

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

**FAO No.1412 of 2015 (O&M)
Date of decision :11.01.2016**

Kamla Devi and others

.....Appellants

Versus

Dharampal and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Sudhir Kumar, Advocate for applicants-appellants.

DARSHAN SINGH, J.

CM-4018-CII-2015

Heard.

For the reasons mentioned in the application, same is allowed.

CM-4019-CII-2015

There is delay of 812 days in filing the present appeal. The appellants have filed an application under Section 5 of the Limitation Act for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed.

FAO No.1412 of 2015

The present appeal has been preferred by the appellants-claimants against the award dated 06.03.2013 passed by the learned Motor Accidents Claims Tribunal, Narnaul (hereinafter called the 'Tribunal') vide which the claim petition filed by the appellants under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') for grant of compensation on account of death of Suresh, the son of appellants No.1 & 2 and brother of appellant No.3, in the motor vehicular accident which took place on 16.11.2009, has been dismissed.

2. The petition was contested by respondents No.2 & 3 by filing the separate written statement, whereas respondent No.1 was proceeded against ex parte.

3. In the written statement filed by respondent No.2, the factum of accident was denied and it was pleaded that a false case has been got registered against respondent No.1. The respondent insurance company also denied the factum of accident. The age and occupation of the deceased were also denied.

4. From the pleadings of the parties the following issues were framed:-

1. Whether motor vehicle accident which took place on 16.11.2009, in the area of P.S. Mohindergarh was an outcome of rash and negligent driving of vehicle bearing No.HR-66-5551 by respondent No.1? OPP
2. If Issue No.1 is proved, whether Suresh died in the above accident? OPP
3. If issues No.1 & 2 are proved, whether petitioners are entitled to get compensation, if so, to what amount and from whom? OPP

4. Whether respondent No.1 was not having driving licence to ply the vehicle in question in the area of accidental place? OPR-3

5. Relief.

5. The learned Tribunal on appreciation of evidence came to the conclusion that the involvement of vehicle in question was an afterthought just to extract compensation from the insurance company and the claimants have failed to prove the involvement of the vehicle in question and consequently the petition was dismissed.

6. I have heard Mr. Sudhir Kumar, Advocate for the appellants and have gone through the paper-book carefully.

7. Perusal of the impugned award depicts that in order to establish the involvement of the vehicle and negligence on the part of respondent No.1, the claimants have examined PW2 Rajesh Kumar witness of the occurrence, who had deposed that respondent No.1 was driving vehicle No.HR-66-5551 in a rash and negligent manner and hit the motorcycle of deceased Suresh. FIR Ex.P2 has also been registered on the statement made by PW2 Rajesh Kumar. This fact has not been disputed that name and make of the offending vehicle was not mentioned in the FIR Ex.P2. There is no dispute with the proposition of law that omission of the registration number of the vehicle in the FIR is no ground to decline the claim of the claimants if the involvement of the vehicle and negligence on the part of its driver is established from the evidence/material available on record. But when the story is suspicious with respect to the involvement of the vehicle, the claimants are required to lead cogent, convincing and reliable evidence to remove the suspicious

circumstances surrounding the involvement of the vehicle.

8. In the instant case, on the basis of evidence on record the learned Tribunal has mentioned about the involvement of respondent No.1 Dharampal, the driver, in nine other claim petitions. Such numbers of claim petitions against one particular driver is highly suspicious. It is settled principle of law that mere registration of criminal case cannot establish the case of the claimants. The claimants have to establish their case on the basis of evidence brought before the Tribunal. The claimants have only examined PW2 Rajesh on the point of negligence and involvement of the vehicle. The FIR Ex.P2 has been registered on the statement of PW2 Rajesh kumar wherein neither the registration number of the offending vehicle nor the name of the driver was mentioned. Even the make of the offending vehicle was not mentioned. Then this fact has not been clarified as to from where PW2 got information about the identity of the vehicle and its driver. In view of the highly suspicious circumstances created in the case in hand, due to involvement of respondent No.1 Dharampal in various claim petitions, the appellants should have examined the Investigating Officer of the case to clear all the doubts about the involvement of the vehicle and its driver. Thus, I have no reason to differ with the findings arrived at by the learned Tribunal that the involvement of the vehicle in question in the present accident is not established.

9. Consequently, there is no illegality in the impugned award passed by learned Tribunal.

10. Resultantly, the present appeal has no merits and the same is hereby dismissed.

11.01.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**