

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

**FAO No.6144 of 2010
Date of decision :15.01.2016**

Hira Singh and others

.....Appellants

Versus

Rajpal alias Raju and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Ramendra Chauhan, Advocate for appellants.

None for respondents No.1 & 2.

Ms. Vandana Malhotra, Advocate along with
Ms. Monika Jangra, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 07.05.2010 passed by learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter called the 'Tribunal) vide which the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the Act) for grant of compensation on account of death of Vimaljit, who died in the motor vehicular accident which took place on 23.06.2008, has been dismissed.

2. As per the case of the appellants-claimants, deceased Vimaljit was working as a Manager with Century Veterinary Division. On 23.06.2008 at about 07:30 p.m., he was going on motorcycle HR-19A-8194. When he was near the railway crossing Rohtak Road, Charkhi Dadri, respondent No.1 Rajpal alias Raju came there driving the tractor bearing registration No.HR-16G-1928 in a rash and negligent manner and struck the motorcycle of deceased Vimaljit. As a result of which, he fell down and received serious injuries. He succumbed to the injuries at PGIMS, Rohtak on the next day. It was further pleaded that he was earning Rs.12,000/- per month and was having the degree in Master in Business Administration from Kurukshetra University. The claimants have claimed the compensation to the tune of Rs.20,00,000/-.

3. Respondents No.1 & 2 contested the petition on the plea that the first information report against respondent No.1 was false. He was not at fault. The facts have been concealed. The respondent Insurance-Company has pleaded that it was not a case of vehicular accident. The FIR has been lodged by an interested party who was not the eye witness of the occurrence.

4. From the pleadings of the parties, the following issues were framed:-

1. Whether accident took place due to rash and negligent driving of vehicle tractor bearing registration No.HR-16G-1928 by respondent No.1 Rajpal alias Raju, resulting into death of Vimaljit Singh as alleged? OPP
2. Whether claimants are related to deceased Vimaljit Singh as alleged? OPP
3. If issues Nos.1 & 2 are proved, whether claimants are entitled

for compensation, if so, to what amount and from whom? OPP

4. Whether petition is vague, indefinite, not filed in accordance with provisions of law and is not maintainable? OPR
5. Whether this Tribunal has no jurisdiction to try and decide this petition? OPR
6. Whether the claim petition is bad for mis-joinder and non-joinder for necessary parties? OPR
7. Whether the claim petition is result of collusion in between claimant and respondent Nos.1 and 2? OPR-3
8. Whether respondent No.1 was not having a valid driving licence and the offending vehicle was being driven in violation of terms and conditions of insurance policy at the time of accident? OPR-3
9. Relief.

5. On appreciation of the evidence coming on record, the learned Tribunal held that the claimants have failed to establish that respondent No.1 was involved in the accident or that he has caused the accident. In view of these findings on issue No.1 the claim petition was dismissed.

6. Aggrieved with the aforesaid award, the present appeal has been preferred.

7. I have heard Mr. Ramendra Chauhan, Advocate, learned counsel for the appellants, Ms. Vandana Malhotra, Advocate along with Ms. Monika Jangra, Advocate, learned counsel for respondent No.3 and gone through the record carefully.

8. Learned counsel for the appellants contended that learned Tribunal has dismissed the claim petition simply on the ground that the registration number of the tractor and the name of the driver were not

mentioned in the FIR. He contended that Heera Singh, father of the deceased, was not an eye-witness of the accident. So, it is not expected that he will disclose the name of the driver and registration number of the vehicle. He contended that the vehicle and the driver have been traced out during the investigation of the criminal case. The statement of PW2 Jora Singh has been recorded by the police under Section 161 Cr.P.C. during the investigation who has revealed the registration of the vehicle and the name of the driver. The statement made by him clearly indicates that respondent No.1 has caused this accident by driving the tractor in question in a rash and negligent manner. There was nothing to disbelieve his statement which has been wrongly discarded by the learned Tribunal. His statement is also corroborated from the fact that the criminal case was registered against respondent No.1 and the prosecution for causing this accident was also launched against him on completion of investigation. Thus, he contended that the findings given by learned Tribunal are not sustainable.

9. On the other hand, learned counsel for the respondent-Insurance Company contended that it is a case of plantation of the vehicle in collusion with the police and PW2 Jora Singh. PW2 Jora Singh has been introduced as a witness after more than one month of the occurrence. There is no explanation as to how said Jora Singh came to know about the registration number of the vehicle and the name of its driver. He has stated that he was not known to the driver. The vehicle which caused the accident was also not left at the spot. It is not believable that he will orally remember the number of the tractor even after more

than one month of the accident. Thus, she contended that learned Tribunal has rightly disbelieved the statement of PW2 Jora Singh. Mere registration of the criminal case cannot establish the negligence.

10. I have duly considered the aforesaid contentions.

11. There is no dispute with the proposition of law that in a claim petition filed under Section 166 of the Act it is incumbent upon the claimants to establish the rash and negligent driving on the part of the driver of the vehicle. Further, the identity of the vehicle and its driver involved in the accident has to be established. The entire case of the prosecution is based on the statement of PW2 Jora Singh, the alleged eye witness and the fact that the prosecution has been launched against respondent No.1 for causing this accident.

12. The first information report about this accident was lodged by Heera Singh father of the deceased, wherein the registration number of the vehicle and the name of the driver have not been mentioned. He was also not the eye-witness of the occurrence. He has reached at the spot on receiving the telephonic information about the accident.

13. PW2 Jora Singh has deposed that the tractor bearing registration No.HR-16G-1928 being driven in a rash and negligent manner by its driver Rajpal, resident of village Noutana, came from the opposite direction and struck against the motorcycle, as a result thereof the motorcycle fell down along with its driver. The driver of the motorcycle whose name later on learnt as Vimaljit received the injuries. He further deposed that the accident took place due to sole negligence of

the tractor driver as a result of which Vimaljit sustained injuries and later on died. In the cross-examination he admitted that his statement was recorded by the police on 25.07.2008, i.e. after one month and 2 days of the occurrence. He admitted that during this period, he did not approach the police. He further admitted that the tractor driver was not known to him personally. But he further deposed that after the accident, the tractor stopped for a while and came back to the injured. He enquired his name. When he left the spot, the tractor driver and the tractor was present at the spot. This witness has further stated that on the day when he made the statement, the police met him on the road. Thus, even on that day he had not approached the police. PW2 Jora Singh appears to be an introduced witness and the statement made by him before the Tribunal does not appear to be true. As per his statement he was not known to the driver of the tractor but the facts narrated in the report under Section 173 CrP.C. Ex.P2 totally contradicts his version. In the report under Section 173 Cr.P.C., it has been mentioned that on 28.08.2008 Jora Singh son of Pehlad Singh caste Jat resident of Sumra Khera Police Station - Bawani Khera had produced tractor No.HR-16G-1928 along with trolley marka Eicher red colour and its driver Rajpal son of Sadaram caste Ahir, resident of village Noutana, Police Station - Kanina. Tractor was taken into possession vide memo and the driver was arrested. So, it was PW2 Jora Singh who had produced the tractor and the driver before the police in the investigation of the case. He has completely concealed all these facts from the Tribunal while making the statement on oath. It is a fact of common knowledge that an unknown person cannot play the role of

producing the vehicle and driver before the police. It is only a well known person who can perform this duty. It shows that PW2 Jora Singh was well known to the owner of the vehicle and the driver that is why he has produced the vehicle before the police along with its driver which totally renders the testimony of PW2 Jora Singh unworthy of credence. It appears that the vehicle has been planted in collusion with PW2 Jora Singh to extract the compensation from the Insurance Company. So, the statement of PW2 Jora Singh is unworthy of credence. It is settled principle of law that mere registration of the criminal case will not establish the negligence.

14. Thus, I do not find any illegality in the findings of the learned Tribunal that the claimants have failed to establish the involvement of respondent No.1 or that he has caused this accident.

15. Consequently, the present appeal has no merits and the same is hereby dismissed.

15.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**