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

Sr. No.205

**FAO No.2727 of 2010  
DECIDED ON: May 05, 2017**

**LATA AND OTHERS**

**..APPELLANTS**

**VERSUS**

**SURENDER AND OTHERS**

**...RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE JASPAL SINGH**

Present: Mr. Arun Yadav, Advocate,  
for the appellants.

Mr. K.C. Saini, Advocate,  
for respondents No.1 & 2.

Ms. Madhu Sharma, Advocate,  
for respondent No.3.

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**JASPAL SINGH, J.**

Instant appeal has been directed by Smt. Lata and others feeling dissatisfied against the impugned Award dated January 29, 2010, whereby a claim petition preferred by them under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act' only) bearing MACT No.136 of 2008 on account of death of their predecessor-in-interest namely Dharambir Singh in a

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vehicular accident allegedly involving truck bearing No.RJ-14GA-6618 has been dismissed.

2.               shortly put, the facts giving rise to the instant appeal are that on October 29, 2007 at about 6.30 p.m. deceased Dharambir Singh was going on Delhi-Jaipur Road (N.H. No.8) near 1<sup>st</sup> company driver Surender came from Delhi side while driving truck No.RJ-14GA-6618 in a very rash and negligent manner and hit against the deceased violating the traffic rules and abducted chopped off his life at the spot. His dead body was rushed to CHC, Bawal and cremated there. FIR No.310, dated October 29, 2007, under Sections 279/304-A was also registered at Police Station Dharuhera. It has further been alleged that at the time of death, Dharambir Singh was aged about 49 years and earning an amount of ₹ 10,000/- per month by self employment. The petitioners are his legal heirs, who have spent a huge amount on his cremation on last rights and they have claimed a sum of ₹15,00,000/- on account of death of Dharambir Singh. The claim petition was resisted by the respondents on filing written statement as well as adducing their evidence.

3.               After appraisal of the evidence given by learned counsel for the appellants, the claim petition was dismissed vide impugned Award dated January 29, 2010 holding that the appellants-claimants have failed to establish rashness and negligence on the part of offending vehicle which allegedly resulted into death of Dharambir Singh.

4.               In response to notice of motion issued in the instant appeal, Mr. K.C. Saini, Advocate represented respondents No.1 & 2, whereas, Ms. Madhu Sharma, Advocate represented respondent No.3-Insurance

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Company.

5. Assailing the impugned Award dated January 29, 2010, it has been argued with vehemence by learned counsel for the appellants that the same is absolutely against the evidence available on file and settled canons of law. Misappropriation of the evidence as well as legal proposition applicable to the facts and circumstances of the case in hand has resulted into miscarriage of justice. Learned Tribunal has gravely erred while in not appreciating the fact that local police has filed a challan for which respondent No.1 is facing criminal trial before the learned trial court for the commission of charges under Section 304-A IPC. Thus, it is duly proved on record that accident was caused due to rash and negligent driving of offending vehicle being driven by respondent No.1. Not only this, even respondent No.1 did not opt to appear in the witness box either to deny the accident or to explain the circumstances in which accident occurred which proved fatal to Dharambir Singh. Non-appearance of the driver of offending vehicle/respondent No.1 is fatal to his claim and an adverse inference should be drawn against him and in favour of the present appellants/claimants.

6. Learned counsel for the appellants has further urged that even respondent No.3-Insurance Company has also admitted the accident as in para No.3 of the written statement, it has been alleged by him that cause of accident was that the offending vehicle was over loaded and carrying passengers at the time of accident. Thus, a fact which is admitted by the respondent need not to be proved under Section 58 of the Evidence Act.

7. The learned Tribunal has erred while giving a finding that in

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the instant case Investigating Officer has not been examined and statement of PW3 does not figure in the list of witnesses submitted along with report 173(2) Cr.P.C. But the learned trial court has failed to appreciate that after the completion of investigation, challan has already been presented against respondent No.1 meaning thereby that in the eyes of investigation, there was sufficient evidence against respondent No.1 to establish the rashness and negligence on his part. Even if, the statement of PW3 for the sake of arguments is not taken into consideration, there is other overwhelming evidence to establish that accident occurred due to rashness and negligence driving of offending vehicle by respondent No.1. Thus, findings recorded by the learned trial court regarding this issue No.1 are not sustainable in the eyes of law and deserves to be reversed and delivered in favour of appellants/claimants. Consequently, the claimants are entitled to just and adequate compensation on account of death of Dharambir Singh taken into consideration his age, income and other facts.

8. While concluding his arguments, it has been submitted by learned counsel for the appellants that since it is amply proved on record that accident solely occurred due to rashness and negligence driving of offending vehicle by respondent No.1, impugned Award dated January 29, 2010 is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant appeal.

9. On the other hand, learned counsel for respondents No.1 & 2 as well as respondent No.3-Insurance Company have supported the impugned Award dated January 29, 2010 and have submitted that there is no cogent and convincing evidence available on file to prove the rashness and

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negligence on the part of respondent No.1 while driving of offending vehicle which resulted into death of Dharambir Singh. Therefore, learned Tribunal has rightly dismissed the claim petition.

10. After bestowing due consideration to the aforesaid rival submissions made by learned counsel for the parties, appraisal of evidence and scrutinizing the impugned Award dated January 29, 2010, this Court does not find any legal and factual substance in the submissions made by learned counsel for the appellants.

11. Appellants/claimants, in order to prove rashness and negligence on the part of respondent No.1, which is alleged to have been resulted in the death of Dharambir Singh have examined PW3-Lal Chand an alleged eye-witness. No doubt, while appearing the witness box as PW-3 and furnishing his affidavit as Ex.PW3/A wherein he has categorically stated that on October 29, 2007 at about 6.30 p.m., he was present near N.H. No.8 and spotted that a person was going on foot towards Dharuhera side. Meanwhile, a truck came behind and struck against that unknown person ending his life at spot. The truck driver stopped for a while and fled away from the spot.

12. Here it would be pertinent to mention that PW3-Lal Chand is neither the author of the FIR nor an eye-witness cited in the list of witnesses along with report 173(2) Cr.P.C./challan. He was not associated with during investigation of the FIR No.310 dated October 29, 2007 registered in connection with death of Dharambir Singh in a vehicular accident. Similarly, PW-3 Lal Chand neither accompanied with the dead body to the hospital nor he identified by him at the time of autopsy. Thus, the

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testimony of PW3-Lal Chand is surrounded by suspicious circumstances if he appears to be an eye-witness he must be present at the spot and must have taken care of the dead body, informed his relatives, reported the matter to the police or participated in the inquest proceedings as well as investigation proceedings.

13. Here it would also be pertinent to mention that FIR No. 310 dated October 29, 2007 was lodged by one Bhimaber Dayal against some unknown vehicle as well as unknown persons. The last rites of deceased were got conducted by the police as unknown as whereabouts of deceased could not be traced out despite best efforts by the police. An autopsy of the dead body was also conducted by Dr. Jaiparkash-PW2 of the body of an unknown persons. Even, the age of deceased was not depicted in the postmortem report Ex.P2. Though PW3 Lal Chand has tried to show his presence in his fields at the time of accident but to the utter surprise, he could not tell khasra number/killla number of the properties owned by him. Similarly, he could not tell as to when police came at the spot after the accident when the dead body was shifted or removed from the spot to the hospital. It has also admitted by him that his statement was never recorded by the police in respect of accident in question at any point of time. Though it has been stated by him that he had gone to the house of deceased for mourning or to pay condolence and at that time he had disclosed the registration number of the truck to the family members of the deceased. But PW4-Rajbir who is author of the FIR and brother of the deceased has feigned ignorance about the presence of PW3-Lal Chand during his cross-examination. So, it has been rightly concluded by learned Tribunal that

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testimony of PW3-Lal Chand does not inspire confidence and in the given circumstances the mere filing of the report under Section 173(2) Cr.P.C. against respondent No.1 is itself not suffice so as to hold the rashness and negligence on the part of the driver-respondent No.1 of the offending vehicle. This Court has also appraised and scrutinized the entire evidence as well as impugned Award dated January 29, 2010, but does not find any infirmity, illegality or perversity either in the findings recorded by learned Tribunal on issue No.1 or in the impugned Award dated January 29, 2010, the same are held to be legal, valid and absolutely in consonance with the evidence available on file as well as legal proposition of law.

14. As a sequel to the aforesaid discussion, this Court does not find any merit in the instant appeal. As such, the same is dismissed.

15. No order as to costs.

May 05, 2017  
*Ankur*

(JASPAL SINGH)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No