

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

FAO-2360-2013 (O&M)
Date of decision: 31.05.2016

Sushil Dabra and others

...Appellants

Versus

Aman Kasrija and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R. K. Girdhar, Advocate
for the appellants.

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

Mr. Vinod Chaudhri, Advocate
for respondent No.3.

JITENDRA CHAUHAN, J.

This appeal has been filed by the claimant-appellants against the impugned award dated 14.12.2012, passed by learned Motor Accidents Claims Tribunal, Sri Muktsar Sahib, (for short, 'the Tribunal').

The learned counsel for the appellants contends that the learned Tribunal has erroneously and arbitrarily decided the claim petition of the claimant-appellants as the facts and circumstances of the case itself shows the rash and negligence on the part of respondent No.1, driver of the offending vehicle i.e. Car bearing registration

No.PB-30E-3773. He further states that there is no mechanical fault in the offending vehicle, therefore, the sole reason for the accident in question is the rash driving of the offending vehicle by respondent No.1. The learned counsel cites '**State of Madhya Pradesh thr. the Manager, Government Milk Scheme, Seoni and others Vs. Madhukar and others**', 1993 ACJ 116 (M. P).

On the other hand, the learned counsel for the respondents have vehemently opposed the prayer made by the appellants.

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. car, by respondent No.1, was on the claimants. 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 not taken place due to the rash manner of driving of the said vehicle by respondent No.1. However, they have failed to do so. In his cross-examination, respondent No.1 has clearly stated the accident had taken place all of a sudden, due to emerging of a vehicle from opposite side with headlights on and he hit the offending vehicle against the berm of the canal minor bridge. Moreover, the claimants in the claim petition, did not raise any averment that they were dependents upon the

income of the deceased.

The relevant paras of '**Surender Kumar Arora and another Vs. Dr. Manoj Bisla and others**', 2012(3) PLR 244 (SC) be read as under:-

“9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that respondent no.1 drew the vehicle in a rash and negligent manner which resulted in the fatal accident. Maybe, in order to help respondent no.1, the claimants had not taken up that plea before the Tribunal. Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in the case of Kaushnuma Begum (Smt.) & Ors. (supra) would have come to the assistance of the claimants.

10. In our view the issue that we have raised for our consideration is squarely covered by the decision of this Court in the case of Oriental Insurance Co. Ltd. (supra). In the said decision the Court stated :

"....Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

11. We are in agreement with the principles stated by this Court in the aforesaid decision.

In this way, the claimants have failed to discharge the initial burden of proving their case by leading cogent or convincing evidence. The appellant-claimants thus have no case at all. Therefore, no fault can be found with the findings recorded by the learned Tribunal. The ratio of the reported case cited by learned counsel for the appellants does not apply to the facts of the instant case.

Thus, in the light of the above discussion, the instant appeal is hereby dismissed.

31.05.2016

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**(JITENDRA CHAUHAN)
JUDGE**