

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

FAO No. 344 of 2003 (O&M)

Date of Decision:- 12.12.2017

Santi Devi & Ors.

....Appellants

Versus

Jai Singh & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Parminder Singh, Advocate, for
Mr. Salil Bali, Advocate, for the appellant.

Mr. Sanjeev Pabbi, Advocate, for respondent No3.

AVNEESH JHINGAN, J. (Oral)

Present appeal has been filed against the award dated 3.10.2002 passed by Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal') being aggrieved of dismissal of claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short,'the Act').

The record of this appeal was burnt and from the salvaged record of the partially burnt case, the same was reconstructed subject to all just exceptions and further verification.

Brief facts are that one Lilu Ram allegedly met with a motor vehicular accident that occurred on 07.09.1999. As per the claimants, Sham Lal S/o Nathu Ram R/o of Kath Mandi Hisar, telephonically informed the family members of Lilu Ram that he had met with an accident. He further informed that offending jeep was stopped. The sons of Lilu Ram Bajrang Dass and Raj Kumar reached the spot and took their father to the CMC Hisar. It has been stated that from CMC Hisar he was referred to Vimhans

Hospital New Delhi where he was admitted and later on shifted to Apollo Hospital New Delhi. From Apollo Hospital he was taken to Jindal Hospital, Hisar. FIR No. 46 dated 13.01.2000 was registered at Police Station Civil Lines Hisar. It was alleged that offending vehicle was a Jeep bearing registration No. HR-20E-7274.

The Tribunal dismissed the claim petition on the ground that the claimants failed to prove the involvement of the offending vehicle and rash and negligent driving of the offending vehicle.

The legal aspect regarding onus being on the claimants to prove rash and negligent driving of the offending vehicle and involvement of the offending vehicle under Section 166 of the Act, has been settled by the Hon'ble Supreme Court in ***Surender Kumar Arora and another Vs. Manoj Bisla and others, 2012 (4) SCC 552***. It was held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

The issue involved in the present case is '*whether the claimants have discharged*' their onus as casted upon under Section 166 of the Act or not?

Learned counsel for the appellants has argued that as per statement of RW-1 driver of the jeep and the eye-witness it has been proved that the accident occurred with the jeep. He further relies upon the fact that the driver of the jeep was charge-sheeted and hence it is proved that the jeep was being driven rashly and negligently.

Learned counsel for the insurance company has argued that it has not been proved that Lilu Ram met with an accident with the offending jeep

and it is the case of clear collusion between the claimants and the respondent No.1. Neither MLR nor post mortem report was produced.

The appellants have badly failed to prove that the deceased met with an accident with the offending jeep. It has not been proved that the accident occurred due to rash and negligent driving of the offending vehicle. No document has been placed on record to establish that the death was a result of injuries suffered in the accident.

The story put up by the appellants is that on the date of accident, on receiving information from Sham Lal, sons of the deceased reached the spot. As per the claim made the offending jeep was stopped at the site of accident. In spite of that, no report was made to police either by the family members of the deceased or by the alleged eye-witness Sham Lal. It has been stated that he was taken to CMC Hisar. No MLR has been produced on record and it has not been averred that any ruqa was sent by the hospital authorities or by the doctor to the police. It is worthwhile to mention that he was admitted to CMC on 07.09.1999 and was discharged on 08.09.1999. In the discharge slip there was no mention of Lilu Ram being referred to a Delhi Hospital. There is no document placed on record to establish that he was first admitted in Vimhans Hospital and thereafter in Apollo Hospital. The only document which is placed on record is that he was admitted in Jindal Hospital Hisar on 04.12.1999. There is no explanation forthcoming that where Lilu Ram was from 08.09.1999 to 04.12.1999. This gap raises a cloud of suspicion on the story of the appellants that why no FIR was registered till 13.01.2000. It has been explained that since Lilu Ram was hospitalised and was in serious condition the family was not in a position to

get the FIR registered. Since there is no document on record to establish that he was hospitalised from 08.09.1999 to 04.12.1999, in such circumstances, even the explanation cannot be accepted.

There is another aspect of the matter that no post-mortem report was placed to establish that the death of Lilu Ram was a result of the injuries suffered by him in a road accident.

The reliance of the counsel for the appellants on the statement of alleged eye-witness Sham Lal cannot be accepted as it has not been established that he was an eye-witness. On one hand, Sham Lal had claimed that he was the eye-witness; he gave a telephonic call to Bajrang Dass and he along with Bajrang Dass took the injured to CMC Hospital. In the same breath, he stated that he does not know the family members of the injured. It has not come on record that how he got the phone number and gave a call to Bajrang Dass.

Even the statement made by Jai Singh RW-1 admitting that his jeep hit an old man is not worth reliance. The Tribunal has given the location of the accident and thereafter dealt with the local routes from which it has been proved that there is a contradiction in his statement. On one hand he was saying that he was going to Hansi and whereas there was no occasion for him to be in Madhuban Park while going from Hisar to Hansi.

Even if it is assumed for the sake of argument that the offending vehicle was involved in the accident, the second requirement of the twin condition to be met under Section 166 of the Act is still not fulfilled i.e. rash and negligent driving of the offending vehicle. RW-1 Jai Singh in his statement had nowhere admitted that he was driving the offending vehicle

rashly and negligently. The reliance of learned counsel for the appellants on the fact that driver was charge-sheeted itself was a proof of rash and negligent driving cannot be accepted in view of the decision of Hon'ble Apex Court in **Kamlesh & Ors. Vs. Attar Singh & Ors., 2015(15) SCC 364.** The Hon'ble Apex Court has held that merely because the driver has been charge- sheeted will not be a proof that there was rash and negligent driving of the offending vehicle.

For the reasons mentioned above, the appellants have failed to prove not only the involvement of the offending vehicle but they have failed to prove the rash and negligent driving of the offending vehicle. Moreso, they have even failed to establish that the death was because of injuries suffered in the alleged accident.

The appeal is devoid of any merits and is dismissed, accordingly.

December 12, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No