

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

FAO No. 1792 of 2010

DATE OF DECISION : 14.11.2017

Jai Gur and another

.... APPELLANTS

Versus

Ram Kumar and another

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Manoj Tanwar, Advocate,
for the appellants.

Mr. Subhash Goyal, Advocate,
for respondent No.2.

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AVNEESH JHINGAN, J. (Oral)

The issue involved in the present appeal is whether the claimants have been able to discharge the onus to prove involvement of the offending vehicle in the accident, as required under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act').

On 19.06.2008, Lakhwinder Singh allegedly met with a motor vehicular accident involving a Maxi Cab bearing registration No. HR-56T/3553 (for short, 'the offending vehicle'). As a result of the accident, he sustained injuries and ultimately lost his life.

A claim petition under Section 163-A of the Act was filed by the parents of the deceased.

The said claim petition was dismissed by the Motor Accident Claims Tribunal, Ambala (for short, 'the Tribunal') vide its award dated 24.07.2009, holding that the claimants were not able to prove involvement of the offending vehicle in the accident.

Aggrieved of the said award, the present appeal has been filed by the claimants.

Learned counsel for the appellants contends that Raju, real brother of the deceased, was travelling in the offending vehicle and was eye witness to the accident. He submits that the MLR of the deceased (Ex.PA) bears the signatures of Raju, which shows that he was present in the hospital. He further contends that the accident took place at 10.30 PM and the MLR was prepared at 11.00 PM on the same day, meaning thereby that within half an hour, the injured was hospitalised. He further relies upon the statement of Raju recorded under Section 161 Cr.P.C., wherein he stated that he along with his brother was travelling in the offending vehicle which was hit by a truck and an iron sheet pierced into the head of Lakhwinder Singh. He also placed reliance upon the deposition of Raju before the Tribunal as PW.6 to prove the involvement of the offending vehicle. He further stated that the FIR was registered and charge sheet was presented against the driver of the offending vehicle, which proves involvement of the offending vehicle. Learned counsel further relies upon the mechanical report and the fact that the offending vehicle was impounded by the police and thereafter got the same released on sapurdari by the owner of the offending vehicle.

Learned counsel for respondent No.2 – Insurance Company, on the other hand, argued that Raju was not travelling in the offending vehicle as in his cross-examination before the Tribunal, he admitted that it was on the information from the SHO about the accident that he reached Mullana hospital after half an hour of getting information. Therefore, he was not an eye witness and the claimants failed to discharge the onus to prove that the offending vehicle was involved in the accident. He further argued that driver of the offending vehicle was known to Raju, since they were co-villagers.

From a perusal of the record and the paper-book, there are various angles which require consideration before coming to the conclusion that Raju is an eye witness to the accident. The evidentiary value of Raju will have to be seen.

The entire endeavour of learned counsel for the appellants to show that Raju was present at the time of the accident is based on the MLR, which is at 11 PM in Mullana hospital. The time of accident given is 10.30 PM. His contention is that within half an hour, he was present in the hospital, which is an indicator that he was travelling in the offending vehicle. He further relies upon the statement of Raju recorded under Section 161 Cr.P.C., where he stated that he along with his brother Lakhwinder Singh (deceased) was travelling in the offending vehicle.

The signatures of Raju on the MLR of Lakhwinder Singh ensures that he was there in the hospital, it cannot be concluded that he was present at the time of the accident also. The contention that within half an

hour Raju was at hospital and hence, he was eye witness to the accident has no substance. If with the above reasoning, the cross-examination of Raju is read, he had stated that he was informed by SHO of Police Station Mullana about the accident, on getting the information, he reached hospital after half an hour. There is a difference of half an hour between the accident and preparation of the MLR, from the said evidence, it cannot be concluded that Raju was there in the offending vehicle. Further, it was alleged that the offending vehicle was hit by a rashly and negligently driven truck, neither the registration number of the truck has been mentioned nor it is a case where Raju had also suffered some injuries in the accident.

With regard to the reliance upon the statement of Raju made under Section 161 Cr.P.C., the criminal proceedings as such have no bearing on the claim petition under the Act. The claim petition has to be decided as per evidence brought on record in the said proceedings. Be that as it may, even statement under Section 161 Cr.P.C. has contradictions, when it is read with the pleadings of the claim petition. As per the statement of Raju recorded by the police under Section 161 Cr.P.C., Raju and the deceased were travelling in the offending vehicle, whereas as per the claim petition, both the brothers along with other passengers were travelling in the offending vehicle. It is pertinent to note that no other co-passenger was examined by the claimants.

The other aspect which needs consideration is that as per the statement of Raju, the driver of the offending vehicle, namely Ram Kumar,

was known to him since long, as they were co-villagers. The driver was the best witness available with the claimants, he was known to the brother of the deceased, inspite of all these facts, for the reasons best known to the appellants, the driver was not examined.

Further, the mechanical report and getting the offending vehicle released on sapurdari by the owner, also do not enhance the case of the claimants. At the most, from these documents, it can be derived that the offending vehicle was struck by a truck, yet it is to be proved that the deceased lost his life because of the said accident.

For the reasons recorded above, no fault can be found with the award of the Tribunal and it cannot be held that the claimants were able to discharge the onus casted upon them to prove involvement of the offending vehicle in the accident.

Hence, the appeal is dismissed being without any merit.

November 14, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes