

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

**FAO-4733-2009 (O&M)
Date of decision: 12.04.2016**

Sudesh and others

...Appellants

Versus

Satyawan and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. V. S. Punia, Advocate,
for the appellants.

Mr. Neeraj Khanna, Advocate for
Mr. Ravinder Arora, Advocate
for respondent No.3.

JITENDRA CHAUHAN, J.

CM No.-- of 2009

For the reasons contained in the application, same is allowed and delay of 34 days in filing the present appeal is condoned.

Main Case

This appeal has been filed by the claimants-appellants against the impugned award dated 23.01.2009, passed by learned Motor Accidents Claims Tribunal, Jind, (for short, 'the Tribunal').

The learned counsel for the appellants contends that the learned Tribunal has wrongly dismissed the claim petition on the

grounds that the investigating officer was not examined and no official from the police station was brought in the witness box to prove the version of the FIR. Though, the factum of the accident is duly proved by FIR No.304 dated 19.12.2006, at P.S. Uchana.

On the other hand, the learned counsel for respondent No.3 has vehemently opposed the prayer made by the claimants.

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

In the case in hand, the initial burden to prove that the accident took place due to the rash and negligent driving of vehicle bearing registration No.HR-32-B-4572, by respondent No.1, was on the claimants. There is no dispute with regard to the fact that FIR was registered. In order to prove their case, the claimants were required to lead cogent evidence before the Tribunal that the accident in question occurred due to the rash and negligent driving of the said vehicle driven by respondent No.1. However, they have failed to do so. Moreover, the investigating officer, to prove the version of PW4-Ramphal, informant was not examined. In fact, PW4 in his cross-examination has deposed that he had not witnessed the accident in question and does not know about the vehicle involved and the manner of accident. Therefore, the information with PW4, with regard to the identity of the offending vehicle cannot be relied upon.

In this way, the claimants could not discharge the initial burden of proving his case by leading cogent evidence and in the absence thereof, the question of rebuttal evidence by the respondents does not arise. The appellants-claimants thus have no case at all. Therefore, no fault could be found with the findings recorded by the learned Tribunal.

Dismissed.

12.04.2016

ashok

**(JITENDRA CHAUHAN)
JUDGE**