

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

FAO-5347-2011 (O&M)
Date of decision: 27.10.2017

Bharat Singh and another

.... Appellants

Versus

Ram Avtar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.A.K.Goel, Advocate
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent No.2.

Avneesh Jhingan, J.

Present appeal has been preferred by the claimants against the award dated 22.04.2011 passed by Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as the 'Tribunal') dismissing the claim petition.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the ill-fated parents of Rahul who lost his life in a motor vehicular accident on 27.10.2008. It was alleged that at the time of the accident, Rahul was driving the motorcycle bearing registration No.HR-10C-7495 and Sandeep was pillion rider. It was alleged that motorcycle was hit by a pick up van bearing registration No.HR-19E-0969 (hereinafter to be referred as 'the offending vehicle'). FIR No.410 dated 28.10.2008 was registered at the instance of ASI Sajjan Singh.

The Tribunal dismissed the claim petition as the claimants failed to prove the involvement of the alleged offending vehicle in the accident.

Aggrieved of the said order, the present appeal has been filed.

I have heard the learned counsel for the parties and perused the paperbook and record.

Learned counsel for the appellants has argued that the accident occurred on 27.10.2008 and Rahul, aged 23 years, constable in Delhi Police, lost his life. The claimants had produced the pillion rider Sandeep and eye witness Om Parkash, yet the claim petition has been dismissed.

Learned counsel for the Insurance Company contended that the claimants had failed to prove the involvement of the offending vehicle in the accident. The witnesses were not worth reliance.

At the time of the accident, Sandeep was the pillion rider on the motorcycle. He was the best person who could have deposed regarding the involvement of the offending vehicle. In his statement, he only stated that some Mahendra Pick Up van struck the motorcycle but he was not aware of its registration number. His statement is fortified from the fact that on 28.10.2008, an FIR was registered against an unknown vehicle.

The star witness produced by the claimants was PW2, the alleged eye witness by the name of Om Parkash. The story built up was that he was travelling in a bus and witnessed the said accident. He was one who gave the registration number of the offending vehicle. The statement of PW2 is not found worth reliance. He supported the claim petition but there are various issues which go unanswered in his statement and even in the cross-examination. There is no explanation given as to how he knew the parents of

the deceased. In his cross-examination, he specifically stated that the deceased was not known to him. He further stated that he saw two persons standing at the place of the accident. He stated that he was not aware if the man who met with accident is alive or not. Even the claimants have not put forth any explanation that how Om Parkash contacted them and how they became aware of the registration number of the offending vehicle. The missing link is that nothing has come on record that when after the accident, Om Parkash met the parents of the deceased to give the registration number. The other aspect to be noticed is that he is not summoned witness and stated that he was asked by the counsel for the claimants to appear in this case. Even his presence at the time of the accident is doubted as he failed to produce the ticket of the bus, he was travelling in. He was not able to give the registration number of the bus in which he was travelling. Not only the above said links, the fact remains that the alleged eye witness to the fatal accident neither bothers to stay there to inform the family nor he informs the police.

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

Hon'ble the Apex Court in **Surender Kumar Arora and another Versus Dr. Manoj Bisla and others, 2012 (4) SCC 552**, has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimants.

As per the above decision, the onus is on the claimants under Section 166 of the Act to prove that the accident was result of rash and

negligent driving of the offending vehicle.

Even if standard of proving beyond reasonable doubt is not applied even then it is not proved that offending vehicle was involved in the accident. In the present case in the absence of any reliable witness the claimants have failed to discharge the onus. The claim petition fails at the threshold itself. No fault can be found in the award passed by the Tribunal.

The appeal is without any merit, and is dismissed.

(AVNEESH JHINGAN)
JUDGE

27.10.2017

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Note:

1. Whether the order is speaking/reasoned: Yes/No
2. Whether the order is reportable : Yes/No