

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

**FAO No.5036 of 2015 (O&M)
Date of Decision: February 09, 2016.**

New India Assurance Company Limited

.....APPELLANT(s).

VERSUS

Bala Devi and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. R.C. Gupta, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is appeal filed by New India Assurance Company against the award dated 30.04.2015 passed by Motor Accident Claims Tribunal, Bhiwani (later on referred to as 'the Tribunal') whereby the claim petition filed by respondents No.1 and 2 under Section 166 of Motor Vehicles Act, was allowed.

The case of the claimants, in brief, is that on 13.01.2014, Bhupinder son of claimants, along with Narinder, both employed in the poultry farm of Balwan Singh son of Jai Lal, were going to village Rohnat on motorcycle. Bhupinder was driving the motorcycle and Narinder was pillion rider. Balwan Singh was going to Hansi in his Swift car to get his machine repaired and was behind the motorcycle of Bhupinder. At about 07.15 P.M. when the motorcycle was at a distance of 15 feet from Bus Stand

Alakhpura, a Swift car bearing registration No.HR-19-H-3457 (later on referred to as 'the offending vehicle') came from opposite side at a very high speed. It was being driven by respondent No.1 Anoop Singh in a rash and negligent manner and hit the motorcycle of Bhupinder and Narinder, who fell on the road and received multiple fatal injuries. Balwan Singh stopped his Swift car and identified them. Narinder died at the spot while Bhupinder was taken to Sarvodya Hospital, Hisar, where he later succumbed to the injuries. The matter was reported to the police and FIR No.16 of 14.01.2014 was registered at Police Station Tosham on the statement of Balwan Singh.

In reply, respondents No.1 and 2 i.e. driver and owner of the offending vehicle, denied the accident and alleged their false implication.

Appellant-insurance company (respondent No.3 in the claim petition) in its separate reply, also denied the accident.

On appraisal of evidence, the Tribunal recorded the finding that the accident had taken place due to rash and negligent driving of the offending vehicle by respondent No.1.

Learned counsel for the appellant has assailed the above findings of the Tribunal and argued that in the FIR, the number of the offending vehicle or name of the driver was not mentioned. It was after a gap of two months, the identity of the offending vehicle was disclosed and Anoop Singh was named as driver of the offending vehicle. He has argued that the author of the FIR registered in this case did not appear to depose in favour of the claimants. Claimants examined PW3 Ramehar as eyewitness of the occurrence. Testimony of this witness is not reliable as he has stated

that after the accident, he was in hurry to reach his house and left the place of

accident after some time. He had seen the driver of the offending vehicle when he was in police custody. There is no explanation as to why he did not report the matter to the police with all promptness immediately after the accident.

Admittedly, number of the offending vehicle and name of its driver are not mentioned in the FIR registered on 14.01.2014. Ramehar eyewitness while appearing as PW3, has given the number of the offending vehicle and also named respondent No.1 as its driver. He has stated that respondent No.1 was driving the offending vehicle in a rash and negligent manner at a high speed and caused the accident. In cross-examination, he has stated that he had no contacts or relations with the claimants. He had made statement before the police on 15.01.2014 at Bus Stand, Tosham in the shape of affidavit, which was got prepared by him in the Court compound, Tosham and number of offending vehicle was noted by him at the spot.

The police after investigation presented final report against driver of the offending vehicle, who was charge-sheeted on 30.05.2014 for causing death of Narinder in the accident. As per post-mortem report on file Ex.P9, Bhupinder had died on 19.01.2014 because of the injuries received by him in the accident. The police had taken the offending vehicle into possession vide recovery memo (Ex.P6). The vehicle was got mechanically examined and in the report of mechanic (Ex.P7), left side headlight and bumper were found in broken condition which shows that the offending vehicle had met with an accident. The above factors corroborate the testimony of PW3 Ramehar. Respondents in the claim petition, including the appellant, failed to examine the driver of the offending vehicle to rebut or

controvert the evidence produced on record. Even the owner of the offending vehicle has not appeared in the witness box to explain as to how the front light and bumper of his vehicle got damaged.

Taking into account all the above facts and circumstances, I am of the considered opinion that the Tribunal has committed no error of law or fact while relying on the statement of PW3 Ramehar and report of mechanic (Ex.P7), for reaching the conclusion that the accident had taken place due to rash and negligent driving of offending vehicle by respondent No.1. The argument of learned counsel for the appellant challenging the above observation of the Tribunal has no merit, as such, discarded.

No other point has been argued.

In view of my above discussion, this appeal has no merits.

Dismissed.

February 09, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE