

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

**FAO No.3411 of 1999 (O&M)
Date of Decision: May 12, 2017**

Kalawati and another

..Appellant(s)

Versus

Rajesh Kumar and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Surinder Gandhi, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent no.3-insurance company.

Mr. Sailender Singh, Advocate
for respondent no.4.

ANITA CHAUDHRY, J.

This is the claimants' appeal aggrieved with the dismissal of the claim petition by the Motor Accident Claims Tribunal, Ambala dated 01.06.1999.

The counsel for the appellants states that there were two petitions and one of them was allowed and sought time to produce the order. It would be irrelevant as if the evidence produced in this case which has to be seen.

Last opportunity had been granted to the appellants to make their submission. The case has been repeatedly adjourned on the request of the appellants for the last five dates. It was in February, 2015 the

counsel for the appellants had sought time to arrange part of the record that was available with the counsel of the lower Court as the record of this file had been burnt in the fire accident which had taken place in the year 2011. No record had been filed in the last two years. Only the copy of the award could be reconstructed. The copy of the award has been placed on record by the counsel for the insurance company. The copy of the claim petition is available with the counsel for the appellant and has been perused.

In the heading of the petition, the reference is to Section 166, 163-A and Section 140 of the Motor Vehicles Act but the opening paragraph of the judgment shows that the claim petition was treated under Section 166 of the Motor Vehicles Act and rightly so as the claimants had pleaded that the accident had occurred on account of negligence of respondent no.1. The issues were framed on the basis of the pleadings.

The claimant had pleaded that Dharampal was travelling in a canter and was going from Parwanoo to Madras and the vehicle was driven by Rajesh – respondent no.1. The canter had reached village Sathana when a Rajasthan when a truck came from the opposite side at a high speed and while overtaking another vehicle came to the wrong side of the road and struck against their canter. The driver of the canter had taken his vehicle to his extreme left side. It was pleaded that the accident took place on account of negligent driving of truck bearing registration no.HR-11-1096. The vehicle was owned by respondent no.4 and was insured with respondent no.3.

Respondents no.1 & 2 denied that the accident had occurred on account of their negligence. The insurance company took the plea that both the trucks were insured with them and denied the allegation. It was pleaded that none of the drivers were at fault. On these pleadings the following issues were framed:-

1. Whether Dharam Pal had died in a motor vehicle accident caused by rash and negligent driving of canter no.HR03-A-0851 or truck No.HR11-1096 as alleged? OPP
2. Whether insurance company of the canter and the truck is not liable to pay compensation for the reasons mentioned in the preliminary objection? OPP-3
3. To what amount of compensation the petitioners are entitled to and if so, from whom? OPP
4. Relief.

The claimants had examined one witness and had tendered the copy of the FIR Ex.P1.

The counsel for the claimants had stated that he did not have copy of the FIR with him. The same was also not available with counsel appearing for the respondents.

The submission on behalf of the claimants was that the claim petition had been filed under Section 163-A of the Motor Vehicles Act and therefore, it should have been considered as a petition under Section 163-A of the Motor Vehicles Act and they were not to prove the negligence and the claim should have been allowed as the accident was admitted by respondents no.1 & 2. The counsel further submits that they had examined the claimant and had tendered the FIR and the contents of the FIR should have been considered.

The submission on the other hand was that the claim petition was considered under Section 166 of the Motor Vehicles Act and the opening paragraph of the judgment also says that the petition was under Section 166 of the Motor Vehicles Act.

The claimants have not produced their own record to show that any application had been made to treat the petition under Section 163-A of the Motor Vehicles Act. They had pleaded negligence on the part of the driver and therefore, the issue of negligence had been framed. No eyewitness was examined. Only the copy of the FIR was tendered in evidence.

The claimants had failed to examine any eyewitness. Merely tendering the FIR in evidence was not enough to hold any driver responsible for the accident. I see no infirmity in the findings recorded by the Tribunal. It was a case of no evidence.

The findings are affirmed and the appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

May 12, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No