

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

FAO No.5305 of 2008.

Date of Decision: 01.03.2017.

Ram Singh and another

....Appellants.

VERSUS

Satish Kumar and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Ms. Monika Arora Advocate for the appellants.

Mr. Kapil Khanna, Advocate for respondent No.1.

Respondent No.2 exparte vide order dated 08.09.2014.

Ms. Vandana Malhotra, Advocate for respondent No.3.

SNEH PRASHAR, J.

This appeal is directed against the award dated 20.08.2008 passed by learned Motor Accident Claims Tribunal, Bhiwani (for short, “the Tribunal”) by virtue of which the MACT Petition No.3 of 2007 filed under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) by the appellants-claimants, was dismissed.

The facts in the backdrop are that on 04.08.2006 Amit Kumar (since deceased) was travelling in Max No.HR-19A-6084 (hereinafter referred to as “the offending max”) being driven by Satish Kumar (respondent No.1), for going to Charkhi Dadri. It was alleged that the offending max was being driven in a rash and negligent manner. At about

3:00 p.m., when the offending max reached in the area of village Unhani, because of its high speed, rash driving and being on the wrong side, the driver (respondent No.1) could not control the same and it struck into a tree. Amit Kumar sustained fatal and grievous injuries on various parts of the body. Satish Kumar, driver of the offending max also sustained multiple and grievous injuries and the vehicle was badly damaged. The accident was witnessed by one Dharam Pal son of Dolat Ram, resident of village Unhani who was present in his field near to the place of accident. Later, Amit Kumar succumbed to the injuries suffered by him.

Alleging that the accident occurred solely due to rash and negligent driving of the offending max by respondent No.1, the legal heirs (parents) of deceased Amit Kumar filed a petition under Section 166 of the Act of 1988 claiming compensation from the driver, owner and insurer of the offending vehicle. The claim petition was contested by the respondents. On the basis of the pleadings of the parties issues were settled. Considering the ocular and documentary evidence led by the parties and the submissions made on their behalf, the petition was dismissed.

Feeling aggrieved with the award dated 20.08.2008, the appellants preferred the instant appeal.

The submissions made by Ms. Monika Arora, learned counsel for the appellants, Mr. Kapil Khanna, learned counsel for respondent No.1 and Ms. Vandana Malhotra, learned counsel for respondent No.3 have been heard and record perused.

Learned counsel for the appellants argued that Dharam Pal son of Dolat Ram was present in his fields and was an eyewitness of the accident. By way of his affidavit Ex.P9, he testified that the offending max

was being driven at a high speed and in a rash and negligent manner because of which it struck into a tree. The report with regard to the accident was lodged by Ram Singh, father of the deceased wherein he stated that earlier he was told that the accident had taken place due to failure of the brakes of the offending max but later on he came to know that the accident occurred due to rash and negligent driving of the offending max by its driver and then on his statement the First Information Report was registered on 31.08.2006. Learned counsel contended that registration of the case of accident against respondent No.1 was sufficient to prove that due to rash and negligent driving on his part, the accident had taken place. She also referred to mechanical report of the offending max (Ex.P8), according to which at the time of examination of the said vehicle on 21.09.2009 by a motor mechanic, the vehicle was found to be badly damaged.

The First Information Report (Ex.P2) was got registered after a delay of 26 days. In his statement, which formed the basis of First Information Report, PW1 Ram Singh, father of the deceased, mentioned that in his earlier statement he had stated that the offending max hit into a tree because of failure of the brakes and the accident had taken place by chance. He stated that thereafter on enquiry, he came to know that the accident was result of rash and negligent driving on part of respondent No.1-driver of the offending max. In the postmortem report dated 05.08.2006 (Ex.P3), the information furnished by the police for getting conducted the postmortem, is not mentioned. The alleged first statement of Ram Singh, father of the deceased, wherein he allegedly stated that the offending max had hit into the tree because of failure of the brakes and in that accident his son had suffered injuries, was not tendered in evidence. PW2 Dharam Pal, who was presented

as an eyewitness, stated that his statement was recorded by the police after about 20-25 days of the accident. Thus, there is no ocular or documentary evidence of the date of alleged accident which could prove that Amit Kumar suffered injuries or died due to the same in the vehicular accident. No reason was explained for withholding the first statement of the father of the deceased even though in the same he had stated that the accident had taken place by chance.

The matter does not end here. Neither PW1 Ram Singh nor PW2 Dharam Pal spoke a word to disclose the date on which Dharam Pal had met Ram Singh and informed him that he had witnessed the accident and that the accident had taken place due to rash and negligent driving of the offending max, in which his son was travelling. In the First Information Report, Ram Singh mentioned that some passersby had taken out his son from the vehicle. Those passersby, who took the injured to the hospital, were not named and admittedly Dharam Pal was not the person who had taken out the injured from the vehicle or had taken him to the hospital. Neither Ram Singh nor Dharam Pal stated so. It is also not the case that having witnessed the accident, Dharam Pal took any step to lodge a report with the police with regard to the accident. His conduct, therefore, clearly proves that he was not, in fact, the eyewitness and was a procured witness who was subsequently introduced to lodge the First Information Report.

As regards, the mechanical report Ex.P8 of the offending max, the examination was conducted by a motor mechanic and not by the official mechanic of the police. Although the report speaks of damage to the conductor side window, seat, dashboard and roof of the offending max, but

the offending max had hit into a tree, it could not be explained how the roof and back body of the offending max was found to be broken. Apart from the above, it is also noteworthy that examination of the offending max was got conducted on 21.09.2006 i.e. after another 21 days of the registration of the First Information Report, which too was lodged after 26 days of accident. Thus, the mechanical report also does not appear to be trustworthy as it cannot be linked with the accident. The driver of the offending max was said to have sustained grievous injuries but his medical record was also not produced.

In the above premise, the conclusion inevitable is that the appellants had failed to prove occurrence of the accident as well as death of Amit Kumar due to the injuries sustained by him in the accident involving the offending max. Thus, there being no ground for intervention in the award passed by learned Tribunal and the appeal being devoid of merit, is dismissed.

(SNEH PRASHAR)
JUDGE

01.03.2017.
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No