

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

FAO-3268-2015

Date of decision: 15.02.2016

Smt. Sheetal and others

...Appellant(s)

Versus

Rajbir and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sanjay Mittal, Advocate,
for the appellant(s).

JITENDRA CHAUHAN, J.

This appeal is directed against the award dated 28.01.2015 passed by Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal) vide which the claim application filed under Section 166 of the Motor Vehicle Act, 1988 (for short 'the Act') by the claimants was dismissed.

The widow, minor son and mother of the deceased Vikas Kumar filed claim petition under Section 166 of the Act before the Tribunal. It was averred in the petition that on 01.01.2015, the deceased Vikas Kumar was going on his motor cycle bearing registration No. HR-36-P/6568 and when he reached near the field of Bir Singh of Village Dhawana, the offending

vehicle i.e. Dumper, bearing registration No. RJ-21-G/2919, being driven in rash and negligent manner by the respondent No. 1, Rajbir, came from the opposite direction and hit the motor cycle of Vikas Kumar, which resulted into his death. FIR No. 1 dated 01.01.2013 under Sections 279 and 304-A IPC and Section 196 of the Act was registered in Police Station Khol, District Rewari, against Rajbir.

It was further claimed that the deceased was 26 years old at the time of his death. He was employed as an operator in M/s YKK Ltd. Bawal and was earning Rs. 50,000/- per month.

The respondents No. 1 and 2 i.e the driver and owner of the offending vehicle appeared and filed written statement admitting the factum of accident but attributed it to the sole negligence of the deceased.

The Insurance Company appeared and filed separate written statement denying the factum of accident for want of knowledge.

Both the parties led their evidence. After appraisal of evidence, the Tribunal dismissed the claim petition on the ground that the identity of the vehicle involved in the accident was not established. It has further been observed by the Tribunal that the sole witness of the accident i.e. PW-4, Azad Singh did not disclose the number of the vehicle to the police for one month and two

days.

It is contended on behalf of the appellant that the Tribunal fell in grave error in dismissing the claim petition. There was sufficient evidence to prove the identity of the vehicle in question but the same has not been taken into consideration by the Tribunal.

I have heard learned Counsel for the parties and gone through the case file.

The sole question arising for consideration in this case is whether the identity of the offending vehicle is proved or not. The accident is alleged to have taken on 01.01.2013 at 9:30 a.m. As per the version put forth in the FIR Ex. P1, there was dense fog at the relevant time due to which author of the FIR or the pillion could not notice the registration number of the offending vehicle. On information, the police reached the spot where Ashu Singh, the maternal uncle of the deceased projected himself as an eye witness and lodged the complaint.

For the reasons best known to the complainant, the eye witness, Ashu Singh has not been examined by the claimants. The testimony of PW-4, Azad Singh does not inspire the confidence because the witness disclosed the registration number of the offending vehicle after a gap of one month and two days. If this witness had actually seen the vehicle in question at the time of

accident, he would have disclosed the same to the maternal uncle of the deceased who was present at the time of accident. Not only that, the witness deposed that he met the Police on 03.02.2013 at the bus stand Dhawana and recorded his statement disclosing the number of the registration. As per this witness, he knew the deceased and his father also. The distance of village of this witness is 7 k.m from the village of the deceased. There was no obstruction to the witness to go to the village of the deceased and disclose the number of the vehicle to the family members of the deceased. PW-4 neither disclosed the number of the vehicle to the maternal uncle of deceased at the time of accident nor to his family members thereafter. The conduct of the witness shows that the identity of the vehicle was not known to him and only to get compensation from the Insurance Company, false case has been projected. This being so, this Court does not find any infirmity in the award passed by the Tribunal.

Consequently, the appeal is dismissed.

15.02.2016*sumit***(JITENDRA CHAUHAN)
JUDGE**