE**

Whether to be referred to the Reporters? Yes/No