

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

FAO-821-2014 (O&M)

Date of decision: 15.02.2016

Kelawati @ Kello and others

...Appellants

Versus

Dinesh Kumar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ramender Chauhan, Advocate,
for the appellants.

JITENDRA CHAUHAN, J.

This is claimants' appeal challenging the impugned award dated 05.12.2013, passed by the learned Motor Accident Claims Tribunal, Bhiwani, (for short, 'the Tribunal'), whereby, their claim petition has been dismissed.

Brief facts leading to the filing of the present appeal are that the claimant-appellants filed claim petition averring therein that on 27.07.2012, at about 7.00 A.M., Randhir (since deceased) met with an accident due to the rash and negligent driving of a car bearing registration No.HR-16F-6700. He succumbed to the injuries on the spot, whereas, the offending driver fled away from

the spot along with the car involved in the accident. It was further averred that at about 7.30 a.m., one Jaibir son of Rishal, firstly saw the accident and informed the brother of the deceased, namely, Biru, whereupon, the family members of the deceased reached the spot and identified the dead-body of Randhir.

The claim petition was contested by the respondents. In their written statement, respondent Nos.1 and 2 stated that no accident, as projected, ever took place. The FIR was registered against an unknown vehicle and the alleged offending vehicle was introduced subsequently after a long delay.

In its separate written statement, respondent No.3, Insurance Company, pleaded that the identity of the driver as well as the offending vehicle was not proved as neither the name of the driver nor the registration number or type of the vehicle alleged to have caused the accident, was mentioned in the FIR.

After hearing learned counsel for the parties and perusing the evidence brought on record, the learned Tribunal dismissed the claim petition filed by the claimants by holding that the claimants have failed to prove that the accident took place due to rash and negligent driving of the alleged offending vehicle by respondent No.1.

Hence, the present appeal.

The learned counsel for the appellants contends that the registration of the FIR against the offending driver is sufficient to prove that the accident was caused due to his rash and negligent driving. All the prosecution witnesses have supported the case of the claimants.

I have heard learned counsel for the appellants and perused the record.

In this case, the FIR, Ex.P1, was authored by Biru, PW2, alleging therein, that on the fateful day, one Jaibir came to his house and informed that his brother Randhir was lying dead on the road. After reaching the spot and on making enquiries, Biru came to know that some unknown vehicle had hit his brother and fled away from the spot. On the contrary, during his examination-in-chief as PW2, this witness stated that on 27.07.2012 at about 7.00 p.m., deceased Randhir came to Bhiwani for some personal work when he reached on the main Chang-Bhiwani road, a car bearing registration No.HR-16F-6700, hit against deceased, Randhir, who died on the spot due to the injuries suffered by him. It was further deposed that at about 7.30 a.m., one Jaibir son of Rishal, resident of Chang first saw the accident and informed him that one car had hit his brother and he was lying dead on the road. However, during his cross-examination, he admitted that the

accident did not take place in his presence and that his brother was hit by some unknown vehicle. He further stated that when he reached the spot, the dead body of his brother was lying in the middle of the road and no person or vehicle was seen there. He further deposed that he did not know as to which vehicle was involved in the accident till date, he was not aware of the registration number of the offending vehicle. He further admitted that he had not stated in his affidavit that it was respondent No.1, who had caused the accident.

Similarly, the statement of PW3, Jaibir, who is the alleged eye-witness of the accident, also does not inspire any confidence. In his affidavit, Ex.PW3/A, this witness stated that the accident took place due to the sole rash and negligent driving of Maruti Alto Car bearing registration No.HR-16-F-6700 by respondent No.1 and he had passed this information to the family members of the deceased. During his cross-examination, he has specifically stated that he gave the registration number of the vehicle in question to Biru at his house at 7.00 A.M. As against this, FIR, Ex.P1, which was lodged at 9.00 A.M. on the same day, i.e. 27.07.2012, there is no mention of either the name of the driver or the details of the offending vehicle. He also did not know the name of the driver of the offending vehicle till the date of his

examination. A copy of the report under Section 173 Cr.P.C. (Mark RA) reveals that PW3, Jaibir, is not even named as eyewitness, in the list of witnesses attached therewith. Even otherwise, the FIR was lodged against unknown driver and unknown vehicle and respondent No.1 came to be arrested by the police 67 days thereafter.

In these circumstances, the inescapable conclusion is that the claimants have failed to prove that the accident in question was caused due to rash and negligent driving of the alleged offending vehicle by respondent No.1. Thus, their claim has rightly been rejected by the learned Tribunal.

In view of the above, no case for interference in the impugned award is made out.

Dismissed.

15.02.2016
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(JITENDRA CHAUHAN)
JUDGE