

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

**FAO No. 2018 of 2011 (O&M)
Date of Decision: 17.07.2017**

Darshna Devi & Ors. ... Appellants
vs.

Baljeet Singh & Ors. ... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. K.S. Dhanora, Advocate
for the appellants.**

**Mr. Satpal Dhamija, Advocate
for respondent No.3.**

ANITA CHAUDHRY, J.

CM NO. 6186-CII OF 2011

For the reasons mentioned in the application, the same is allowed and delay of 22 days in re-filing the appeal stands condoned.

FAO No. 2018 of 2011

The appellant-claimants have filed the instant appeal questioning the legality and propriety of the award dated 27.07.2010 passed by the Motor Accident Claims Tribunal, Hisar(for brevity, the Tribunal) dismissing the claim petition seeking compensation for the death of Bintu son of appellants No.1 and 3 and father of appellant No.2.

Bintu succumbed to the injuries received by him in an accident which took place on the night intervening 02/03.09.2008 on account of rash and negligent driving by respondent No.1. The car was owned by respondent No.2 and was insured with respondent No.3.

Respondents No.1 and 2 though admitted the accident, but claimed that it had occurred due to the negligent driving of the deceased himself.

The insurance company took the stand of collusion between the appellants and the private respondents, apart from the other legally available defences.

The learned Tribunal vide award dated 27.07.2010 turned down the plea of the claimants and held that they had failed to prove that Bintu died in the accident in the mode and manner as claimed and dismissed the claim petition.

I have heard learned counsel for the parties and have perused the records carefully.

The submission of learned counsel for the appellants was that the Tribunal had gone wrong in holding that the appellants had failed to prove the accident, whereas there was ample evidence on record to prove the accident. Referring to the statements of PW5 Rishikesh, the eye-witnesses, it was submitted that it goes to show that the accident had taken place due to rash and negligent driving of car by respondent No.1 in which Bintu had died and the appellants are entitled to adequate compensation from the respondents.

In the instant case, it was claimed that the accident took place on the night intervening 02/03.09.2008, while the FIR was registered after an inordinate delay on 23.10.2008. PW5 claimed that he passed on the information about the causing of accident by respondent No.1 to the family of the deceased on 12.09.2008, still the

FIR was got registered with unexplained delay on 23.10.2008. The occurrence was alleged to have been witnessed by PW5 Rishikesh and one Bhim Singh. Bhim Singh was not produced before the Court. PW5 Rishikesh claimed that he knew the deceased previously, still he did not take the deceased to the hospital nor made any immediate attempt to apprise the family members of the deceased about the manner in which the accident had occurred. PW5 claimed that police vehicle came at the spot and thereafter next day he along with Bhim Singh left for Bikaner. He admitted that at the time of accident they did not disclose the number of the offending vehicle to the police nor they interacted with them but maintained that their statements were recorded after 25/30 days. The conduct of PW5 Rishikesh is unnatural. There is no reason why he failed to inform the police and creates doubt about the veracity of his statement, he was not present at the time of accident and was introduced later on. His testimony was found to be untruthful, vague and contradictory by the Tribunal.

In the initial version given to the police in the DDR (Mark-X) it was mentioned that it occurred all of a sudden and not due to the fault of any person. There was no reference to respondent No.1. The witnesses were found to have made contradictory statement about the manner in which the accident had taken place. It was held that a story had been concocted and the vehicle had been introduced later just to procure the compensation from the insurance company.

Keeping in view the aforesaid circumstances, the Tribunal had rightly disbelieved the witnesses and to conclude that the

claimants had failed to prove that Bintu died in an accident. The fact germane to the issue was that the accident was not proved, which is a sine quo non for awarding compensation. The findings are based on the evidence adduced on record. No ground for interference is made out. The appeal is dismissed.

17.07.2017

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No