

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

Sr. No.343

**FAO No.694 of 2005
Date of decision : 17.11.2017**

Maghar and another

..... Appellants

VERSUS

Rohit alias Bunty and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Sandeep Khunger, Advocate
for the appellants.

None for respondents No.1 to 3.

Mr. Rajneesh Malhotra, Advocate
for respondent No.4-Insurance Company.

SUDHIR MITTAL, J. (Oral)

The claimants are in appeal against the Award dated 02.12.2004 passed by the learned Motor Accidents Claims Tribunal, Ferozepur, (hereinafter referred to as 'the Tribunal'), whereby the driver and the owner of Tata Indica Car bearing registration No.PB-05-H-2601 has been exonerated from any liability.

2. The undisputed facts are that Prem @ Kala-deceased was going on a bicycle alongwith his brother, namely, Raj Kumar from village Piranwala to Khai Phemeki on 27.03.2003 at about 11.00 a.m. Near the bus-stop of village Piranwala, the deceased-Prem @ Kala and his brother came on to the G.T. Road and met with an accident with a Tata Indica car. Thereafter, the driver of the Tata Indica car took the deceased alongwith his brother to Amar Hospital, Ferozepur. The death of Prem @ Kala took place on 13.06.2003 in Civil Hospital, Ferozepur.

3. The parents of deceased-Prem @ Kala filed a claim petition on 01.08.2003 alleging negligence of the driver of the Tata Indica car. The claim petition has been rejected vide the impugned award by holding, inter alia, that the claimants have not been able to prove negligence of the driver of the Tata Indica car nor have they have been able to connect the death of Prem @ Kala to the accident. Aggrieved by these findings, the parents of deceased-Prem @ Kala have preferred the present appeal.

4. It has been vehemently contended by learned counsel for the appellants that the record of the case conclusively shows that the Tata Indica car had hit Prem @ Kala. Reference has been made to the pleadings of the parties to contend that the driver of the Tata Indica car, in his written statement, has admitted the factum of the accident. Reference has also been made to the statement of Raj Kumar (AW-2) to contend that the said witness (brother of the deceased-Prem @ Kala) had stated in his examination-in-chief in no uncertain terms that his brother died on account of the rash and negligent driving of the driver of the Tata Indica car and that he has not been cross-examined on this aspect of the matter. He further submits that the driver of the Tata Indica car has admitted in his written statement that the deceased-Prem @ Kala was shifted from Amar Hospital, Ferozepur to Sobti Neuro and Trauma Centre, Ludhiana, and therefore, it is established that the deceased-Prem @ Kala had suffered serious head injuries resulting in his death. In a nutshell, the arguments of the learned counsel for the appellants are that: a) the pleadings and the evidence of the parties established negligence of the driver of the Tata Indica car and,

b) an inference is to be drawn from the fact that the deceased-Prem @ Kala was admitted to Sobti Neuro and Trauma Centre, Ludhiana, that he died on account of head injuries sustained by him in the accident.

5. On the other hand, learned counsel for respondent No.4-Insurance Company supports the impugned award. He refers to DDR dated 28.03.2003 (Ex.R3) to contend that the first statement of AW-02 Raj Kumar son of the appellants/claimants exonerates the driver of the Tata Indica car. He also relies upon the written statement of the driver and the owner to contend that at no stage any admission has been made regarding negligence on their part. He further submits that after getting DDR (Ex-R3) recorded, the claimants have taken a U-turn in the present claim petition by contending that the death is on account of rash and negligent driving of the driver of the Tata Indica car.

6. I have carefully read the contents of the DDR dated 28.03.2003 (Ex.R3), which has been produced on the record by respondent No.1/driver of the Tata Indica car. It has been clearly recorded therein that the accident took place because the bicycle of the deceased-Prem @ Kala went into a pot-hole in the road resulting in loss of control on account of which the accident took place, despite an attempt being made by the driver of the Tata Indica car to reduce his speed and avoid the cyclist. The document was also signed by Raj Kumar (AW-2). The statement made by him at the first instance after the accident, is clearly at variance with the stand taken by the claimants in the claim petition. Further, a perusal of the cross-examination of the said witness reveals that there were three persons travelling together on their respective bicycle on the day of the accident. It further shows that other people had gathered at the spot after the accident took place.

However, no other witness has been produced in support of the claim. In this state of evidence, it is difficult to hold that there was any negligence on the part of the driver of the Tata Indica car. DDR (Ex.R-3) is in the nature of an admission made on behalf of the claimants that there was no negligence involved and thus, the findings of the learned Tribunal, in this regard, cannot be faulted.

7. Once, it is held that there was no negligence on the part of respondent No.1/driver of the offending vehicle, no relief can be granted to the claimants, even if it is held that the death of their son was on account of the injuries sustained in the accident, although, in my considered opinion, the claimants have failed to establish a clear link between the motor vehicular accident and the death of Prem @ Kala.

8. Thus, the appeal is without any merit and the same is dismissed. Since, the claim petition has been filed under Section 140 of the Motor Vehicles Act, 1988, as well, no fault liability of ₹50,000/- is fastened on the driver and owner of the offending vehicle, which the Insurance Company would be liable to indemnify.

(SUDHIR MITTAL)
JUDGE

November 17, 2017

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No