

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 2466 of 2004
DECIDED ON: FEBRUARY 01, 2017

DEV KUMAR & ANOTHER

.....APPELLANTS

VERSUS

GURJIT SINGH & OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. R.S. Budhwar, Advocate
for the appellants.

Mr. Hardeep Singh Dhillon, Advocate for
Mr. Baldev Singh, Advocate
for respondents No.1 and 2.

Mr. R.N. Singal, Advocate
for respondent No.3.

JASPAL SINGH, J

Unsuccessful claimants have preferred the instant appeal feeling dissatisfied with the award dated February 21, 2002 passed by Motor Accident Claims Tribunal, Kurukshetra (for short 'Tribunal') whereby, claim petition preferred by them under Section 166 read with Section 140 of Motor Vehicle Act, 1988 (for brevity 'Act') seeking compensation on account of death of their father Om Parkash in a vehicular accident alleged to have occurred on July 02, 2002 at about 11.45 p.m. on Pehowa-Kurukshetra road near bus stand Mela; has

been dismissed.

Briefly, stated the facts of the case are that on July 02, 2002 at about 11.45 p.m. Om Parkash (since deceased) was standing by the side of the road on Pehowa-Kurukshetra near bus stand Mela. In the meantime, respondent No.1 while driving a motorcycle No. HR-41-4068 rashly and negligently came and struck against him. Due to the impact, he sustained multiple grievous injuries and became unconscious and died at the spot. After causing the accident, respondent No.1 fled away from the spot. FIR No. 142 was registered on July 03, 2002 in respect of the accident in question, the offending vehicle i.e. motorcycle was owned by respondent No.2 and insured with respondent No.3- National Insurance Company.

Upon notice claim petition was resisted by respondents. Respondents No.1 and 2 filed joint written statements raising preliminary objections *inter-alia* on the grounds that the same is not maintainable; that the claimants have no locus-standi to file the claim petition: and that no cause of action had accrued to the claimants for filing the claim petition. On merits, respondents No.1 and 2 have denied the accident as well as involvement of alleged motorcycle. They have alleged that respondent No.1 has been falsely implicated in the criminal case by the claimants in collusion with the police.

Respondent No.3 filed a written statement raising preliminary objections in addition to objections taken by respondents No.1 and 2 that respondent No.1 was not holding a valid and effective driving licence at the time of accident; that the claim petition is bad on account of non-joinder and mis-joinder of the necessary parties; and that the claim petition has been filed with the collusion of respondents No.1 and 2. On merits, the insurance

company pleaded that no accident took place with the afore-said motorcycle. It has been falsely involved in collusion with respondents No.1 and 2 just to extract compensation from it. All other allegations were denied alleging the same to be false and frivolous.

On going through the pleadings of the parties, following issues were framed on February 07, 2003 by learned Tribunal:

- 1. Whether the accident in question resulting into death of Om Parkash was caused due to rash and negligent driving of motorcycle No. HR-41-4068 on the part of its driver respondent No.1 as alleged? OPP.*
- 2. If issue No.1 is proved to what amount of compensation, the petitioners are entitled to and from whom?OPP.*
- 3. Whether respondent No.1 was not holding a valid and effective driving licence on the alleged date of accident? OPR.*
- 4. Relief.*

In support of their respective pleadings they led oral as well as documentary evidence. After hearing learned counsel for the parties and appraisal of evidence available on record, issue No.1 was decided against the claimants whereas, issues No.2 and 3 were held to have redundant, in view of findings recorded on issue no. 1. Resultantly, claim petition was dismissed vide impugned award dated February 21, 2002.

Feeling dissatisfied with the impugned award, claimants preferred the instant appeal. In response to notice of motion, respondents appeared and resisted the instant appeal.

While assailing the findings recorded by learned Tribunal, especially, on issue No.1 and the consequent dismissal of claim petition vide impugned award, it has been argued with vehemence by learned counsel for the

appellants that mis-appreciation of evidence as well as legal proposition applicable to the facts and circumstances of the case in hand has resulted into miscarriage of justice. In fact, there is a cogent and convincing evidence adduced by the appellants to prove that the accident has occurred due to rash and negligent driving of motorcycle No. HR-41-4068 by respondent No.1, in which, Om Parkash, father of the appellants lost his life. Accident is alleged to have taken place on July 02, 2002 and in this regard FIR No. 142 dated July 03, 2002, under Section 279, 337 and 304-A IPC was registered. After investigation the police came to the conclusion that death of Om Parkash was occurred in an accident involving motorcycle No. HR-41-4068 but learned Tribunal did not take this aspect into consideration. PW-3 Surinder Kumar in his statement made before the police has categorically disclosed about the vehicle involved in the accident as well as its driver but the learned Tribunal dismissed the claim petition simply by observing that the vehicle was traced after one month of the accident. Moreover, it is the duty of the investigating agency to investigate the matter and trace out the offending vehicle as well as its driver. On account of any lapse or omission on the part of investigating agency, claimants/appellants cannot be made suffer. It is also proved on record that Om Parkash died due to the head injuries sustained by him in a road side accident. Thus the findings delivered by learned Tribunal on issue No.1 are liable to be reversed and decided in favour of claimants/appellants.

On the other hand, learned counsel for the respondents have supported the impugned award and have submitted that there is no an iota of evidence even to suggest that Om Parkash sustained injuries in a vehicular accident that too, involving motorcycle No. HR-41-4068. Mere registration of

FIR is not suffice. There is only statement of Surinder Singh-PW-3, who has simply stated that motorcycle was being driven by a motorcyclist in a rash and negligent manner. At the time of accident he did not inform the police and remained tight lipped for a period of one month. His alleged statement under Section 161 of the Code of Criminal Procedure was recorded by the police on August 02, 2002. He never approached the police either to disclose the number of offending vehicle or the name of motorcyclist, who had allegedly caused the accident. Even, the motorcyclist was not got subjected to any identification parade in his presence. Since the presence of Surinder Singh-PW-3 is itself doubtful and suspicious at the spot, it has been rightly ignored and disbelieved by the learned Tribunal while passing the impugned award. Respondents, accordingly prayed for dismissal of instant appeal.

After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned award, this Court finds that the statements made by the appellants/claimants carries no legal or factual weight.

The claim petition was preferred under Section 166 of the Act and for claiming compensation, it is obligatory upon the claimants to prove the rashness and negligence on the part of offending vehicle, which they have miserably failed to establish in the instant case.

Accident in question is alleged to have taken place on July 02, 2002 at about 11.45 p.m. regarding which though an FIR No. 142 was registered under Sections 279, 337 and 304-A IPC on July 03, 2002 yet neither the description of the offending vehicle nor its driver came into light. It was only after about one month, one Surinder Singh was brought forward for the reasons

close to the chest of the police. His statement was recorded and the motorcycle bearing NO. HR-41-4068 was involved in the above-referred FIR. Surinder Singh-PW-3 is also not proved to be present at the time of place of occurrence. Though, it has been stated by him while appearing in the witness box that on July 02, 2002, he was returning from Chhika to his village Chibba on his motorcycle and when he reached near the round about Kurukshetra then another motorcycle driven by someone was going ahead to him. He further stated that a person was standing on the kacha berm of road and the said motorcyclist hit against him. As a result of impact, he fell down and sustained injuries on his head. He did not report the matter to the police, immediately after the occurrence. It is very strange how, when and on what basis the police visited to the house of Surinder Singh after one month of the accident i.e. on August 02, 2002 when his statement under Section 161 of Cr.P.C. was allegedly recorded. The cross-examination of Surinder Singh is relevant to arrive at a conclusion whether his testimony is worthy of credence. While he was subjected to cross-examination, he has stated that at the time of accident motorcyclist had disclosed the name of his village but did not disclose his name. Surinder Singh-PW-3 never visited the police station to disclose either the registration number of alleged offending vehicle or the driver. Even, it has been stated by him that he was unaware as to how the police came to know that he has seen the accident. Respondent No. 1 was also not subjected to any identification parade in his presence. Testimony of Surinder Singh does not inspire confidence. As such, it cannot be said to be worthy of any credence.

Here, it would also be pertinent to mention that FIR was registered against unknown person as well as unknown vehicle. ASI Maya Ram who

conducted the investigation of a criminal case appeared in the witness box as RW-2. He carried out the proceedings under Section 174 Cr.P.C. as well as got conducted the autopsy on the dead body of the deceased. He also prepared a report under Section 173 Cr.P.C. It has been admitted by him that he recorded the statements of some persons under Section 161 Cr.P.C. but during investigation conducted by him neither the name of driver nor the number of offending vehicle was disclosed by any of them.

Thus, this Court is of the considered view that there is no infirmity, illegality or perversity in the impugned award, especially, findings recorded by learned Tribunal on issue No.1 and the consequent dismissal of claim petition. Rather, the same are absolutely in consonance with the evidence available on file.

In the light of what has been discussed above, this Court does not find any merit in the instant appeal. As such it stands dismissed.

No order as to costs.

FEBRUARY 01, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*