

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

544

FAO-2112-2003

Decided on : 30.10.2017

Piara Singh

*... Appellant**Versus*

Raghubir Dass and others

*.. Respondents***CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present : Mr.Malkeet Singh, Advocate
for the appellant.

Ms.Manju Sharma Kaushik, AAG, Punjab.

Mr.P.K.Suri, Advocate for
Mr.R.S.Chauhan, Advocate for Punjab Roadways, Chd.

Avneesh Jhingan , J. (Oral)

The present appeal has been filed against the award passed by
Motor Accident Claims Tribunal, Nawanshahr (for short 'the Tribunal').

2. The issue involved in the present appeal is whether the onus
put on the claimants under Section 166 of the Motor Vehicles Act, 1988
of proving the involvement of the vehicle and rash and negligent driving
has been discharged or not.

2. On 9.8.1998, Bhagat Ram aged 62 years lost his life in an
alleged motor vehicular accident. FIR No.79 dated 9.8.1998 was
registered at Police Station Balachaur.

3. The legal heirs of Bhagat Ram filed a claim petition under
section 166 of the Act. The said claim petition was dismissed by the
Tribunal on the ground that the claimants failed to prove the involvement
of the alleged offending bus bearing registration No.PB-12C-9459.

4. Aggrieved of the said award, the present appeal has been filed.

5. Learned counsel for the appellant argued that in support of their claim petition, claimants produced AW-2 Jagjit Singh who was the eye witness and one Piara Singh who supported the contents of the claim petition. He contended that there is no dispute that Bhagat Ram lost his life and that there was an accident. Hence, the Tribunal erred in dismissing the claim petition.

6. Learned counsel for the respondents argued that no worth reliance witness was produced by the claimants to prove that the offending bus of Punjab Roadways was involved in the said accident.

7. The legal position with regard to discharge of onus under Section 166 of the Act has been settled by the Hon'ble Apex Court in **Surender Kumar Arora and another Vs. Dr. Manoj Bisla** and others, 2012 (4) SCC 552 held as under:-

10. In our view the issue that we have raised for our consideration is squarely covered by the decision of this Court in the case of Oriental Insurance Co. Ltd. (supra). In the said decision the Court stated : "....Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or

his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

A perusal of the above decision, it has been held that the onus lies upon the claimants to show that the accident occurred as a result of rash and negligent driving of the offending vehicle.

8. As per law enunciated, in the proceedings under Section 166 of the Act, the onus is upon the claimants to discharge that offending vehicle was involved in the accident and that the accident occurred due to rash and negligent driving of the offending vehicle.

9. In the present case, the relevant witnesses for supporting the claim of the claimants are Jagjit Singh AW-2 and Piara Singh AW-3. From the perusal of the cross examination of their statements, it is evident that both of them deposed that they were not present at the time of accident. The Tribunal has reproduced the relevant portion of the cross-examination in its award. Rather, Jagjit Singh appears to be the first person who reached the spot. In his statement, he only said that he heard a sound while working in his fields. When he rushed to the spot, he saw that Bhagat Ram was lying on the road and his grand-son Balbir Singh was present there. Both these statements nowhere proves that Bhagat Ram received injuries from the offending bus. Balbir Singh grandson who according to Jagat Singh was present at the spot never stepped into witness box. In such circumstances, no fault can be found with the award passed by the Tribunal.

10. The other aspect which is to be considered is that the claimants had one more hurdle to cross i.e. to prove the rash and

negligent driving of the vehicle. There is no iota of evidence on record to prove involvement of vehicle what to say to prove rash and negligent driving of the offending bus.

10 There is no merits in the appeal and the same is dismissed.

[Avneesh Jhingan]
Judge

30.10.2017

sd

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No