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

FAO-759-1998 (O&M)

Date of decision: 09.05.2017

MANJIT KAUR AND ANOTHER

... Appellants

versus

MANOHAR LAL & ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. B.B.S. Sobti, Advocate,
for the appellants.

Mr. V. Ramswaroop, Advocate,
for respondent No.4.

HARI PAL VERMA, J.

The appellants-claimants have filed the present appeal against the award dated 02.12.1997 passed by Motor Accident Claims Tribunal, Ludhiana (for short, 'the Tribunal') whereby their claim petition filed under Section 166 of the Motor Vehicles Act, for grant of compensation on account of death of Malkiat Singh (husband of claimant/appellant No.1 and father of claimant/appellant No.2), was dismissed.

Briefly stated, the appellants-claimants (herein referred as 'claimants'), who are the legal heirs of deceased-Malkiat Singh, have filed a claim petition, claiming therein that the deceased, at the time of his death, was 36 years of age and was working in Horticulture division

of PWD, Ludhiana. He was getting salary of ₹1,960/- per month and also earning ₹1,000/- per month from a gurdwara for the services rendered by him there. As per the claim petition, on 05.02.1994, when he was at a distance of ½ km from the road to erect fencing to protect the plant, a vehicle i.e. Jeep bearing registration No.RJ-13C-1877, being driven by Manohar Lal (respondent No.1) in a rash and negligent manner, while trying to overtake a Metador going ahead of it, went over the divider of the road and hit the deceased where he was working i.e. at a distance of ½ km from the road. Due to the injuries received by Malkiat Singh in the said accident, he died at the spot.

Before the Tribunal, the driver and owners of the vehicle were proceeded ex parte and only the Insurance Company (respondent No.4 herein) contested the claim petition denying the very factum of accident, relationship of the deceased with the claimants, the income and age of the deceased. It also took preliminary objections with regard to the liability to pay the amount, pleading that the petition is not maintainable, driver had no licence to drive the alleged vehicle, terms of the policy were violated, etc.

To prove the case, the claimants examined PW1-Karan, who was working as a labourer on the same road near the place of occurrence. Firstly, he stated that a Jeep No.1827 and then said a Jeep No.1877 came and while overtaking a Metador, hit a labourer who died at the spot. He further deposed that he does not know the name of the person killed. Manjit Kaur-claimant No.1 herself appeared as PW-2

and proved the relationship of the claimants with the deceased and also the income of the deceased. The claimants also examined an employee of Horticulture department as PW-3, who stated that on the date of accident, a Jeep No.1097 hit Malkiat Singh, who died at the spot. PW4-Secretary from the Gurdwara, deposed that Malkiat Singh was not being paid anything by the gurdwara for his services.

The Tribunal found no merit in the claim petition as even the accident was not proved. Therefore, dismissed the claim petition vide award dated 02.12.1997.

Aggrieved against the aforesaid award dated 02.12.1997, the claimants (appellants herein) have filed the present appeal.

Learned counsel for the appellants-claimants has argued that the fact that Malkiat Singh had died in the accident, had duly been proved. Therefore, the Tribunal should have awarded the compensation as claimed in the petition. He has further argued that the Tribunal has wrongly held that respondent No.1-driver was not responsible for the accident. Further, the versions of the eyewitnesses were also brushed aside by the Tribunal and the Tribunal did not appreciate the fact that the witnesses were illiterate and have given statements after lapse of a long time, resulting in fading away of their old memories. The Tribunal had failed to apply the principle of *res ipsa liquidator* because in the present case, the facts itself spoke about the involvement of the vehicle and for this accident, a criminal case was also registered against the driver-respondent No.1. The Tribunal, without summoning the

original FIR register or the police record, wrongly held that the FIR was not proved.

I have heard learned counsel for the parties.

In order to succeed in a claim petition under MACT, the claimant is always required to prove that the accident has occurred due to rash and negligent driving of the driver of the offending vehicle. In the present case, the claimants had examined two eyewitness, who spelt out the vehicle number differently than pleaded in the claim petition. So far as the question of FIR is concerned, neither any of the official, who produced the FIR from the police station nor the person, who got recorded the FIR, had been examined. Except the eyewitnesses, the other witnesses also did not support the case of the claimants. Thus, the claimants have failed to prove the alleged accident which caused the death of Malkiat Singh.

In view of above, this Court also does not find any reason to interfere in the award passed by the Tribunal. Accordingly, the appeal filed by the appellants-claimants stands dismissed.

(HARI PAL VERMA)
JUDGE

09.05.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No