

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

**FAO No.5542 of 2002 (O&M)
Date of Decision: May 11, 2017**

Phulli Devi and others

..Appellant(s)

Versus

Sanjiv Kumar and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ravi Gakhar, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent no.3-insurance company.

ANITA CHAUDHRY, J.

This is the claimants' appeal aggrieved by the dismissal of the claim petition.

The record of this file had been burnt in the fire accident which had taken place in the year 2011. Only copy of the grounds of appeal and copy of the award could be reconstructed. The counsel for the appellants has placed on record the copy of the FIR, however, he states that he does not have the statement of Sher Singh. The counsels appearing for the parties agreed that the matter can be decided on the basis of whatever is available on the record.

An accident had occurred on 05.03.2000. The incident was reported by Lakhmi Chand , brother of Madan Lal deceased on the

following day. It was disclosed that Madan Lal left home to visit the temple at 8:00 P.M. but did not return. On the next day he along with his neighbour went to lookout for him and he came to know that an unknown vehicle and unknown driver had struck him. The body was found lying on the road. The FIR was lodged at 10:25 AM the next day.

The claimants had examined Sher Singh who deposed that he was a witness to the accident and the accident was caused by respondent no.1 and Madan Lal had died immediately after the accident. The witness had stated that he had a shop near the bus stand.

The Tribunal rejected the statement of Sher Singh as it was found that no information was given to the police. It also noted that the name of the eyewitness was not even mentioned in the claim petition. His statement was rejected and the claim petition was dismissed.

The submission on behalf of the claimants is that Sher Singh was a witness to the accident and he had given the details of the vehicle involved in the incident and he was arrayed as a party but chose to stay away from the witness box and the statement of the eyewitness had gone un-rebutted and should have been accepted.

The submission on the other hand is that the FIR was against an unknown person and even till the filing of the claim petition the claimants did not disclose the name of the eyewitness and if he indeed had passed the vital information, there is no reason why that information was not given to the police and the witness was procured.

The First Information report was lodged by the brother the next day. The body was found lying on the road even till the next morning. Had there been any witness and known to the family the information would have been passed on to them. As per the FIR an unknown vehicle had struck. Sher Singh did not call up the police and given the details nor he went to the police station. There is no explanation why he remained quiet for so long. Even till the filing of the claim petition the claimants were not sure who their witness was. A petition can not be allowed only because the statement of the witnesses had gone un-rebutted. The claimants had to discharge the onus to prove the involvement of the vehicle and the driver. It is clear that the witness was procured.

I find no infirmity in the findings recorded by the Tribunal.
The findings are affirmed and the appeal is dismissed.

(ANITA CHAUDHRY)
JUDGE

May 11, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No