

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

**FAO No.1191 of 2004**

**Date of decision : 20.01.2017**

**Anguri Devi and others**

.....Appellants

*Versus*

**Lakhvinder Singh alias Lakha and others**

...Respondents

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Krishan Singh, Advocate for appellants.

Mr. Sandeep Suri, Advocate for respondent No.3-  
Insurance Company.

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**DARSHAN SINGH, J.**

The present appeal has been preferred by the appellants-claimants against the award dated 23.10.2003 passed by learned Motor Accidents Claims Tribunal, Ambala (hereinafter called the “Tribunal”) vide which the claim petition filed by the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) for grant of compensation to the tune of ₹15,00,000/- on account of death of Rishi Pal in the motor vehicular accident, which took place on 27.03.2000 has been dismissed.

2. As per the case of the claimants, on 27.03.2003 at about 1:00 p.m. deceased Rishi Pal was proceeding on his Hero Honda motorcycle bearing registration No.HR-04-8945. When he reached at Begna bridge

situated on the outskirts of village, a bus bearing registration No. DL-IP-2436 being driven by respondent No.1 rashly and negligently hit the motorcycle driven by the deceased. As a result of which, deceased Rishi Pal suffered fatal injuries. It was further pleaded that the accident had taken place due to rash and negligent driving of aforesaid bus driven by respondent No.1.

3. The claim petition has been contested by respondents No.1 & 2 by filing the joint written statement, wherein they denied that accident was the result of rash and negligent driving on the part of respondent No.1. It was pleaded that the deceased himself was negligent who was driving the motorcycle in violation of the traffic rules.

4. Respondent No.3 the Insurance Company also contested the claim petition by filing the written statement wherein it denied any accident having been taken place between motorcycle bearing registration No.HR-04-8945 being driven by the deceased and bus bearing registration No.DL-IP-2436. In the alternative, it was pleaded that in the event of accident having been proved, it was due to negligence of the deceased himself. The respondent-Insurance Company also raises certain legal and preliminary objections.

5. From the pleadings of the parties, following issues were framed:-

1. Whether the accident in question had taken place due to rash and negligent driving of bus No.DL-IP-2436 by respondent No.1? OPP
2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP

3. Whether the petition is not maintainable in the present form?  
OPR
4. Whether respondent No.1 was holding a valid and effective driving licence at the time of accident? OPR
5. Relief.

6. On appreciation of the evidence on record and contentions raised by learned counsel for the parties the learned Tribunal concluded that the claimants have failed to prove that bus bearing registration No.DL-IP-2436 was involved in the accident and issue No.1 was decided against the claimants and ultimately the claim petition was dismissed.

7. Aggrieved with the aforesaid award dated 23.10.2003, the present appeal has been preferred.

8. I have heard learned counsel for the parties and have gone through the record of the case carefully.

9. Learned counsel for the appellants-claimants contended that the accident has been even admitted in the written statement filed by respondents No.1 & 2. He further contended that the criminal case has been registered against respondent No.1 for causing this accident and after investigation, the report under Section 173 Cr.P.C. has been filed against him. RW-1 Ram Kumar the owner of the bus has admitted that Lakhvinder Singh respondent No.1 was facing prosecution for causing this accident.

10. He further contended that respondent No.3 Lachman is the eye witness of the occurrence. He has categorically deposed that the bus was being driven at a very high speed by respondent No.1 and it hit the

motorcycle of deceased Rish Pal, as a result of which he suffered the fatal injuries. The statement of PW3 Lachman the eye witness of the occurrence is corroborated from the documents of the criminal case and the medical evidence. Thus, he contended that learned Tribunal has wrongly dismissed the claim petition.

11. On the other hand, learned counsel for respondent-Insurance Company contended that PW-3 Lachman is not a reliable witness. He has got registered the FIR, as per which he was not an eye witness of the occurrence but while appearing in the witness box he has made the material improvement. He further contended that in the cross-examination he has admitted that it was the fault of the motorcyclist/deceased. He further contended that the burden to establish that the accident had taken place due to rash and negligent driving of respondent No.1 was upon the claimants but they have not been able to establish this fact. Mere admission of accident in the written statement will not establish that respondent No.1 was negligent of causing this accident. Thus, learned Tribunal has rightly dismissed the claim petition.

12. I have duly considered the aforesaid contentions.

13. The present claim petition has been preferred by the appellants-claimants under Section 166 of the Act. It is settled principle of law that in a claim petition filed by the claimants under Section 166 of the Act in order to succeed, it was incumbent upon the appellants-claimants to establish that respondent No.1 the driver of the bus was negligent for causing the accident. Reference can be made to cases ***Minu B. Mehta and***

***another Vs. Bal Krishan Ram Chandra Nayan and another AIR 1977 SC 1248 and Oriental Insurance Co. Ltd. Vs. Prem Lata Shukla and others 2007 (4) PLR 93 (SC).***

14. In the instant case, the entire case of the claimants is based on the statement of PW-3 Lachman, the only witness examined by the claimants on the mode of accident. PW-3 Lachman has got registered the FIR Ex.P1 with respect to this accident and that was his first version of the occurrence. As per the version mentioned in the FIR on the date of accident he was travelling in a Maxi Cab and was going to his village from Naraingarh. When the Maxi Cab went ahead of village Laha and was crossing the bridge of Bigna, they saw that a dead body of a youngman was lying there and a motorcycle Hero Honda was also lying at the spot. The driver of the Maxi Cab stopped his vehicle. He also got down from the vehicle and found that the deceased was Rishi Pal son of Singh Ram resident of village Chhoti Khori, Tehsil Naraingarh, Distt. Ambala, who was identified by him. He further deposed that the accident has been caused by unknown driver and unknown vehicle. Thus, as per the version mentioned in the FIR PW-3 Lachman was not an eye witness of the occurrence rather he came at the spot after the accident had already taken place. However, when he stepped in the witness box as PW-3, he projected himself as an eye witness of the occurrence. Due to this material deviation in his statement, he is not a reliable witness.

15. Mere this fact that the criminal case has been registered against respondent No.1 for this accident is no ground to establish the rash

and negligent driving on the part of respondent No.1. The copy of the FIR and the report under Section 173 Cr.P.C. are not the substantive evidence. The Tribunal has to base its findings on the basis of evidence adduced before it. The claimants have only examined PW-3 Lachman in order to establish the negligence on the part of respondent No.1 but as already discussed, he was not actually an eye witness to the occurrence and has materially improved his version while appearing in the witness box.

16. It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the driver as the Tribunal is required to act upon the evidence adduced before it. To support this view reference can be made to case ***Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582***. In a latest judgment titled as ***Kamlesh and others Vs. Attar Singh and others 2016(1) RCR (Civil) 24*** the Hon'ble Apex Court has laid down that though the police has registered a case against the driver of the Tempo and filed the charge sheet but the same cannot be said to be conclusive.

17. In the written statement filed by respondents No.1 & 2 they have pleaded that the accident was not the result of any rash and negligent act of the driver of the bus but it was due to rash and negligent driving of motorcycle driven by deceased who was not driving the motorcycle as per the traffic rules. Thus, there is no admission on the part of respondents No.1 & 2 with respect to any negligence on the part of respondent No.1 for causing this accident.

18. Consequently, I do not find any illegality in the findings of

the learned Tribunal. The appellants-claimants have not been able to establish that the present accident was caused by respondent No.1 due to rash and negligent driving of bus bearing registration No.DL-IP-2436.

19. Resultantly, the present appeal has no merits and the same is hereby dismissed.

**20.01.2017**

*sunil yadav*

**( DARSHAN SINGH )  
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No