

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

FAO-107 of 2003

Date of decision: 20.12.2017

Munni Devi and others

.... Appellants

Versus

Dharam Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Atul Gaur, Advocate for
Mr. Sameer Rathaur, Advocate
for the appellants.

Mr. Ishaan Cooner, Advocate for
Mr. J.S. Cooner, Advocate
for respondents No. 1 and 2.

Mr. Lalit Garg, Advocate
for respondent No.3.

Avneesh Jhingan, J.

The present appeal has been filed being aggrieved of award dated 25.11.2002 passed by the Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') dismissing the claim petition filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

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

Jaspal Singh died on 24.02.1999 as a result of injuries suffered allegedly in a motor vehicular accident that occurred on 19.02.1999. It was alleged that the offending vehicle in the said accident was truck bearing

registration No. HYR-9927. A claim petition was filed by the legal heirs of the deceased but the same was dismissed by the Tribunal on the ground that the claimants were not able to prove the involvement of the offending vehicle.

At the time of the accident Chander Pal was a pillion rider on the scooter of Jaspal Singh. The FIR was lodged on 20.02.1999 on the statement made by Chander Pal. The said FIR was against the unknown vehicle stating the accident to be a hit and run case. It would be worthwhile to mention here that during the claim proceedings Chander Pal was not examined by the claimants.

The entire reliance of learned counsel for the appellants is on the statement of Ram Niwas the alleged eye witness to the accident.

Learned counsel for the respondents have defended the award and argued that the Tribunal has not relied upon the statement of Ram Niwas as it was not proved that he was present at the place of occurrence.

I have heard learned counsel for the parties, perused the paperbook and the record.

Apart from the contradiction between the version of accident as mentioned by Chader Pal and Ram Niwas, the statement of Ram Niwas when read alongwith the statement of the Investigating Officer makes interesting reading. Ram Niwas stated in his examination that the offending vehicle overtook his truck and the same was being driven rashly and negligently. According to him, the said offending vehicle hit a scooterist who fell down and was lying unconscious. He admitted that he stopped for short time but left the place of accident on the apprehension that people will beat him. He further stated that he had disclosed the truck number and the

manner of accident to various people on his way to Shahzadpur. He further emphatically stated that his statement was recorded by the police on 24.02.1999 as police from police station Mullana visited his residence for inquiry.

The said statement was not found worth reliance by the Tribunal and the Tribunal has recorded various reasons for that. There was no detail given even of a single person with whom Ram Niwas shared the truck number and the manner of accident. He had not stated that on his way to Shahzadpur he had given this information to some police personnel. There was a mystery as to how police from police station Mullana visited his residence for inquiry. There was an alleged statement recorded on 24.02.1999, the said statement had not seen the light of the day. Rather, the Investigating Officer when examined before the Tribunal in his cross examination admitted that the statement of Ram Niwas was recorded after around six months from the date of accident whereas according to Ram Niwas his statement was recorded on 24.02.1999.

For the reasons best known to the appellants the person who was admittedly present at the time of accident i.e. Chander Pal was held back.

The law is well settled that under Section 166 of the Act, onus is upon the claimants to prove involvement of the offending vehicle and rash and negligent driving of the offending vehicle.

The Hon'ble 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.

The Hon'ble Apex Court has also held that it is not that the claimants have to prove beyond doubt the involvement of the offending vehicle or rash and negligent driving of the offending vehicle but it is to be decided on principle of preponderance. Reliance is placed upon ***Bimla Devi and Ors. Vs. Himachal Road Transport Corpn. & Ors., 2009 (3) RCR (Civil) 805.***

Even testing the evidence on the principles of preponderance the statement of the alleged eye witness cannot be relied upon as it is not even evident that he was present at the place where accident occurred. Apart from that the missing link as to how police came to know about the details of Ram Niwas and the fact that he was an alleged eye witness to the accident is also missing. Apart from this it is pertinent to note that initially the FIR was registered against an unknown vehicle. Chander Pal was not examined. The delay of six months in recording the statement of Ram Niwas clearly raises a cloud of doubt on the fact that he was the alleged eye witness to the said accident. In such circumstances, no fault can be found in the award passed by the Tribunal dismissing the claim petition.

Appeal stands dismissed.

(AVNEESH JHINGAN)
JUDGE

20.12.2017

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1. Whether the order is speaking/reasoned: Yes/No

2. Whether the order is reportable : Yes/No