

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

FAO-4207-2009 (O&M)
Date of decision: 09.05.2016

Smt. Manjit Kaur and others

...Appellants

Versus

Karam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. G. K. Mann, Advocate for the appellants.

Mr. Vinay Puri, Advocate for

Mr. D. K. Bhatti, Advocate for respondent No.1.

JITENDRA CHAUHAN, J.

This appeal has been filed by the claimant-appellant against the impugned award dated 13.12.2008, passed by learned Motor Accidents Claims Tribunal, Ludhiana, (for short, 'the Tribunal').

The learned counsel for the appellants contends that the learned Tribunal has ignored the statement of PW2-Harbans Singh, eye-witness, who specifically stated that the accident took place due to the rash and negligent driving of respondent No.1, and he along with others lodged the report, Ex.P9, with the P. P. Doraha. Further, the stand of respondent No.1 that the offending scooter i.e.PB-10N-0957 was being driven by its owner at the time of accident, is rebutted by the fact that the owner did not suffer any injury. Therefore, the appellants

have proved the rash and negligent driving on the part of respondent No.1.

On the other hand, the learned counsel for respondent No.1 submits that the deceased, Gurinder Singh was at fault and the offending scooter was not being driven by respondent No.1.

I have heard the learned counsel for the parties and perused the record.

In the case in hand, both the parties have filed the claim petitions before the learned Tribunal. The initial burden to prove that the accident took place due to the rash manner of driving of opposite party, was on both of them. In order to prove their case, the legal heirs of the deceased, Gurinder Singh, were required to lead cogent and convincing evidence before the Tribunal that the accident in question had occurred due to the rash manner of driving of the said vehicle by respondent No.1. However, they have failed to do so. From the perusal of the DDR, lodged with regard to the alleged accident, by Harbans Singh, reveals that the accident in question was natural accident and no party was to be blamed. Thus, the learned Tribunal has rightly drawn adverse inference against the claimants. The learned Tribunal has correctly observed in the impugned award that the possibility of fault of deceased, Gurinder Singh due to his own rash or negligent driving as also his having been under the influence of liquor and as such his inability to properly drive the scooter in the given set of circumstances

cannot be ruled out. The principle of '*res ipsa loquitur*' would apply in the instant case.

It shall not be out of place to mention here that Karam Singh, respondent No.1 did not opt to prefer appeal against the dismissal of his claim petition. In his claim petition, Karam Singh, respondent No.1 had an altogether different story to narrate. He tried to distort the story by stating that in fact he was merely a pillion rider but the scooter No.PB-10N-0957 was being driven by Naresh Kumar its owner. Surprisingly, Naresh Kumar did not suffer any injury in the accident. It appears that Karam Singh has brought the claim petition only as counter blast to the claim petition filed by Manjit Kaur wife of late Gurinder Singh. In view of my above discussion no cogent, reliable and convincing evidence has come on record to conclude that accident took place due to rash and negligent driving of either of them.

In this way, the claimants miserably failed to discharge the initial burden of proving their case by leading cogent and convincing evidence. Therefore, no fault can be found with the findings recorded by the learned Tribunal.

Thus, in the light of the above discussion, the instant appeal is hereby dismissed on merits.

09.05.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**