

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

FAO No.3781 of 2014.

Date of Decision: 29.03.2016.

Om Pati and another

....Appellants.

VERSUS

Sardara Singh and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vijay Singh Kajla, Advocate for the appellants.

SNEH PRASHAR, J.

Assailing the award dated 05.12.2013 passed by Motor Accident Claims Tribunal, Hisar (for short, “the Tribunal”) dismissing claim petition No.189 of 2011 of the appellants-claimants, they filed the instant appeal.

The facts garnered from the record are as under:-

A petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) was filed by the appellants alleging that Jagdish Chander (since deceased), husband of appellant No.1 and father of appellant No.2, had taken contract for construction of road from bypass to the Mill Gate i.e. Raipur Road. On 20.10.2010, he alongwith his son Rajesh had gone to the site to inspect the work done. At about 11:30 a.m., when they both were standing on the extreme left side of the road, a Swift car

bearing registration No.HR-10J-0041 (hereinafter referred to as the “offending car”) being driven rashly, negligently and in a high speed by Sardara Singh (respondent No.1) came from the side of Hansi and hit Jagdish Chander. As a result of accident, he suffered serious and grievous injuries and was got admitted in Jindal Hospital, Hisar by his son Rajesh. Respondent No.1 after causing the accident sped away from the spot.

Jagdish Chander remained hospitalized w.e.f. 20.10.2010 to 10.12.2010. Subsequently, he was again admitted in the hospital and he succumbed to the injuries on 19.10.2011. The dead body was subjected to postmortem at General Hospital, Hisar. A First Information Report No.941 dated 20.10.2010 was registered at Police Station Sadar, Hisar on the statement of Rajesh Kumar.

The appellants alongwith Rajiv (respondent No.5) claimed compensation to the tune of Rs.50,00,000/- from the driver, owner and insurer (respondents No.1 to 3) of the offending car. The third son of the deceased namely Sanjeev (respondent No.4 herein) was impleaded as proforma respondent.

The petition was contested by respondents No.1 to 3. In the joint written statement filed by respondents No.1 and 2, the factum of accident as alleged by the appellants-claimants was denied and false First Information Report was said to have been got registered. Respondent No.3-insurer besides raising all legal objections available to the insurer under the provisions of the Act of 1988 pleaded with emphasis that the petition had been filed in collusion with respondents No.1 and 2. On the basis of the

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 vide award dated 05.12.2013.

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

The submissions made by learned counsel for the parties have been heard and record perused.

To begin with, learned counsel for the appellant argued that Rajesh, eyewitness of the accident and lodger of the First Information Report, Sanjiv Soni, are real brothers being sons of deceased Jagdish Chander. They both had accompanied the deceased to the hospital after the accident but only the name of Sanjiv was mentioned by the doctor in the medico legal report Ex.P1 as the relative accompanying the injured. On getting information about the accident, Sanjiv had immediately reached the site of accident and taken his father to the hospital. Misappreciating the facts and evidence adduced by the appellants, learned Tribunal held that PW6 Rajesh was not present when the accident took place. Learned counsel further asserted that there was a delay of 22 days in lodging the First Information Report because initially the family members of deceased Jagdish Chander decided not to initiate any criminal action against the driver of the offending car. Subsequently, when the condition of the injured became serious, a report was lodged with the police by his son Rajesh and

the First Information Report was registered. In such circumstances, the finding of learned Tribunal that the offending car was not involved in the accident is factually incorrect.

The only eyewitness of the accident according to the appellants was Rajesh son of the deceased who appeared as PW6. By way of his affidavit Ex.PW6/A, he deposed that he and his father were standing on the katcha berm beside the road and he was 10-15 paces away from his father when the offending car came from the side of Hansi and hit his father. He also stated that the driver of the offending car sped away after causing the accident and that he got admitted his father in Jindal Hospital, Hisar for treatment. Importantly, in his cross-examination PW6 deposed that after the accident the driver stopped the vehicle but seeing the seriousness of his father he fled away from the spot with his vehicle and in the meantime, he (PW6) noticed the registration number of the vehicle. It was further stated by him that after the accident he summoned one person from Sector 1-4, Hisar. Learned counsel for the appellants argued that it was Sector 14, Hisar but due to typographical mistake it was mentioned as Sector 1-4 in the statement. Anyhow, during further cross-examination, PW6 stated that at the time of admission of his father in Jindal Hospital, the officials of the hospital took his signatures on several papers.

The testimony of PW6 Rajesh is not inconsonance with the facts apparent from the medical documents. Ex.P1 is the medico legal report prepared by the doctor on examination of injured Jagdish Chander when he arrived in the hospital. The name of the relative accompanying the injured is

mentioned as Sanjiv. The signatures on Ex.P1 at two places are also of Sanjeev. Rajesh stated that the hospital officials got signed several documents from him when he took his father to the hospital, but not a single such document was produced by him. Meaning thereby that he was not present with his father Jagdish Chander when he was admitted in the hospital and it was his other brother Sanjeev who was present.

According to PW6 Rajesh, there was no other person present at the time of accident when his father was hit by the offending car. It does not appeal to a prudent mind that Rajesh instead of immediately taking his father to the hospital to provide him medical assistance waited for his brother Sanjeev to come and then left him to take his father to the hospital. As observed above, in his cross-examination PW6 Rajesh stated that after the accident he called one person from Sector 1-4, Hisar. Even if it is taken to be Sector-14, Hisar, in which he was residing, yet it was not his deposition that he had called his brother Sanjeev from Sector-14, Hisar. He did not name the person whom he called after the accident. Had he called his brother he would have easily named him. In said set of facts, when according to the medical documents Sanjeev had taken the injured to the hospital, there remains no doubt that the claim of PW6 Rajesh that he was standing with his father when the accident took place and had eye-witnessed the accident was false. It is also noteworthy that Sanjeev did not step into the witness box to explain how and from where he had received information about accident of his father and had taken his father to the hospital in an injured condition. This also renders the story of the appellants

with regard to the accident doubtful.

The matter does not end here. It was stated by PW6 Rajesh that immediately after the accident when the driver stopped the offending car and then seeing the serious condition of his father the driver sped away, he noticed the registration number of the offending car. It means the identity of the offending car was known to PW6 Rajesh from the very beginning i.e. since the time of the accident. However, PW6 Rajesh admitted that he did not inform the police about the accident and it is also apparent that he did not accompany his father to the hospital. As per his own testimony he met the police many a times in the hospital and the first time he met them was 2-3 days after the accident, but for the reason not explained he did not lodge report with regard to the accident till 12.11.2010. The argument of learned counsel for the appellants that as stated by PW1 Dr. Shantanu Rawat the Ruqa (police information slip) Ex.P2 was sent on 10.11.2010 because earlier the family members of the injured had required not to initiate medico legal proceedings, is devoid of merit. When the medico legal report Ex.P1 was prepared on 20.10.2010, there was no reason for the hospital to withhold information regarding admission of an injured of a motor accident. To send information was a legal obligation on the hospital and the family of the injured could not have stopped the doctor from doing so. The doctor PW1 admitted that the hospital is bound to send the "Ruqa" as and when the patient is admitted with history of roadside accident.

It is noteworthy that in the medico legal report Ex.P1, the history was written as under:-

“ H/o RSA ”

The note of history in such short form only indicates that the said words were later on added in the medico legal report Ex.P1 and for that reason the police information slip Ex.P2 was also sent after about 20 days. Otherwise also, in case as stated by PW1 Dr. Shantanu Rawat the relatives of the injured had told the hospital not to initiate medico legal proceedings, he could not explain even one reason for still preparing the medico legal report. Resultantly, the apparent intentional delay of 22 days in lodging of the First Information Report, missing of details of accident in the medical documents and inconsistency in the statement of PW6 Rajesh render the alleged narration of accident by the witnesses completely doubtful. It is also apparent that Rajesh was not an eyewitness of the accident. He and the vehicle were subsequently introduced.

Since the appellants failed to prove the identity of the vehicle involved in the accident, learned Tribunal rightly dismissed the petition and the award warrants no intervention.

Thus, there being no merit in the appeal, it is dismissed.

(SNEH PRASHAR)
JUDGE

29.03.2016.
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