

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.206

FAO No. 5380 of 2011
DECIDED ON: May 05, 2017

DHAPA DEVI & ANOTHER

..APPELLANTS

VERSUS

NARESH KUMAR & OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. R.A. Sheoran, Advocate,
for the appellants.

None for respondents No.1 and 2.

Mr. Lalit Garg, Advocate
for respondent No.3.

JASPAL SINGH, J.

Instant appeal has been preferred by the appellants against the award dated May 27, 2011 passed by Motor Accident Claims Tribunal, Bhiwani whereby, claim petition preferred by the appellants under Section 166 of the Motor Vehicles Act, 1988 (for short 'Act') seeking compensation on account of death of Dinesh in a vehicular accident took place on

September 19, 2008, has been dismissed.

Briefly stated the facts giving rise to the instant appeal are that on September 19, 2008, Krishan alongwith Dinesh Kumar (since deceased) were going from Dhigawa to village Kharkari on a motor cycle bearing No. AF. When they reached near Bajrang Bali Petrol Pump, a Mahindra Max vehicle bearing registration No. HR-22C-3474 driven by respondent No.1 came from the petrol pump side at a high speed and in a rash and negligent manner and struck against the motor cycle. As a result of impact of accident Krishan fell on the katcha portion of the road while Dinesh fell on the road and the vehicle went over the legs of Dinesh. The driver of the jeep fled away from the spot after making arrangement for a vehicle and took Dinesh to General Hospital, Bhiwani but his condition being precarious he was referred to PGI Rohtak. However, he was taken to CMC Hisar. FIR in respect of the accident was got registered on September 25, 2008. It was further averred by the claimants that the accident solely occurred on account of rashness and negligence of driving of offending jeep by respondent No.1. The deceased was aged about 28 years and mechanic by profession and was earning ₹10,000/- p.m. The claim petition was dismissed on merits by the learned Tribunal vide impugned award. Aggrieved against the dismissal of claim petition, appellants preferred the instant appeal.

While assailing the impugned award it has been argued with vehemence by learned counsel for the appellants that the learned Tribunal has dismissed the claim petition solely on the ground that FIR was registered after six days and in the MLR it has been mentioned that the some unknown person was brought to the hospital by Anil Kumar and in

case Krishan would have accompanied the deceased, he would have figured in the hospital record . These findings delivered by learned Tribunal are absolutely erroneous on the ground that Anil Kumar also accompanied the patient. Since the condition of the injured was serious, then Krishan Kumar had gone to bring the medicine and Anil Kumar got prepared the MLR. The said Anil Kumar was unknown to the deceased and thus, the name of the injured was mentioned as unknown.

It has further been submitted by learned counsel for the appellants that delay in lodging the FIR was because the condition of the Dinesh-deceased was serious and it becomes the duty of every family member to firstly save the life of an injured and then to think about the lodging of FIR and initiation of other proceedings. In the FIR registration number of the vehicle has been specifically mentioned and during the investigation, it was found that offending vehicle met with an accident and the driver was prosecuted and convicted. Thus, when the FIR was registered and the driver has already been convicted and sentenced, it was erroneously observed by learned Tribunal that appellants could not prove the accident or involvement of offending vehicle or that accident occurred due to rash and negligent driver of offending vehicle by respondent No.1. Moreover, it is also evident from the hospital record as well as PMR that injuries sustained in a road side accident proved fatal to Dinesh. Moreover, the proceedings under Section 166 of the Act are of summary in nature and the provisions of Evidence Act as well as Code of Civil Procedure are not applicable in the instant case. Learned Tribunal has also ignored and disbelieved the report under Section 173(2) Cr.P.C. as well as the fact that

the driver of the offending jeep has already been convicted and sentenced. Similarly, testimony of Krishan PW-2 an eye witness has also disbelieved without any cogent and convincing reason. Findings recorded by learned Tribunal in this regard are not sustainable in the eyes of law and deserves to be reversed. Consequently, claimants deserves just and adequate compensation on account of death of Dinesh.

On the other hand learned counsel for respondent No.3 has supported the impugned award submitting that learned Tribunal has rightly concluded that Krishan PW-2 is made a witness and was not present at the time of accident. Had it been so, his name must have figured in the hospital records with regard to the admission of Dinesh in an injured condition. Moreover, Anil Kumar whose name has been figured in the hospital records has not been examined. Krishan is the author of the FIR, which was got registered by him after six days and there is no explanation with regard to the delay, which otherwise appears to have been used by Krishan as well as claimants for concocting the story. Mere the name of Anil Kumar, who is stated to have taken the injured Dinesh to the hospital did not figure in the FIR and has also not been examined. Moreover, the statement of Krishan particularly, his cross-examination is also relevant. According to which he did not see the accident. Thus, learned Tribunal has rightly concluded that the claimants have failed to establish the accident in which Dinesh sustained injuries and ultimately expired. Accordingly, he prayed for the dismissal of instant appeal.

After bestowing due consideration to the rival submissions made by learned counsel for the parties as well as scrutinizing the impugned

award, this Court does not find any legal or factual substance in the submissions put forth by learned counsel for the appellants.

The entire case of the appellants hinges on the testimony of Krishan who has submitted his affidavit Ex.PW-2/A who deposed that on September 19, 2008 at about 10.00 am he and Dinesh were going from village Dhigawa to Kharkkari on a motor cycle. When they reached near Bajrang Bali Petrol Pump, a Mahindra Max vehicle bearing registration No. HR-22C-3474 driven by respondent No.1 came from the petrol pump side at a high speed and in a rash and negligent manner and struck against the motor cycle. In the said accident Dinesh sustained multiple serious injuries. Though, he was firstly rushed to the General Hospital, Bhiwani but his condition being precarious he was referred to PGI Rohtak. However, he was taken to CMC Hisar. Ultimately, he succumbed to his injuries. In fact, the presence of Krishan is highly doubtful at the place of accident. No doubt, in the examination in chief, submitted by way of his affidavit, he has supported the version contained in the claim petition but while subjecting to cross-examination whatever he has stated in examination-in-chief stood smashed. In the examination-in-chief he has submitted that offending jeep being driven by respondent No.1 came from the petrol pump side and struck against their motor cycle but while subjecting to cross-examination it has been stated by him that the jeep in question came from petrol pump side, which is situated on the other side of the road and it was head on collision, it means that the jeep came from the opposite direction. However, it has been alleged by him that it was head on collision which is not possible since the offending vehicle is not stated to have been approached at the

place of accident from the opposite direction. However, in the cross-examination it has been admitted by him that he did not see the driver as well as registration number of the vehicle, which caused the accident. If it was so, how the registration number and the name of the driver emerged in the FIR. Thus, it shows that delay in lodging the FIR has been utilized by Krishan in concocting the story with regard to the accident as well as his presence at the spot. Not only this it has also been stated by him that he remained with deceased during his treatment in the hospital for one day. Meaning thereby, that he was present in the hospital after the ruqa was sent by the hospital authorities to the police in pursuance of which police visited the spot but Krishan did not make any statement in respect of accident with the police.

Here it would also be pertinent to mention that there is no explanation what to talk of any plausible explanation with regard to the delay in lodging of FIR. Krishan Kumar who alleges himself to be an eye witness did not take the injured to the hospital. Rather, it was Anil Kumar who took an unknown person to the hospital as per the hospital records. Even, Anil Kumar who accompanied the injured has not been examined as an witness. Had Krishan Kumar been present at the time and place of accident, he must have accompanied the injured to the hospital and his name would have figured in the hospital's record. Similarly, had he been present there in the hospital, he must have informed the police at the earliest in respect of the accident. There is no explanation as to why he did not report the matter to the police immediately after the accident, if he was present at the time and place of accident and was aware about the manner in which the

accident occurred. No doubt respondent No.1 driver of offending jeep was convicted by the learned Magistrate but in the appeal preferred by him, he has been acquitted of the charges. Since the presence of Krishan Kumar PW-2 at the time and place of accident is not established, thus, learned Tribunal has rightly concluded that claimants have failed to prove that Dinesh lost his life due to the injuries sustained by him involving jeep bearing No. HR-22C-3473 being driven by respondent No.1.

As a sequel of afore-said discussion, this court does not find any merit in the instant appeal. As such, it stands dismissed, whereby the impugned award passed by learned Tribunal is upheld.

No order as to costs.

MAY 05, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No