

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

**FAO No. 2103 of 2012 (O&M)
Date of Decision: 13.11.2017**

Saroj Bala & Ors.

... Appellants

vs.

Rajesh & Anr.

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

**Mr. Subhash Goel, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

The cost imposed vide order dated 13.07.2017 has been deposited with the High Court Legal Services Committee and a receipt thereof has been placed on record.

The claimants are aggrieved by the dismissal of their claim petition. They are the widow, minor son and parents of deceased Sukhbir Singh. They filed a claim petition seeking compensation on account of death of Sukhbir Singh. It was claimed that Sukhbir Singh sustained injuries in a road said accident on 25.05.2011 and later died. FIR No. 78 dated 26.05.2011 was also registered in relation to the accident. It was claimed that the accident had been caused due to rash and negligent driving of tractor No. HR32-C-9356 by respondent No.1. The insurance company with which the tractor was insured was also arrayed in the claim petition.

The driver-owner of the tractor though denied the accident, but claimed that it had occurred due to fault of the deceased himself.

Respondent No.2 Insurance Company had pleaded collusion between the claimants and respondent No.1 just to get compensation from it.

On appraisal of evidence led by the parties, the Tribunal dismissed the claim petition, leading to the institution of present appeal.

I have heard learned counsel for the parties and have carefully gone through the paper-book.

Learned counsel for the appellants had urged that the Tribunal had adopted a pedantic approach while evaluating the evidence on record. According to him, the proceedings before the Tribunal in a claim petition are of summary nature and the evidence should not be scrutinized in the manner as is done in a civil or criminal case. He urged that in an accident case the FIR is lodged in a haste and only because the particulars of the vehicle are not mentioned therein, it cannot be said that the vehicle had been implicated lateron. He further urged that the FIR was registered, the accused was facing trial and this was a strong circumstance to show that the accident had taken place due to rash and negligence of respondent No.1 but this fact has not been taken care off while dismissing the claim petition and adverse inference should have been drawn against respondent No.1 who did not opt to step in the witness box. He has placed reliance

upon **Girdhari Lal Vs. Radhey Shyam & Ors. 1993(2) PLR 109, Raju & Ors. Vs. Sukhwinder Singh & Ors. 2006(4) RCR(Civil) 82 and Gurdeep Kaur Vs. Tarsem Singh, 2008(2) RCR(Civil) 774.**

Learned counsel for insurance company has supported the impugned award.

After going through the records, in the considered opinion of this Court, there is no merit in the appeal. It is a case where there is no denial to the fact that Sukhbir Singh died in a road side accident. There is no evidence to prove that the accident had occurred due to rash and negligent driving of driver of tractor No. HR32-C-9356. The FIR was registered by Inder Singh on the next day of the accident against the unknown vehicle. Neither the registration number nor the name of driver was mentioned therein. It was claimed that Inder Singh was accompanying the deceased on his motor cycle when the accident had taken place. Inder Singh stepped in the witness box as PW4. In his examination-in-chief, he claimed that the police recorded his statement and a criminal case was registered against respondent No.1 and during investigation the offending vehicle and respondent No.1 were traced. In his cross-examination he admitted that he came to know about the offending tractor after 2-4 days of the accident and this fact was told to him by the owners of the land near the place of accident, whose names were not known to him. No evidence was led to prove that how the involvement of the tractor driver was found. The investigating officer of the case had not been produced in the Court nor any attempt was made to procure the presence of the persons who disclosed to

Inder Singh about the name and particulars of the driver. They were the best witnesses to depose about the complicity of respondent No.1. No supplementary statement of Inder Singh was recorded. PW Inder Singh claimed that he sustained injuries in the accident, but failed to get himself medically examined. Had he been present at the time of accident and had he sustained injuries, he must have been medically examined.

Considering these facts, Inder Singh was rightly disbelieved and it was rightly held that he was not present at the time of accident and had been introduced lateron. There is no dispute to the fact that FIR was registered against unknown vehicle and respondent No.1 is facing trial and he failed to step in the witness box in the claim petition, but in absence of any evidence to prove that how the involvement of respondent No.1 was found in the accident, it cannot be said with certainty that respondent No.1 had driven the tractor rashly and negligently which resulted in the accident. Respondent No.1, the deceased and Inder were from the same village and had every reason to favour the claimants. In this case, the FIR was lodged against unknown vehicle, which is not the position in the case of Gurdeep Kaur and Raju (Supra), while in Girdhari Lal's case (supra), the aspect of registration of FIR against the driver was not dealt with on merits, but only for condoning the delay in filing the claim petition and are of no help to the claimants.

Keeping in view the aforesaid circumstances and observations, the Tribunal had rightly concluded that there was

collusion between the claimants and private respondents and the tractor was introduced to grab compensation. The findings are based on the evidence adduced on record. No ground for interference is made out. The appeal is dismissed.

13.11.2017

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No