

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

FAO No.6506 of 2012.

Date of Decision: 17.03.2016.

Sunita and others

....Appellants.

VERSUS

Pardeep Goyal and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Jagjeet Beniwal, Advocate for the appellants.

Mr. Rajesh Sharma, Advocate for respondent No.3.

SNEH PRASHAR, J.

Assailing the award dated 07.08.2012 passed by learned Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as “the Tribunal”) by virtue of which the MACT Petition No.172 of 2011/2012 was dismissed, the claimants-appellants filed the instant appeal.

The facts garnered from the record are as under:-

On 14.11.2010 at about 9:00 p.m., Dinesh Kumar (since deceased) was on his way from Baliyali to Bawani Khera on his motorcycle bearing registration No.HR-16H-1744. He was being accompanied by one Vimal Kumar on a separate motorcycle. After Dinesh Kumar had covered two kilometers towards Bawani Khera, a car bearing registration No.HR-

16E-6700 (hereinafter referred to as the “offending car”) being driven rashly, negligently and in a high speed by Pardeep Goyal (respondent No.1) came from the opposite direction and dashed into his motorcycle. As a result of accident, Dinesh Kumar fell down and suffered multiple serious and grievous injuries. One Mukesh Kumar besides Vimal Kumar witnessed the accident. The deceased was taken to General Hospital, Bawani Khera from where he was shifted to Jindal Hospital, Hisar but he succumbed to the injuries.

A First Information Report No.197 dated 15.11.2010 under Sections 279/304-A of the Indian Penal Code (for short, “I.P.C.”) was registered in respect of the accident which took life of Dinesh Kumar. The widow, minor son and parents of Dinesh Kumar filed a petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 impleading driver, owner and insurer of the offending car as respondents.

The petition was contested by the respondents. They denied that respondent No.1 was negligent in driving the offending car and alleged that negligence on part of the deceased had led to the accident. Respondent No.3-insurance company denied the occurrence of accident as well as involvement of the offending car in the same. It was alleged to be a case of hit and run accident. All other objections available to the insurer under the Act of 1988 were also raised.

On the rival pleadings of the parties, issues were settled. Both the parties adduced evidence in discharge of the onus of the issues on of them. Considering the evidence available on record and the submissions

made on behalf of the parties, learned Tribunal recorded a finding that it was hit and run case and only to extract compensation the offending car and its driver had been introduced and dismissed the petition.

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

The submissions made by Mr. Jagjeet Beniwal, learned counsel for the appellants and Mr. Rajesh Sharma, learned counsel for respondent No.3 have been read and record perused.

Learned counsel for the appellants-claimants argued that for proving the accident, the identity of the vehicle involved in the accident as well as its driver the claimants examined PW3 Vimal Kumar, who was accompanying the deceased on a separate motorcycle and PW4 Mukesh Kumar who too was an eyewitness of the accident. In addition to their deposition, the copy of the First Information Report Ex.P3, copy of the final report filed by the police under Section 173 of the Code of Criminal Procedure in criminal case Ex.P4 and copy of charge sheet Ex.P5 were tendered in evidence by the claimants from which it was evident that the offending car was seized by the police, its driver (respondent-Pardeep Goyal) was arrested by the police and after being challaned the driver was charge-sheeted for commission of offence under Sections 279 and 304-A I.P.C. before the Judicial Magistrate. Learned Tribunal failed to appreciate the consistent and cogent testimony of PW3 Vimal Kumar and PW4 Mukesh Kumar as well as the documents produced to corroborate their version. The findings of learned Tribunal being against ocular and

documentary evidence available on record are liable to be set aside and the claimants should be adequately compensated for loss of the only bread earner of their family.

The above arguments were controverted by learned counsel for respondent No.3-insurance company. He pointed out that the accident occurred at 9:00 p.m. on 14.11.2010 and the First Information Report Ex.P3 was got registered by Vimal Kumar at 5:15 p.m. on 15.11.2010. Although the report with regard to the accident was lodged on the next date of the accident that too in the evening, the lodger of the report Vimal Kumar did not mention the registration number, make of the vehicle or name of the driver of the vehicle involved in the accident. The report was lodged against an unknown vehicle driven by an unknown person. It was after 6/7 days that the offending car was introduced as the offending vehicle of the accident by recording statement of PW4 Mukesh Kumar who claimed to be an eyewitness of the accident but neither from the statement of PW3 Vimal Kumar nor from the documents, his presence at the time of accident could be established.

Indeed, perusal of the First Information Report Ex.P3 reveals that it was registered against an unknown vehicle driven by an unknown driver. PW3 Vimal Kumar claimed to be accompanying the deceased on a separate motorcycle when the accident took place. Mukesh Kumar PW4 deposed that he witnessed the accident as he was coming from the opposite direction i.e. the direction from which the offending car came. Importantly, PW3 and PW4 consistently stated that they both together reached the site of

accident. In his deposition, PW3 Vimal Kumar also stated that he had come to know the make of the vehicle i.e. Alto car when it crossed him after covering gap of about 100 yards from the place of accident. PW4 Mukesh Kumar testified that he noted the registration number of the car when it stopped for a while after the accident.

The above facts stated by PW3 Vimal Kumar and PW4 Mukesh Kumar irresistibly convey that immediately after the accident when both the witnesses simultaneously reached the site they had come to know the make of the vehicle as well as the registration number of the vehicle involved in the accident and according to them it was the offending car. Such being the facts, it is not understandable why PW3 Vimal Kumar, who was none else but brother-in-law of the deceased, lodged the First Information Report Ex.P3 on the next day of the accident in the evening against an unknown vehicle driven by an unknown driver.

It does not appeal to a prudent mind that when PW3 Vimal Kumar and PW4 Mukesh Kumar had simultaneously reached the site of accident and they both had noted the particulars necessary for identification of the offending vehicle and they were well known to each other and to the deceased, they intentionally remained silent for 3-4 days and subsequently suddenly after 3-4 days Mukesh Kumar went and informed Vimal Kumar and the widow of the deceased about the make and registration number of the offending vehicle involved in the accident and then on the next day he was produced before the police for recording his statement. PW3 Vimal Kumar stated that he had accompanied the injured to the hospital in the

ambulance but no document was produced to prove his presence with the injured in any of the hospital to which the injured was taken for treatment.

There is yet another inconsistency in the statements of PW3 Vimal Kumar and PW4 Mukesh Kumar which renders their testimony doubtful. PW4 Mukesh Kumar stated that driver Pardeep Goyal was not known to him prior to the accident but after the police recorded his statement in respect of the accident the driver of the offending car Pardeep Goyal came to his house and disclosed to him his name. PW3 Vimal Kumar in his first breath stated that he had met Pardeep Goyal Advocate in the Court but in the next breath improving his statement he deposed that he does not know any Pardeep Goyal of Bhiwani. From the statement of both the witnesses, it is clear that the driver of the offending car was well known to them but they intentionally concealed the said factum and tried to be ignorant about him.

From the above facts and circumstances, it is apparent that the offending car and respondent No.1 as its driver were falsely introduced as the offending vehicle and its driver. The exercise regarding seizure of the offending vehicle, arrest of respondent-driver and his getting charge-sheeted was all got done to create evidence. The finding of learned Tribunal that the claimants had failed to establish involvement of the offending car as the vehicle involved in the accident is affirmed and the appeal being devoid of merit is dismissed.

(SNEH PRASHAR)
JUDGE

17.03.2016.
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