

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

FAO No.3745 of 2012

Date of decision : 12.05.2016

Surinder Kaur and others

.....Appellants

Versus

Krore Singh 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. Mayank Mathur, Advocate for appellants.
 Respondent No.1 proceeded against *ex parte*.
 Mr. J.S. Toor, Advocate for respondent No.2.
 Mr. Vinod Gupta, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred by the appellants-claimants against the award dated 06.03.2012 passed by learned Motor Accidents Claims Tribunal, Patiala (hereinafter called the 'Tribunal'), vide which the claim petition filed by the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short the 'Act') for grant of compensation on account of death of Rajinder Singh in the motor vehicular accident which took place on 07.02.2009 has been dismissed.

2. As per the averments in the petition, on 07.02.2009

deceased Rajinder Singh had gone to Modern Optician Shop. After coming out of the said shop, he was about to board his car, which was parked little ahead towards Head Post Office, Patiala, a bus bearing registration No.PB-11AJ-8732 came from the side of Fountain Chowk, Patiala, which was being driven at a high speed in a rash and negligent manner. The driver of the bus could not control it and it struck against Rajinder Singh from behind. He was thrown at divider of the road. Manrit Saini and other persons collected at the spot. The deceased was taken to Rajindra Hospital, Patiala where he succumbed to the injuries. The police in connivance with the driver and owner of the bus, lodged a false report. Even the statements of the eye witnesses have not been recorded. The petitioners have further pleaded about the age, income and profession of the deceased.

3. The claim petition was contested by respondents No.2 & 3 by filing the separate written statements. Respondent No.2 though has not disputed the accident, but it was averred that the same has taken place due to rash and negligence of the deceased himself. Respondent No.3 National Insurance Company denied the factum of accident. Certain legal and preliminary objections were also raised by the respondent-Insurance Company and prayer was made for dismissal of the petition. From the pleadings of the parties, following issues were framed:-

1. Whether Rajinder Singh died in a motor vehicular accident which took place on 07.02.2009 on account of rash and negligent driving of bus bearing No.PB-11AJ-8732, driven by respondent No.1 Kror Singh? OPA

2. If issue No.1 is proved, whether the claimant is entitled to seek compensation, if so to what extent and from which of the respondents? OPA
3. Whether Krore Singh, respondent No.1 was not having valid and effective driving licence at the time of accident? OPR
4. Whether the petition is not maintainable? OPR
5. Whether the bus No.PB-11AJ-8732, was not having valid RC, fitness certificate, route permit on the date of accident? OPR
6. Relief.

4. On appreciation of evidence on record, the learned Tribunal dismissed the claim petition. Hence this appeal.

5. I have heard learned counsel for the parties and gone through the paper-book and record of the case carefully.

6. Initiating the arguments, learned counsel for the appellants contended that it is not a condition precedent to get the criminal case registered in order to lodge the claim under the provisions of the Act. He contended that the criminal case was not got registered on account of influence exercised by respondents No.1 & 2. The wrong version of the accident has been mentioned in the Daily Diary Report Ex.RW1/A. He contended that there is nothing to doubt the presence of PW-2 Manrit Saini, the witness of the occurrence. He contended that the Tribunal is to base its findings on the basis of evidence adduced before it. From the statement of PW-2 Manrit Saini it comes out that the accident has been caused by respondent No.1, the driver of the bus in question, by driving the bus in a rash and negligent manner. The police had never joined

Manrit Saini in the investigation with respect to this occurrence and never recorded his statement. Learned counsel for the appellants further contended that the testimony of PW-2 has been disbelieved by the learned Tribunal simply on the grounds that he could not pin point the place of occurrence and that he has not reported the matter to the police, which are no grounds to discard his statement. Thus, he contended that the evidence adduced by the appellants-claimants is sufficient to establish that respondent No.1 has caused this accident by driving bus bearing registration No.PB-11AJ-8732 in a rash and negligent manner.

7. On the other hand, learned counsel for the respondents contended that PW-2 Manrit Singh is an introduced witness. His name was mentioned in the claim petition which has been filed after more than 1½ years by introducing him as a witness of the occurrence. He further contended that Daily Diary Report No.14 dated 07.02.2009 Ex.RW1/A was lodged by Charanjit Singh, who is the real brother of the deceased. In the said DDR, it has been mentioned that the accident has taken place by chance and nobody was at fault. Thus, they contended that in these circumstances, the sole statement of PW-2 Manrit Saini, who is an introduced witness, cannot be relied upon and the learned Tribunal has rightly dismissed the claim petition.

8. I have duly considered the aforesaid contentions.

9. This fact is not disputed that immediately after the accident, on the same day Charanjit Singh the brother of the deceased has

lodged DDR No.14 dated 07.02.2009 with P.P. Model Town, Patiala. In the said DDR, it has been mentioned that the accident has taken place by chance when the deceased was crossing the road from the side of Post Office, Patiala. It is further categorically mentioned that this accident has taken place as his brother hit with the bus while crossing the road by chance and nobody is at fault for this accident. On the basis of this DDR, the inquest proceedings were carried out. From the statement of RW-1 HC Rajinder Kumar it comes out that during inquest proceedings, the statement of Satinder Pal (actual name Jitender Pal Singh), Manmohan Singh and Charanjit Singh Ex.RW1/C, Ex.RW1/D and Ex.RW1/E respectively, were also got recorded by the police. Jitender Pal Singh is the son of Rajinder Singh. He has categorically stated that they have made the inquiry about the mode of occurrence and came to know that this occurrence has taken place by chance and they do not want any legal action. The same facts have been repeated in the statement of Charanjit Singh the brother of the deceased Ex.RW1/E. So, the first version of the occurrence reported to the police was that this accident has taken place by chance when deceased was crossing the road and nobody was at fault.

10. The name of PW1 Manrit Saini nowhere figures in the entire inquest proceeding Ex.RW1/B and the Daily Diary Report Ex.RW1/A.

11. There is no dispute with the proposition of law that the registration of the criminal case is not a condition precedent to lodge the

claim for grant of compensation under the provisions of the Act and the Tribunal is to base its findings on the basis of the evidence before it. But at the same time it is the settled principle 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 negligence on the part of the driver of the vehicle. The entire case of the appellants-claimants is based on the statement of PW-2 Manrit Saini. His presence at the spot is extremely doubtful and he appears to be an introduced witness. In the cross-examination he has admitted that he knows Surinder Kaur claimant and also knows Jitender Pal Singh as they used to reside near his old house. He also used to purchase the medicine from their shop. He admitted that he has attended the 'Bhog' ceremony of Rajinder Singh, which shows the close association of PW-2 Manrit Saini with deceased and his family. He has also admitted in the cross-examination that he is deposing about the manner of this accident for the first time before the Tribunal. This witness has taken the stand that the police had enquired from him about the manner of the accident at the spot but his statement was not recorded. But this version of PW-2 is falsified from the fact that if he would have been present at the spot and would had disclosed that the accident has been caused by respondent No.1 by driving the bus in question in a rash and negligent manner, there was absolutely no reason for the son and brother of the deceased to make the statement to the police during the inquest proceedings that the accident has taken place by chance when

deceased was crossing the road and nobody was at fault for this accident. The name of this witness has been disclosed for the first time in the claim petition which has been filed after more than 1 ½ years of the occurrence. There is no material on record to show that the claimants have moved any application to the police to take up the investigation of the case and to join Manrit Saini in the investigation. PW-2 Manrit Saini was familiar to the family members of the deceased. He also attended his 'Bhog' ceremony. So, he had ample opportunity to disclose that respondent No.1 was negligent for causing this accident. But he never came forward with any such version prior to make the statement in the Court. In these circumstances the presence of PW-2 Manrit Singh at the time of occurrence is not established. No other evidence has been adduced by the claimants to establish the negligence on the part of respondent No.1 for causing this accident.

12. Consequently, I have no reason to differ with the findings recorded by the learned Tribunal that the appellants-claimants have failed to establish that the present accident has taken place due to rash and negligence driving of bus bearing registration No.PB-11AJ-8732 by respondent No.1.

13. Resultantly, the present appeal has no merits and the same is hereby dismissed.

12.05.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**