

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO No. 461 of 2003 (O&M)

Date of Decision: 23.10.2017.

Banwari Lal

.....Appellant

**Versus**

Satish Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vivek Suri, Advocate  
for the appellant.

Mr. Binat Sharma, Advocate for  
Mr. A.S. Sidhu, Advocate  
for respondent No.3.

Mr. Gurnam Singh, Advocate for  
Mr. V.P. Singh, Advocate  
for respondent No.4.

**AVNEESH JHINGAN, J.**

The present appeal is against the award dated 24.10.2002 passed by the Motor Accidents Claims Tribunal, Patiala (for short 'the Tribunal').

This was burnt case and has been reconstructed from the salvaged record and copies supplied by counsels subject to all just exceptions.

The present appeal has been filed by the claimant against the dismissal of claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'). The claim petition was dismissed as the claimant failed to prove involvement of Maruti Van bearing registration No. CH-01-C-8973 in the accident.

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

The brief facts necessary for adjudication of the present appeal

are noted below:

On 7.12.1998 Banwari Lal allegedly met with an accident, as a result of which he suffered fracture on his right leg and right shoulder. He was taken to Civil Hospital, Rajpura and subsequently was referred to Rajindera Hospital, Patiala. He remained indoor patient till 25.1.1999. The claimant had to undergo two major operations. DDR No. 9 dated 7.12.1998 was reported at Police Station Focal Point, Rajpura.

The claim petition under Section 166 of the Act was filed by the claimant.

In support of the claim petition, the appellant himself appeared as CW1 and one Bhupinder Kumar appeared as CW4. It may be mentioned here that Bhupinder Kumar, was the alleged eye witness. DDR was exhibited as Ex.R1. The contents of Ex.R1, when compared with the claim petition, are contradictory. As per the DDR the appellant had stated that some vehicle came from the back and struck against the cycle due to which he suffered injuries. It was further stated that he was a safai sewak and was going towards Petrol Pump for doing cleanliness work. After the accident, one Kishan who was at Petrol Pump took him to the hospital. In the claim petition it was claimed that the appellant was struck by rashly and negligently driven Maruti Car bearing registration No.CH-01-C-8973. Apart from the contradiction in the DDR and the claim petition, the claimant was not able to discharge its onus, regarding involvement of the said Maruti van in the accident.

Hon'ble the Apex Court in **Surender Kumar Arora and another Versus Dr. Manoj Bisla and others**, 2012 (4) SCC 552, has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on

the claimant.

In the above referred decision, the law has been initiated that the claimant has to discharge the onus regarding involvement of the vehicle.

Learned counsel for the appellant has argued that it is not disputed by the respondents that the accident took place and there was an injury. He further argued that the onus stood discharge as soon as the appellant himself deposed before the Tribunal and Bhupinder Kumar who was an eye witness to the accident also supported the claim petition.

Learned counsel for respondents No. 3 and 4, on the other hand, contended that apart from the contradiction in the contents of the DDR and the claim petition, there were contradiction in the contents of the complaint. From the reading of the statement of CW1, it is evident that he admitted that at the time of accident and reporting the DDR, neither the number of the vehicle was known to him nor he had mentioned about any eye-witness.

It would be appropriate to mention at this stage that in DDR it was mentioned that accident occurred due to darkness and due to fog. The DDR was lodged by the appellant himself. The statement in DDR appears to be correct as in the month of December, fog is there. In case, the vehicle struck from the back as mentioned in the DDR and there was fog, the appellant could not have noted the registration number of the offending vehicle.

The matter does not end here, in his statement, CW1 states that he came to know about the driver, owner and the vehicle after 3-4 months of the accident. It has not come on record as to how the claimant became aware about the involvement of the said vehicle. The star witness produced by the

claimant is one Bhupinder Kumar. He has supported the version of the claimant but it was not proved that Bhupinder Kumar was present at the time of accident. His name finds no mention in the DDR. He was not the person who had taken the claimant to the hospital. The claimant himself stated that apart from Bhupinder Kumar, there was one Ram Kumar, who was there at the time of accident, but for reasons best known, Ram Kumar was not examined. The relevant witness would have been Kishan who took the claimant to the hospital, even he was not examined.

In view of the contradiction and the fact that the most important witness never deposed before the Tribunal, no fault can be found with the award passed by the Tribunal.

The claimant had failed to establish the involvement of the said Maurit Car in the accident.

Finding no merit in the present appeal, the same is dismissed.

**23.10.2017**  
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**(AVNEESH JHINGAN)**  
**JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No