

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

FAO No. 9518 of 2014 (O&M)

Date of decision: 14.01.2016

Dalbir Singh and another

... Appellant

versus

Maninder Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Aditya Sanghi Advocate for the appellants.

Mr. Vivek Suri, Advocate for respondent Nos. 1,2,5 & 6.

K.Kannan, J. (ORAL)

The driver and the owner were found responsible for causing the death of a person who was a motor cyclist. The involvement of the vehicle was admitted. The accident resulted in death is also an admitted fact. Against the award granting compensation to the representatives of the deceased, the point urged in the appeal is that the deceased was under the influence of liquor and there was no proof that the death was on account of negligent driving. In a case of death of a pedestrain on the road, I will look no more than the involvement of vehicle as relevant for consideration for a claim before the Tribunal. The element of proof of negligence is negligible when case of death of a cyclist or motor cyclist. In any state of collision between two vehicles, as the common sense dictates, the vehicle which is heavier must take the brunt of blame for accident. Normally, the cyclist by himself does not cause any serious injury to any other person. It is the

movement of motor cycles which expose persons to risk and therefore the Motor Vehicles Act contains provisions for providing compensation for persons who are injured or to the representatives in the cases of death where the injuries or death are the resultant to the use of motor vehicles. I will make no bones of this issue that no FIR was registered immediately after the accident and that a complaint was given only about 5 days after the incident. A delayed complaint could be a cause for doubt where the involvement of vehicle is put in challenge. However, the involvement of vehicle itself is not doubted then issue of delayed complaint loses much of its relevance. Drunken driving is itself an offence and if there is a death of such a person it will be no argument for the driver of yet another vehicle to state that the deceased was in a drunken state and that he did not deserve sympathy. Perhaps there is a greater reason for circumspection for persons driving heavier vehicles to ensure that they put all the care to factor even the negligence of other road users.

There was a sure case of the Court relying on the investigation that had been carried out that implicated the driver of the car but there had been no medical record that the deceased himself was in a drunken condition. Even postmortem had not been done and it is difficult to vouch for the so called drunken condition.

The owner and the driver of the car must take a greater blame when he was putting a vehicle on road even without taking an insurance which is compulsory. Driving an uninsured vehicle is an

offence under Section 196 and the driver himself ought to have been prosecuted. If there had been no prosecution levied against the driver, I direct the police of the jurisdiction to register a complaint against the driver and take it to the logical end.

I will make no intervention with the award passed by the Tribunal and dismiss the appeal. The order copy is also directed to be sent by the Registry to the driver and owner of the vehicle which was found to be involved in the accident.

There are some documents filed for inclusion as additional evidence which are statements of other persons that show that this vehicle was not involved in the accident. Statement of living persons not before the Tribunal but elsewhere cannot constitute evidence per se. There is also no justification for not filing any of these documents, if at all there are worthwhile before the Tribunal. I reject the attempt to introduce the additional evidence in appeal as irrelevant and inadmissible.

(K.KANNAN)
JUDGE

14.01.2016

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