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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1779-2012

Date of decision : 16.11.2017

Sanjida and others

... Appellant(s)

Versus

Sahun and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Lamba, Advocate
for the appellant(s).

None for the respondent(s).

AMIT RAWAL, J. (ORAL)

The present appeal has been preferred by the appellants-claimants against the findings rendered by the Motor Accident Claims Tribunal, Fast Track Court, Nuh (in short 'the Tribunal') on account of death of Arif, who died in a vehicular accident, occurred on 07.07.2007 at about 07.30 p.m.

The case set up by the claimants in the claim petition was that the deceased-Arif son of Rehman, while driving on a motorcycle, was hit by a Maruti Van, particulars of which was later on given by eye-witness, namely, Sahid PW-5 i.e. Registration No.HR-55-C-5824, but the claim petition was dismissed on the ground that the vehicle was not found to be involved. The FIR did not disclose the number of the vehicle. According to the statement of Shahid-PW-5, he had noted the number of the vehicle on the date of accident, but his statement was recorded in the month of

February 2008 i.e. after seven months.

Mr. Rajesh Lamba, learned counsel appearing on behalf of the appellants-claimants submit that the Tribunal has not read the cross-examination of PW-5-Shahid in a correct perspective, despite the extensive cross-examination, neither the Insurance Company nor driver and owner had been able to controvert the statement viz-a-viz the non-involvement of the vehicle. Mere production of driver by the owner would not lead to an irresistible conclusion that there was an apparent collusion between the claimants and owner and driver. The factum of filing the challan, proved through the testimony of PW-7 i.e. Inquiry Officer, in FIR No.252 with regard to the accident, in question, had also not been denied. The reference to FIR No.455 dated 03.11.2007 was in respect to theft of Maruti Van, in which, the police had submitted an un-traced report, which had nothing to do with the accident viz-a-viz the compensation being sought under Section 166 of the Motor Vehicles Act. All these factors, if examined in a correct perspective, the claim petition would have been allowed, for, the deceased at the time of accident was aged 20 years. The love and affection of a child has been lost, thus, urges this Court for setting aside the award, under challenge.

There is no appearance on behalf of the respondent(s) despite service. Accordingly, I proceed to decide the appeal on merits.

I have heard learned counsel for the appellants-claimants and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Rajesh Lamba, for, the story put forward by the claimants by relying upon the statement of two eye-witnesses i.e. PW-5 Shahid and PW-6 Imran, had not been found to be trust-worthy as Imran

had not been examined. PW-5 Shahid, in his affidavit, stated that the accident occurred due to the rash and negligent driving of the driver of Maruti Van bearing Registration No.HR-55-C-5824, which was driven by Sahun, but the cross-examination, if read, spilled the beans. For the sake of brevity, the entire cross-examination of PW-5 reads as under:-

" I am 8th class pass. I do not know English. Volunteered I can read and write English. Police has not recorded my statement at any time. Again stated that police has recorded my statement after 7 months of the accident. At the time of recording of my statement police had obtained my signature on my statement. Police has called me at PS Nuh. Police has recorded my statement at P.S. Nuh on 7.7.2007. Again said the deceased had died on 7.7.2007 and my statement was recorded after 7 months of that day. I do not remember the exact date of recording of my statement by the police. Deceased was not related to me. The deceased belongs to village Nidampur. I am not a summoned witness. It is correct that the petitioner Sanjida has called me for giving statement before this Hon'ble Court. I was on a bicycle. I have disclosed and got mentioned in affidavit Ex.PW5/A and stated to the police in my statement that I was on a bicycle. Both Arif (since deceased) and Imran injured were on a motorcycle. I cannot tell the number of the motor cycle of the deceased. I got mentioned in my affidavit as well as in statement before the police that both were on a motor cycle. Arif was driving the motor cycle. I cannot tell the speed of the motorcycle. Both the deceased and injured were coming from Ferozepur Jhirka to Nuh. They were ahead of me and crossed my bicycle. I cannot tell the speed of the alleged Maruti Van. Volunteered the Maruti Van was being driven at a very high speed. The offending vehicle's driver fled

away from the place of occurrence along with his vehicle. I do not know Arif prior to the occurrence. I myself had noted down the registration number of Maruti Car, but I cannot tell the name of its driver and his parentage and address. The driver of the alleged offending vehicle is a resident of Gohana. It is correct that at the time of alleged accident, there was darkness. At the time of alleged accident, there was no divider on the pucca road/at the spot. The registration number of the alleged offending vehicle is HR-55-C5824. Police had called me at once. I have not shown the alleged place of occurrence to the police at any time. The colour of the alleged offending vehicle was white. The alleged offending vehicle was coming from Nuh side. It is incorrect to suggest that no alleged accident took place due to rash and negligent driving of Maruti Car No.HR-55-C-5824. It is also incorrect to suggest that I have been falsely introduced as a witness in order to help the petitioners. It is incorrect to suggest that I have not eye-witnessed the alleged accident. I cannot say whether police had taken the affidavits from other persons regarding non-involvement of the alleged offending vehicle. It is incorrect to suggest that I am deposing falsely."

The statement, as ascertained, in the cross-examination was that he had not been coherent and consistent with regard to the involvement of the vehicle. No explanation came forward in not approaching the police in giving the particulars of vehicle. It was a planned case as mechanical report of the vehicle could not also be ascertained owing to the registration of the FIR No.455 dated 03.11.2007 i.e. after he had suffered a statement to rule out any doubts about the vehicle, in question. In my view, it could not be even a case of hit and run. It has not been established whether the deceased

had died in a vehicular accident involving Maruti Van. Having all sympathy with the deceased, it is axiomatic that the Insurance Company cannot be made to indemnify the insured as it is custodian of a public money and cannot be held responsible for distributing the largesse in every cases of such nature.

No further argument has been raised in order to enable the Court to arrive at a different finding than the one rendered by the learned Tribunal.

For the foregoing reasons, I do not find any illegality and perversity in the findings rendered by the Tribunal and accordingly, the present appeal is dismissed.

16.11.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**Whether speaking/reasoned **Yes/ No**Whether Reportable **Yes/ No**