

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

**FAO No.5631 of 2012 (O&M).
Date of Decision: 17.05.2016.**

Parmila and others

....Appellants.

VERSUS

Mahabir and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Ram Pal Verma, Advocate for the appellants.

Mr. Rajbir Singh, Advocate for respondent No.2.

SNEH PRASHAR, J.

In the petition under Section 163-A of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by appellants-claimants, they averred that on 30.09.2010 Karambir (since deceased) and Dharmender Kumar were going from Bahadurgarh towards Kaithal by means of Eicher Canter No.HR-56-6431 (for short, “the canter”). Karambir was driving the canter. When the canter reached near the drain towards Kaithal, a black bull suddenly came in front of the same. Karambir could not control the vehicle and it collided with the Safeda tree beside the road. Due to the impact, Karambir suffered grievous injuries resulting in his death after few days.

Respondent No.1, being owner and respondent No.2 being

insurer of the canter were impleaded as respondents. They contested the petition. Respondent No.1 pleaded that the accident occurred arising out of use of the canter, but denied its liability to pay compensation. Respondent No.2 alleged that the story of accident presented by the appellants was concocted. It also alleged that deceased Karambir had no valid and effective driving licence on the date of accident.

On the basis of pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus on them. Considering the ocular and documentary evidence led by the parties and the submission made on their behalf, learned Tribunal dismissed the claim petition.

Feeling aggrieved, the claimants-appellants preferred the instant appeal.

The submissions made by Mr. Ram Pal Verma, learned counsel for the appellants and Mr. Rajbir Singh, learned counsel for respondent No.2 have been heard and record perused.

Learned counsel for the appellants argued that the only eyewitness of the accident was Dharmender Kumar, who was travelling with the deceased in the canter at the time of accident. On his statement, Daily Diary Report No.9 (for short, "DDR") dated 01.10.2010 was registered at Police Post Anaj Mandi, Kaithal. PW3 ASI Mahipal produced the relevant record and proved the said DDR Ex.P.5. He also stated that a person named Karambir son of Mahabir had sustained multiple grievous injuries during the accident on 30.09.2010 and the canter was the vehicle

involved in the accident. PW2 Prem Nath Malhotra, Medical Record Officer, Shri Balaji Action Medical Institute, Delhi proved the bill Ex.P4 issued by his hospital pertaining to treatment of deceased Karambir who had remained admitted in his hospital w.e.f. 01.10.2010 to 05.10.2010. Appellant Parmila, widow of the deceased, through her affidavit Ex.PW1/A testified that her husband died due to the injuries sustained by him in the accident. Her statement corroborated by the testimony of PW2 Prem Nath Malhotra and PW3 Mahipal ASI established that Karambir lost his life due to the injuries sustained by him in an accident arising out of use of the canter, but ignoring the said evidence, learned Tribunal wrongly dismissed the petition.

As per story of the appellants, the deceased was accompanied by one Dharmender Kumar when the canter, being driven by him, accidentally hit against a Safeda tree and he suffered serious injuries which led to his death. The DDR Ex.P5 was also recorded on the statement of said Dharmender Kumar, but for the reasons best known to the appellants, Dharmender Kumar did not step into the witness box. It was lodger of the DDR who had stated that 'the canter' was the vehicle, being driven by the deceased and was involved in the accident. However, neither he nor the owner of 'the canter' appeared during evidence to state about the accident and prove the involvement of the canter in the accident. No document showing police proceedings with regard to the accident after registration of the DDR was produced. The DDR by itself was not sufficient to prove the factum of accident and identity of the vehicle involved in the accident.

There had to be some substantive and reliable evidence to prove the both material aspects of the case. In absence of the required evidence even occurrence of accident cannot be held to be established.

The matter does not end here. There is no medical document to prove that the deceased was admitted in any hospital on 30.09.2010. The bill Ex.P4 proved by PW2 may mention that the deceased was admitted in the hospital on 01.10.2010 and was discharged on 05.10.2010 but it does not speak of the reason and the diagnosis with which the deceased was admitted in his hospital. In that manner, there is no substantive and link evidence to prove the factum of motor vehicular accident as well as identity of the vehicle involved in the accident. Learned Tribunal rightly dismissed the petition of the appellants.

The appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

17.05.2016.
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