

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

FAO No. 418 of 2015 (O&M)

Date of decision:06.05.2016

Smt.Fata and ors.

...Appellant(s)

Versus

Waris Khan and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Barjinder Singh, Advocate,
for Mr. Ashish Gupta, Advocate,
for the appellant(s).

Mr. Sandeep Suri, Advocate,
for respondent No. 2.

JITENDRA CHAUHAN, J.

This is claimants' appeal whereby the claim petition filed by them under Section 163-A of the Motor Vehicles Act, 1988, being mother, widow and children of deceased Talib seeking compensation for the death of the deceased, was dismissed.

The brief facts of the case are that the vehicle in question was driven by Umar S/o Nazir. While he was near Ishak Hotel after crossing village Malab, one 10 tyre LP truck suddenly applied brakes forcing the driver to take a sudden cut in order to save themselves, as a result of which, the back side of the Alto car struck against the truck.

As a result, Talib, who was sitting on the rear seat towards conductor

side, received multiple injuries and died on the spot.

The arguments raised by the learned counsel for the appellants are that the learned Tribunal while dismissing the claim petition of the appellants have totally ignored the fact that M.A.C.T proceedings are non-adverse in nature and strict proof of evidence are not required as in criminal cases. In M.A.C.T. cases, a lenient view is required to be taken while deciding the claim petition as the appellants have already led sufficient evidence to prove their claim petition. There is no rebuttal to factum of accident as projected by the claimants. Therefore, in these circumstances, the claim petition of the appellants ought to have been allowed and the impugned award is liable to be set aside as the same is not sustainable in the eyes of law.

It is further submitted that non-examination of the Investigating Officer of the FIR cannot be said to be fatal as it is not mandatory as per the requirement of the law. The factum of accident in question has also not been denied even by the respondents.

On the other hand, the learned counsel for respondent No. 2 has controverted the submissions raised by the learned counsel for the appellant and contended that the award has been rightly passed by the learned Tribunal.

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

It has been alleged in the claim petition that the accident in question took place due to sudden applying of brakes by the driver of

10 tyre LP truck. However, in his affidavit Ex. PW-2/A Javed has deposed that Umar was driving the vehicle at a high speed rashly and he did not pay any heed to their advice, and when they reached near Ishak Hotel, the car struck against a tree. However, as per the aforesaid FIR, the car was struck against the 10 tyre LP truck. Therefore, two contradictory versions have come on file, hence, testimony of Javed, PW-2 regarding the accident having taken place in the manner, is not believable.

Moreover, the petitioner has not examined the investigating officer of the aforesaid FIR to know the result of the investigation of this case. Had the petitioner examined the Investigating Officer, it would have been possible for the Court to ascertain as to whether the aforesaid accident has taken in the manner as deposed by Javed, PW-2 or in the manner given in FIR Ex.-P1. The petitioner has also failed to prove on record as to whether the vehicle in question has been damaged in the aforesaid accident or not. Therefore, in the absence of such damage report to the vehicle in question in the aforesaid accident, it cannot be assumed that the aforesaid accident has taken place out of use of the vehicle in the manner given out by Javed, PW-2 in his affidavit Ex.-PW-2/A. Therefore, in the considered opinion of this Court the accident in question, resulting into death of Talib, has not taken place arising out of use of this vehicle.

The learned Tribunal has rightly returned the findings on the issues under adjudication and has correctly dismissed the claim

petition. No interference by this Court is called for.

Dismissed.

06.05.2016

sumit

(JITENDRA CHAUHAN)
JUDGE