

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

FAO No. 2781 of 2002

DATE OF DECISION : 06.11.2017

Amarjit Kaur and others

.... APPELLANTS

Versus

Charanjit Singh and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sanjay Jain, Advocate,
for the appellants.

Mr. Rajneesh Malhotra, Advocate,
for respondent No.2.

* * *

AVNEESH JHINGAN, J. (Oral)

The present appeal is against dismissal of the claim petition by the Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') vide its award dated 12.12.2001.

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.

On 06.11.1997, Kulbir Singh son of Gurnam Singh lost his life in an alleged motor vehicular accident. There were alleged eye witnesses to the said accident, i.e. ASI Jagpal Singh and Constable Satpal Singh, who were on patrol duty. Kulbir Singh was removed to the hospital and

thereafter, he was referred to PGI on 07.11.1997 and ultimately died in PGI on 11.11.1997.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), was filed by the legal heirs of Kulbir Singh.

The Tribunal, after considering the witnesses and evidence produced before it, dismissed the claim petition.

Learned counsel for the appellants argued that it is not disputed that there was an accident and Kulbir Singh lost his life in the accident. He further argued that ASI Jagpal Singh, eye witness, appeared before the Tribunal and supported the claim petition. He further contended that no evidence was brought on record by the respondents to dispute the involvement of the vehicle.

Learned counsel for respondent No.2 – Insurance Company argued that there are contradictions in the FIR, post mortem report and the claim petition. He contends that the claimants have failed to prove the involvement of the offending vehicle in the accident.

I have heard learned counsel for the parties and perused the paper-book.

The Hon'ble Apex Court in **Reshma Kumari and others Vs. Madan Mohan and another**, (2013) 9 SCC 65, while dealing with the distinction between Section 163-A and Section 166 of the Act, observed as under :-

“10. The 1988 Act gives choice to the claimants

to seek compensation on structured formula basis as provided in Section 163A or make an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 under Section 166. The claimants have to elect one of the two remedies provided in Section 163A and Section 166. The remedy provided in Section 163A is not a remedy in addition to the remedy provided in Section 166 but it provides for an alternative course to Section 166. By incorporating Section 163A in the 1988 Act, the Parliament has provided the remedy for payment of compensation notwithstanding anything contained in the 1988 Act or in any other law for the time being in force or instrument having the force of law, that the owner of a motor vehicle or authorised insurer shall be liable to pay compensation on structured formula basis as indicated in the Second Schedule in the case of death or permanent disablement due to accident arising out of the use of motor vehicle. The peculiar feature of Section 163A is that for a claim made thereunder, the claimants are not required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner or owners of the vehicle concerned. The scheme of Section 163A is a departure from the general principle of law of tort that the

liability of the owner of the vehicle to compensate the victim or his heirs in a motor accident arises only on the proof of negligence on the part of the driver. Section 163A has done away with the requirement of the proof of negligence on the part of the driver of the vehicle where the victim of an accident or his dependants elect to apply for compensation under Section 163A. When an application for compensation is made under Section 163A the compensation is paid as indicated in the Second Schedule. The table in the Second Schedule has been found by this Court to be defective to which we shall refer at a little later stage.

11. On the other hand, by making an application for compensation arising out of an accident under Section 166 it is necessary for a claimant to prove negligence on the part of the driver or owner of the vehicle. The burden is on the claimant to establish the negligence on the part of the driver or owner of the vehicle and on proof thereof, the claimant is entitled to compensation. We are confronted with the question, whether while considering an application for compensation made under Section 166, the multiplier specified in the Second Schedule can be taken to be guide for determination of amount of the compensation.”

In the above said decision, it has been held by the Hon'ble Apex Court that for claiming compensation under Section 166, it is necessary for

the claimant to prove negligence on the part of the driver or owner of the vehicle.

Hon'ble the Apex Court in *Surender Kumar Arora and another Vs. Manoj Bisla and others*, 2012 (4) SCC 552 has 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.

From a perusal of the above decisions, it is evident that the onus to prove the involvement of the offending vehicle and the rash and negligent driving of the offending vehicle is on the claimants.

In the present case, Jagpal Singh ASI is the only star witness, who was alleged to be the eye witness of the accident. He deposed before the Tribunal supporting the claim. It is pertinent to note that the FIR was registered on his statement. The registration number of the offending vehicle mentioned in the FIR is wrong. As per the claim petition, the vehicle involved was bearing registration No. HR-07-6088, whereas in the FIR, registration number of the vehicle was mentioned as HR-02-6089. This contradiction could have been ignored. But the name of the person who suffered injuries in the accident, as mentioned in the FIR, was Satinder son of Surinder. Thereafter, there is a post mortem report produced as Mark B, which relates to Satinder Singh son of Balwant Singh, whereas case of the claimants was that Kulbir son of Gurnam Singh had died in the accident.

In such a situation, it is not possible to connect the contents of

the claim petition with the FIR and with the post mortem report. Rather, one cannot say with certainty that the FIR relied upon by the claimants was with regard to the same accident and the post mortem report produced by the claimants is of deceased Kulbir. In such circumstances, the Tribunal has rightly held that the claimants had failed to discharge the onus as per Section 166 of the Act, and no fault can be found in the award of the Tribunal.

For the reasons recorded above, the appeal is without any merit and same is dismissed.

November 06, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes