

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

378

FAO No.4196 of 2006

Decided on : 24.10.2017

Kapoor Chand and another

... Appellants

Versus

Mahipal and others

.. Respondents

CORAM : HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present : Mr.Vinod Bhardwaj, Advocate
for the appellants.
Mr.Neeraj Khanna, Advocate for
Mr.Ravinder Arora, Advocate for respondent No.3.

Avneesh Jhingan , J. (Oral)

The present appeal has been filed against the award dated 2.5.2006 passed by the Motor Accidents Claims Tribunal, Kaithal (for short 'the Tribunal).

2 The record of this case was burnt and has been reconstructed from the salvaged record and copies supplied by counsel subject to just exceptions.

3 On 11.11.2003, Parveen Kumar met with a motor vehicular accident and suffered grievous injuries including head injury. He was taken to Shah Hospital, Kaithal, from there, he was shifted to Forties Hospital, then to Mukut Hospital, Chandigarh and ultimately, to PGI, Chandigarh. On 3.3.2004, FIR was registered by father of the deceased at Police Station Sewan.

4 A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act) was filed.

5 The Tribunal dismissed the same as claimants failed to prove

the involvement of the tractor bearing registration No.HR-09-4431 (for short 'the offending vehicle'). Aggrieved of the said order, the present appeal has been filed.

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

7 Learned counsel for the appellants argued that there is no dispute that the accident occurred and Parveen Kumar lost his life, yet no compensation has been awarded under Section 166 of the Act. He further argued that the father of the deceased appeared as PW-2, eye witness Ram Phal had appeared as PW-4 and the FIR was exhibited as Ex.P-1. In spite of aforementioned evidence, the Tribunal dismissed the claim petition.

8 Learned counsel for the respondent No.3-Insurance Company argued that the claimants utterly failed to establish the involvement of the offending vehicle in the accident. He contended that the FIR was lodged after 3-1/2 months and deposition of the witnesses relied upon by the claimants did not prove the involvement of the offending vehicle.

9 In the present case, the accident occurred on 11.11.2003. As per claim petition, the deceased was going on his motorcycle when the offending vehicle which was being driven rashly and negligently, suddenly applied brakes, as a result of which the motorcycle banged into the offending vehicle. It would be pertinent to state here that there was no mention of any pillion rider being there at the time of the accident. In order to prove the indulgence of offending vehicle, the basic reliance was on the deposition of the father of the deceased, PW-2, who admittedly was not present at the time of accident.

10. The star witness produced by the claimants, Ram Phal who

happens to be the brother-in-law of the deceased, he filed an affidavit to the effect that he was the pillion rider of the motorcycle at the time of the accident and the accident occurred with the offending vehicle. According to his statement, he was the eye witness but his statement is not worth reliance for various reasons.

11 Firstly, neither his name appears in the FIR nor in the claim petition. Secondly, in spite of being so closely related, it is stated that after the accident, he had to join his duties so he went away to Rewari leaving the injured in the hospital. Thirdly, even in the FIR, father of the deceased has not mentioned that it was the Ram Phal who gave the registration number of the offending vehicle. Fourthly, he never reported the matter to the police.

12 Apart from the reasons mentioned above, the story put forth by the appellants cannot be believed. Pillion rider who meet accident, he must have suffered atleast some injuries but he left the scene immediately and moved towards Rewari to join his duties. Even if this aspect is ignored, he should have informed the details of the accident to the family members or to the police. In such situation, no reliance can be placed on his deposition.

13 The father of the deceased while registering the FIR has stated that it was 7-8 days before 03.03.2004 that his son regained consciousness and he was in a mental state to tell about the accident. Whereas the Tribunal has specifically recorded that from the medical record, it was not proved that the deceased had regained consciousness and was in a mental state to furnish the details of the offending vehicle or

the accident. One could have understood, if Ram Phal was actually an eye witness, then he would have given the details of the offending vehicle to the father of the deceased and on that basis, the FIR would have been registered.

14 The claimants have not examined any doctor to prove that the deceased regained consciousness as alleged in the FIR. In such circumstances, it cannot be held that the claimants discharged their onus to prove the involvement of the offending vehicle in the accident.

12 The Hon'ble Apex Court in Bimla Devi & Ors Vs. Himachal Road Transport Corpn. & Ors., 2009 (3) RCR (Civil) 805 has observed that the standard of proof beyond reasonable doubt has not to be applied.

From perusal of the above said authority, it is clear that the initial onus to prove the accident lies upon the claimant. In the present case, the said onus has not been discharged.

Hon'ble Apex Court in case Surender Kumar Arora and another Vs. Manoj Bisla and others, 2012 (4) SCC 552 has held in para 10 of the judgment which reads as under:-

“10. In our view the issue that we have raised for our consideration is squarely covered by the decision of this Court in the case of Oriental Insurance Co. Ltd. (supra). In the said decision the Court stated : "....Therefore, the victim of an accident or his dependants have an option either to proceed under Section 166 of the Act or under Section 163-A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163-A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle."

13 From the perusal of the above decision, it is evident 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. Meaning thereby that involvement of the offending vehicle has to be proved.

14. As per the above referred decision, the onus is on the claimants to prove that the accident occurred due to rash and negligent driving of the offending vehicle, meaning thereby that involvement of the offending vehicle has to be proved by the claimants.

15 In the present case, in the absence of any reliable evidence or witness, the claimants have failed to discharge the onus. No fault can be found in the award passed by the tribunal. The appeal is without any merits, and the same is dismissed.

[Avneesh Jhingan]
Judge

24.10.2017

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