

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

**F.A.O No. 1057 of 2013  
Date of decision :02.02.2016**

**Rajender Kumar**

**..... Appellant**

**Versus**

**Sanjay Kumar and another**

**..... Respondents**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.Sandeep Kotla, Advocate  
for the appellant.

Mr. Lalit Garg, Advocate  
for respondent no.2.

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**DARSHAN SINGH,J**

The present first appeal has been preferred against the award dated 08.01.2013 passed by the learned Motor Accident Claims Tribunal (for short 'Tribunal'), Hissar, vide which the claim petition filed by the appellant-claimant under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') for grant of compensation to the tune of Rs. 2 lacs on account of the damage caused to his generator set has been dismissed by the learned Tribunal, Hissar.

2. The claim petition has been contested by the respondents by filing the separate written statements. Respondent no. 1 has pleaded his false implication only to extract the compensation. Respondent no. 2-

Insurance Company has raised the legal plea that respondent no. 1 was not holding the valid and effective driving license on the date of the accident. Respondent-Insurance Company has also alleged the false implication of respondent no. 1 by the appellant-claimant and both the respondents denied their liability to pay the compensation.

3. From the pleadings of the parties, the following issues were framed by the Tribunal:-

1. Whether the accident in question occurred due to rash and negligent driving of offending vehicle bearing No. HR-55-A-5080 by respondent no.1?OPP
2. Whether the petitioner is entitled to recover the compensation from the respondents, if so, to what extent?OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Relief.

4. The parties led their evidence in support of their pleas.

5. On appreciating the evidence on record, the learned Tribunal has dismissed the claim petition vide impugned order dated 08.01.2013. Hence this appeal.

6. I have heard Mr. Sandeep Kotla, Advocate, learned counsel for the appellant, Mr. Lalit Garg, Advocate, learned counsel for the respondent no.2 and have meticulously have through the record of the case.

7. Learned counsel for the appellant contended that as a result of this accident, the First Information Report (for short 'FIR') was duly registered and a criminal case was set up against respondent no.1. He contended that even if no eye witness has been examined, but still the

accident is proved from the factum of registration of the criminal case and the photographs produced by the appellant. Thus, he contended that the claim petition has been wrongly dismissed by the learned Tribunal.

8. On the other hand, learned counsel for the respondent-Insurance Company pleaded that the claimant has not examined any witness of the occurrence to establish the mode of the accident and negligence on the part of respondent no.1. Thus, the claim petition has been rightly dismissed by the learned Tribunal.

9. I have duly considered the aforesaid contentions.

10. The present claim petition has been filed by the appellant-claimant under Section 166 of the Act. In order to lay the claim for grant of compensation under Section 166 of the Act, the proof of negligence on the part of the driver is a condition precedent. In the instant case, it is an admitted case that appellant-claimant has not examined any eye witness on the point of occurrence. PW-1 Narender Kumar has simply produced the bills Ex.P-1 and Ex.P-2. PW-2 Naresh Kumar has also proved the bill Ex.P-3. PW-3 Um Shankar Gupta is a surveyor who has assessed the loss caused to the generator set and has proved his report Ex.P-4. PW-5 Atul Jain, Criminal Ahlmad of the Court of learned Judicial Magistrate Ist Class, Hissar has produced the record of the criminal case. So, none of the aforesaid witness relates to the occurrence.

11. Claimant-Rajender Kumar has himself stepped into the witness box as PW-4. But, in the cross-examination, he admitted that he was not present at the time of the accident. So, no witness has been examined by the claimant on the mode of accident. Mere registration of

the FIR will not establish the negligence on the part of respondent no.1.

This Court in case **Ram Karan Vs. Zile Singh 2001(3) R.C.R (Civil) 582** has laid down that “mere registration of an FIR, framing of charge and even judgment of conviction or acquittal of criminal Court is not binding on the Tribunal. The onus of proving negligence is always upon the claimants and they have to discharge it before the Tribunal”. In the instant case, as already mentioned, the appellant-claimant has not adduced any evidence to establish the mode of accident and negligence on the part of respondent no.1 for causing this accident. Mere copy of the FIR and photographs will not advance the case of the appellant. Therefore, the findings of the learned Tribunal do not call for any interference.

12. Consequently, the present appeal being without any merit is hereby dismissed.

**February 02, 2016**

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**( DARSHAN SINGH )  
JUDGE**