

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

**FAO No. 2238 of 2009 (O&M)
DECIDED ON: MARCH 15, 2017**

RAJESH KUMAR & OTHERS

.....APPELLANTS

VERSUS

RAMESHWAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vipul Sharma, Amicus Curiae and
Mr. Jitender Dhanda, Advocate
for the appellants.

Mr. R.P. Daaria, Advocate
for respondent No.2.

Mr. Gopal Mittal, Advocate
for respondent No.3.

Mr. Sandeep Verma, Advocate
for respondent No. 4.

JASPAL SINGH, J

Aggrieved against the dismissal of claim petition preferred under Section 166 of the Motor Vehicles Act (for short 'Act') by the appellants vide impugned award dated November 05, 2008 passed in a petition bearing No. 133-MACT of 2004 captioned as Rajesh Kumar & others vs. Rameshwar & others, appellants have preferred the instant

The brief facts which are necessary for the disposal of instant appeal are that on August 25, 2004 at about 2.30 PM Vidhya Devi deceased alongwith Kamla and Chanpartti were going to attend their duties in Government Live Stock Farm on their bicycles. When they reached near BSF located on Durjanpur Chowk towards Hisar side, meanwhile, a car bearing registration No. CH-03 5202 being driven by respondent No. 1 at a very high speed in a rash and negligent manner came from behind and struck into the bicycle of Vidya Devi. Due to the impact of accident Vidhya Devi fell down and received multiple serious injuries and fell unconscious. Respondent No.1 fled away from the spot. It has further been averred that accident was witnessed by Chander Patti, Balwant and Ram Kumar, who attracted to the scene of accident. When Vidhya Devi was being rushed to Civil Hospital, she breathed her last enroute. It is further alleged that accident in question took place due to the rash and negligent driving of car by respondent No.1, which proved fatal. The deceased was aged about 45 years and was Class IV employee in the Government Live Stock Farm. She was getting salary to the tune of ₹5579/- per month. She used to contribute the entire salary towards the house hold expenses and appellants were fully dependent upon her.

After framing of necessary issues, parties were afforded ample opportunities to lead the evidence in support of their respective pleadings. After appraisal of evidence and hearing counsel for the parties claim petition was dismissed vide impugned award holding that

due to rash and negligent driving of car bearing No. CH-03 5202 by respondent No.1. Aggrieved against the dismissal of claim petition, claimants have preferred the instant appeal, which is being hotly resisted by respondents No.2 to 4 and 6.

While assailing the impugned order, it has been ebulliently argued by learned counsel for the appellants that there may be possibility that the box containing spare parts might have been fallen from some other vehicle passing through that area or the same may be thrown away there by some thief on being noticed by the police or some civilian. Even, if the proposition of learned Tribunal that the spare parts box came out from the offending vehicle is taken to be true for the sake of arguments, even then it can be safely presumed that the same have been carried in the Maruti Car involved in the alleged accident. He further submitted that it is very much evident from the statements of witnesses that the accident took place either due to the involvement of car CH-03 5202 or CH-03-C 5202 and in this situation the learned Tribunal must have granted compensation to the poor claimants on account of death of their mother who was a Class IV employee of Government Live Stock Farm, Hisar.

Thus, impugned order is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant appeal. Consequently, appellants who are fully dependent upon the earnings of the deceased Vidhya Devi are entitled to just and adequate compensation.

On the other hand, learned counsel for the contesting

respondents have supported the impugned order and have submitted that

car No. CH-03 5202 has been involved by the appellants just to extract compensation, which was insured with respondent No.3-insurance company. In fact, car No. CH-03 5202 was not involved in the accident and accident occurred involving the “Marshal jeep”. The said fact is fully established on record. Since impugned order is well reasoned and each and every aspect has been elaborately dealt with by learned Tribunal, no interference is called for. Accordingly, they prayed for the dismissal of appeal.

After bestowing due to consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned order, this Court is of the considered view that that various submissions put forth by the appellants carry no legal and factual weight and the impugned order does not call for any interference by this Court being absolutely in consonance with the evidence available on file and settled proposition of law, especially, in view of the discussion made hereinafter.

In order to establish that the accident took place involving the car No. CH-03 5202 being driven by respondent No.1, in which Vidhya Devi lost her life, appellants have examined Balwant Singh as PW-5 as one of the alleged eye witnesses of the accident. No doubt in his affidavit Ex.PW-5/A i.e. examination in chief, he has asserted that bicycle of the deceased was hit by maruti car the number of which was later on came to his knowledge to be CH-03C 5202 but when he was subjected to cross-examination he has stated that registration number of the car was CH-03C

Bhan, RW-1 who has brought the case property i.e. Two plastic patties, which were taken into possession in the criminal case. Saravjit RW-2 Sales Officer of Spare Parts of Supreme Mobiles Limited, Auto Market, Hisar has identified the case property to be of Mahendra and Mahendra CL-650 Commander Jeep. RW-3 Davender Sharma showroom incharge of Modern Automobile, Hisar has deposed that the case property is not a part of Maruti Car i.e. 800. Raj Kumar RW-4 who conducted investigation of this case and had taken the spare parts of “Mahendra & Mahendra” Jeep from the spot, which was subsequently deposited by him in the malkhana of police station.

Here it would be pertinent to mention that a perusal of FIR Ex.P3, which was got registered by Kamla, transpires that one Marshal jeep came from behind in a rash and negligent manner and hit the bicycle of Vidhya Devi. The spare parts of Mahendra and Mahendra jeep, which is also known as Marshal jeep were found at the spot, were taken into possession by investigating officer. This circumstance is suggestive of the fact that vehicle involved in the accident was a jeep and not a Maruti car.

Moreover, neither the owner nor driver have opted to appear in the witness box. The examination of driver of the car in question was very much essential to show involvement of the car but for the reasons close to his chest, he did not come forward either to deny the accident or the manner, in which, accident occurred. Remaining away from the witness box by driver of the car is suggestive of the fact that he has sided

With the appellants/claimants. Each and every aspect has been dealt with

by the Tribunal elaborately. The facts were twisted by involving the car in question after the registration of FIR in which there is a reference of Marshal jeep and there is nothing about Maruti Car. There is a lot of difference in between Mahindra jeep and Maruti Car, which can be easily identified even by illiterate and rustic villagers. Thus, mere filing of report under Section 173(2) Cr.P.C. against the driver by police does not *ipso facto* mean that accident occurred due to the involvement of Maruti car. Rather, accident had occurred due to rash and negligent driving of Marshal Jeep. As such, finding recorded by learned Tribunal in this regard i.e. On issue No.1 does not call for interference by this Court. Since the appellants have failed to establish the involvement of Car in question in the accident, learned Tribunal has rightly declined the compensation and dismissed the claim petition.

In the light of what has been discussed above, this court does not find any merit in the instant appeal. As such, it stands dismissed whereby, impugned order is upheld but not order as to costs.

JASPAL SINGH
JUDGE

MARCH 15, 2017
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<i>Whether speaking/non-speaking</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>