

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

**FAO No.5035 of 2012
Date of Decision-20.09.2016**

Bimla ... Petitioner
Versus

Ajay and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikrant Rana, Advocate for the appellant.

Mr. Sunil Kumar Dhanda, Advocate
for respondent No.1.

Mr. Vishal Aggarwal, Advocate for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Appellant has assailed judgment dated 21.03.2012 passed by Motor Accident Claims Tribunal, Gurgaon (for short 'Tribunal) whereby claim petition filed by the petitioner-appellant was dismissed in toto.

[2]. Appellant filed a claim petition under Section 163-A of Motor Vehicles Act, 1988 (for short 'the Act') seeking compensation on account of death of her son on 31.03.2009 in a vehicular accident.

[3]. Accident took place at about 6 AM on 31.03.2009 in village Kasan due to rash and negligent driving of driver of offending vehicle i.e. three wheeler No.HR-55-H-7954. Deceased Inderpal was going towards Kasan from his village in tempo No.HR-55-H-7954 driven by respondent No.3. When the vehicle reached at a distance of 1 KM from the village got overturned and

Inderpal received injuries. He was removed to Safdarjang Hospital

where he succumbed to injuries on 01.04.2009. It was alleged that the accident took place due to rash and negligent driving of driver of tempo in question. Respondent No.1 was owner and respondent No.2 was the insurer of the offending vehicle. DDR dated 10.04.2009 Ex.P1 was recorded at Police Station Sarojini Nagar/South, Delhi.

[4]. Claim petition was opposed by the respondents alleging that no such accident had ever taken place. DDR was lodged on wrong facts. Insurance Company/respondent No.2 took all objections with regard to validity of driving licence, validity of route permits and fitness certificate to ply the offending vehicle. No application was filed by the claimant.

[5] After framing of issues, both the parties led evidence. Trial Court after discussing the evidence on record dismissed the claim petition by holding that no such accident took place.

[6]. I have heard the submissions made by learned counsel for both the sides.

[7]. Statement of PW 1-Samay Singh (father of the deceased) showed that after moving application Mark A to the Police, he did not move any application to the Police authority. The witness stated that when he had gone out to meet call of nature, he noticed an accident on the road. His son was dropped at the house when he reached there. The witness had not seen driver/owner of three-wheeler. Thereafter he had gone to the

village for arranging the amount for treatment of his son. His brother and co-residents had taken his son to the hospital. The witness came to know about registration number of the vehicle on the next day. The mental condition of the witness was stated to be disturbed due to mental shock at the time of accident. His wife was not accompanying him. There was no discussion between them in respect of accident till making of the statement in the Court. The witness could not tell as to who disclose the registration number of the vehicle to him, nor he brought any income proof of the deceased.

[8]. PW 2-Bimla Devi (mother of the deceased) also admitted that the accident had not taken place in her presence. Deceased was 19 years of age and was working at Makino Industries at IMT Manesar. A sum of Rs.20,000/- was claimed towards last rites of the deceased. PW 3-Hari Ram, Head Constable brought the record of DDR where no details of the vehicle were mentioned viz-a-viz registration number and make of the vehicle. There was no mention of name or parentage or address of the driver of the vehicle. There was no investigation done on the DDR as the same did not disclose anything for investigation.

[9]. Ramesh Chand was a co-villager of the deceased who had appeared as PW 4. The witness had not reported the matter to the Police. His statement was not recorded in respect of alleged accident at any point of time. He had appeared in the Court for the

first time, before that, police had not contacted him in any manner in respect of alleged occurrence. However, Police had visited his house, but he did not meet the Police. PW 1-Samay Singh was not known to him personally. The witness admitted that there was no chowk at the place of accident, nor there was any traffic at that time. Only the Auto in question was going from Mokalwas to village Kasan. Only 3 persons were present in the auto including driver. The witness alleged that he was at a distance of 15 feet from the place of alleged occurrence which took place towards left hand side of the road. Till the making of statement, the witness stood nowhere, nor the witness could tell the manner in which accident took place. The witness appeared in the Court on his own. No summons were received by him from the Court. Deceased was known to him. He came to the Court on the asking of his Aunt Bimla Devi (mother of the deceased). He also visited the Safdarjung Hospital along with injured and uncle of the injured. [10]. The perusal of the statement of Ramesh Chand revealed that he had admitted so many things in his statement. He was not the author of the DDR, nor reported the accident to the Police. He never contacted the Police for the investigation, nor he tried to meet the Police at any point of time before the appearance in the Court, rather he admitted that on one occasion, he had an opportunity to meet the Police, but he refused to do so. He was not a summoned witness. He appeared on his own, rather appeared on the asking of his Aunt-Bimla Devi (mother of the deceased).

The entire statement of the witness would show that his presence on the spot was totally doubtful as there was no overt act by him on seeing the accident in question.

[11]. Prem Kumar, Record Keeper, Safdarjung Hospital and SI Mahesh Chand while appearing as PW 5 and PW 6 respectively had only deposed in respect of postmortem report and other Police proceedings. The aforesaid witnesses were not present at the time of accident nor PW-6-Mahesh Chand was investigating officer.

[12]. The factum of accident could not be proved by the claimant-appellant in the appeal also. The appellant could not be pointed out anything in respect of connectivity of vehicle in question with that of death of deceased. Issue No.1 was rightly decided by the Tribunal on the basis of evidence available on record. Since issue No.1 was decided against the claimant, therefore, findings recorded under issue No.2 were of no consequence. No evidence was led under issue No.3 and the same was decided against the respondents.

[13]. Taking cumulative effect of the evidence on record, in my considered view no different opinion can be formed. The claimant-appellant could not bring on record sufficient material to connect the death of deceased on account of involvement of offending vehicle which was *sine quo non* for the award under Section 163-A of the Act. Though negligent was not required to be proved, but involvement of the vehicle was necessary to be proved

on record. Since the involvement of vehicle could not be proved by the claimant, therefore, in my considered opinion, the claim was bound to fail.

[14]. In view of aforesaid, I am of the view that this appeal is totally meritless and the same is accordingly dismissed.

20.09.2016

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether Reportable

Yes/No