

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

FAO No. 3130 of 2011

DATE OF DECISION : 29.08.2017

Smt. Chitar Kaur and others

.... APPELLANTS

Versus

Rakesh Kumar and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

None for the respondents.

* * *

AVNEESH JHINGAN, J.

The present appeal has been directed by the claimants against the award dated 20.12.2010 passed by the Motor Accidents Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal'), whereby the claim petition was dismissed holding that it was not proved that the Alto car No. HR-13C-5430 was involved in the accident.

2. The claim petition was filed before the Tribunal by widow of Abhey Singh, her two sons and one daughter. The claim petition was filed under Section 166 of the Motor Vehicles Act, 1988. It was alleged that on 26.06.2009 at about 8.00 PM, Abhey Singh son of Bodan Ram was coming home on his bicycle after closing his fruit shop at Banipur Chowk, Bawal. Along with him, Mukhtiar Singh son of Surta Ram resident of village

Baghana was riding another bicycle. Mukhtiar Singh was stated to be running a vegetable shop adjoining the fruit shop of the deceased. When they reached near Power House, Bawal, an Alto car bearing registration No. HR-13C-5430 (hereinafter referred to as 'the offending car') came from the opposite direction at a very high speed being driven rashly and negligently and hit the bicycle of Abhey Singh. As a result of the accident, Abhey Singh fell on the footpath and suffered multiple injuries on various parts of the body, including head injury. He was taken to Community Health Centre, Bawal, but was declared dead by the Doctor. FIR No. 100 dated 27.06.2009 was got registered by Mukhtiar Singh. A compensation of ₹15,00,000/- along with interest at the rate of 24% per annum was claimed.

3. The driver-cum-owner of the offending car and the Insurance Company filed their separate written statements.

4. The Insurance Company raised a plea that the claim petition has been filed in collusion with the driver-cum-owner of the offending car.

5. The Tribunal framed the following issues :-

- (1) Whether the accident in question took place due to the rash and negligent driving of Alto car bearing registration No. HR-13C-5430 by respondent No.1 on 26.6.2009 ? OPP
- (2) Whether Abhey Singh son of Bodan Ram died due to the injuries received by him in the accident, if so to what amount of compensation and from whom, the petitioners are entitled to ? OPP

(3) Whether respondent No.1 was not holding an effective and valid driving licence at the time of accident, if so, its effect ? OPR2

6. In support of their claim, the appellants examined Mohinder Singh son of Hari Singh resident of village Bawal, District Rewari, as PW.2, who claimed himself to be an eye witness of the accident. Chitar Kaur also appeared and supported the claim.

7. After considering the statements of the witnesses and the evidence produced, the Tribunal concluded that the claimants had failed to prove that the accident had taken place with the offending car. Accordingly, vide award dated 20.12.2010, the claim petition was dismissed.

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

9. I have heard learned counsel for the appellants and perused the paper-book with his assistance.

10. The first and foremost question required to be proved by the claimants is that the accident had taken place with the offending car.

11. The learned Tribunal after appreciating the evidence reached to the conclusion that the claimants have failed to prove that the accident had taken place with the offending car.

12. In the present case, the story set up by the claimants in the claim petition was not supported by any reliable witness or evidence. To start with, the facts were given that the deceased along with Mukhtiar Singh was riding on two separate bicycles and the deceased was hit by the

offending car. It was further pleaded that Mukhtiar Singh lodged the FIR and took Abhey Singh to Community Health Centre, Bawal, where the doctor declared him dead. At the time of producing the evidence, Mukhtiar Singh never stepped into the witness box. One Mohinder Singh son of Hari Singh claiming himself to be an eye witness of the accident appeared as PW.2. He deposed that on 26.06.2009, he was going to Bawal from Rewari on his motor cycle. When he reached near the office of Electricity Board, he saw a person going on the *kutchra berm* of the road on the left side. He stated that the offending car was being driven rashly, negligently, in a zigzag manner and was coming on wrong side. The car struck against the person on *kutchra berm*. He further stated that he himself was able to avoid the accident by applying brakes. It was also stated by PW.2 that he brought the injured to the hospital where he succumbed to the injuries. It was stated that he had told the police about the accident on the same day.

13. In the FIR (Ex.P2) lodged by Mukhtiar Singh he stated that he runs a vegetable *Rehri* next to Abhey Singh's fruit shop. On 26.06.2009 at about 8.00 PM, after closing their *Rehris*, they were coming home on separate bicycles. When they reached near the Power House, the offending car struck into the bicycle of Abhey Singh and he suffered grievous head injury. He further stated in the FIR that he arranged for a vehicle and brought Abhey Singh to hospital where doctor declared him brought dead. He thereafter gave information about the accident to the family of the deceased. He addressed Abhey Singh as his grand-father in the FIR.

14. If the facts given in claim petition, FIR and the statement made by Mohinder Singh are compared, the contradictions are evident. Mukhtiar Singh never mentioned about any eye witness and there was no mention about any motorcycle being there at the place of accident. According to Mukhtiar Singh, he along with the deceased was going on separate bicycles at the time of the accident. Whereas PW.2 Mohinder Singh in his statement stated that he saw a person going on the *kutchra berm* of the road, he nowhere stated that the deceased was on bicycle. According to Mohinder Singh, he took the deceased to Hospital and informed the police about the accident on the same day i.e. 26.06.2009. Whereas the FIR (Ex.P2) is dated 27.06.2009 and has been lodged by Mukhtiar Singh. According to Mukhtiar Singh, he took the deceased to the hospital.

15. Apart from the above contradictions, PW.2 Mohinder Singh in his cross-examination admitted that he was not a summoned witness and had come to the court at the instance of the claimants. The police in an endorsement on the FIR reported that they had received information regarding the accident on arrival of the dead body in Civil Hospital at about 9.30 PM on 26.6.2009. But when the police reached the hospital, no eye witness of the accident was available with the dead body. It was because of this reason that the FIR could only be registered on 27.06.2009 on the statement of Mukhtiar Singh, grand-son of the deceased.

16. Further, the appellants relied upon the fact that the FIR was lodged against respondent No.1 (Rakesh Kumar) and he was charge sheeted.

It may be pointed out that the accident occurred on 26.06.2009, respondent No.1 was arrested on 07.07.2009, i.e. almost 11-12 days after the accident. Nothing has come on the record as to how the identity of the offending vehicle had come into light.

17. During the course of arguments, learned counsel for the appellants was asked about the outcome of the criminal case. He fairly stated that respondent No.1 Rajesh Kumar has been acquitted in the criminal case. However, he stated that at present, he is not able to produce copy of the decision in the criminal case. Generally, result of criminal proceedings should not effect the claim under the Motor Vehicles Act, 1988, but here it has relevance as the accident itself is in doubt.

18. In **Bimla Devi & Ors. Vs. Himachal Road Transport Corpn. & Ors.**, 2009 (3) RCR (Civil) 805, the Hon'ble Apex Court observed that the standard of proof beyond reasonable doubt has not to be applied.

19. Even testing the present case as per the Apex Court's decision, it is evident that in the present case, claimants have not been able to prove that accident occurred with the offending vehicle. Mukhtiar Singh even being relation of the deceased never came forward to step into the witness box. Mohinder Singh was not a summoned witness. His statement was not worth reliance and his presence at the place of accident was not proved. Further, his version is contradictory to the contents of the FIR and the facts mentioned in the claim petition. The story put forth in the FIR, claim petition and the statement made by the alleged eye witness are found to be

contradictory. No reliable material is found on record to establish the case of the claimants that the offending car was involved in the accident. In such circumstances, I am of the considered opinion that the Tribunal has rightly dismissed the claim petition, as the claimants had miserably failed to discharge their onus to prove that the death of Abhey Singh was as a result of his accident with Alto car No. HR-13C-5430.

20. Hence, the present appeal is dismissed.

August 29, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes