

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

FAO-5594-2012 (O&M)
Date of decision: 17.05.2016

Smt. Usha Sharma and others

...Appellants

Versus

Anil Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Alok Jain, Advocate
for the appellants.

Mr. S. K. Tripathi, Advocate
for respondent Nos.1 and 2.

Mr. Vishal Aggarwal, Advocate
for respondent No.3.

JITENDRA CHAUHAN, J.

This appeal has been filed by the claimant-appellants against the impugned award dated 04.02.2012, passed by learned Motor Accidents Claims Tribunal, Gurgaon, (for short, 'the Tribunal').

On behalf of the appellants it is contended that the learned Tribunal has grossly and arbitrarily decided issue No.1 against the claimants without considering the statement of the eye-witness, PW6-Mehtab Singh, vide which the involvement of the offending truck i.e.HR-46C-7000 driven by respondent No.1 was fully established. The learned counsel cites '**Parmeshwari VS. Amir Chand and others**',

2011(85) ALR 747 to contend that the appellants were merely to establish their case on the touchstone of preponderance of probability.

On the other hand, the learned counsel for the respondents have vehemently opposed the prayer made by the appellants and states that the informant, PW6-Mehtab Singh, had neither disclosed the registration number of the offending vehicle nor the name of its driver in the FIR. Further, it is submitted that respondent No.1 stands acquitted in the FIR case. Therefore, the learned Tribunal has rightly declined the claim petition.

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 manner of driving of offending vehicle i.e. truck, being driven by respondent No.1, was on the claimants. There is no dispute about the preposition of law laid down in Parmeshwari's case (supra). It is no doubt true that in road accident claim, strict principles of proof are not attracted as in a criminal case. However, in the instant case, the appellants have no case at all. In order to prove their case, the claimants were required to lead a 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. Eye-witness, PW6-Mehtab Singh had lodged the FIR

on 28.11.2009 whereas, the accident occurred on 27.11.2009, therefore, there is delay of one day in lodging the FIR. He had not disclosed the particulars i.e. the registration number and the name of the driver, of the offending vehicle in the FIR, but in the supplementary statement which was recorded with the police after about 20 days of the accident, the registration number of the offending vehicle was disclosed. He could not explain the delay in disclosing the registration number of the offending vehicle. PW8, ASI Atma Ram has stated that till the recording of the supplementary statement he had no clue about the identity of the offending vehicle, and therefore, the learned Tribunal has rightly drawn an adverse inference against the appellants. The supplementary statement made by PW6-Mehtab Singh after about 20 days of accident in question cannot be relied upon in the given facts and circumstances. 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.

17.05.2016

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**(JITENDRA CHAUHAN)
JUDGE**