

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

**F.A.O. No. 2954 of 2012
Date of Decision:- 07.04.2017**

Roshni and others

....Appellants

vs.

Ramesh Kumar and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Jitender Dhanda, Advocate,
for the appellants.

Mr. Vishal Rattan Lamba, Advocate,
for respondents No. 1 and 2.

Ms. Monika Jangra, Advocate for
Ms. Vandana Malhotra, Advocate,
for respondent No.3.

DAYA CHAUDHARY, J.

The present appeal has been filed to challenge the award dated 29.2.2012 passed by the Motor Accident Claims Tribunal, Hisar (hereinafter referred to as 'The Tribunal') whereby the claim petition filed by claimants under Section 166 of Motor Vehicles Act, 1988 has been dismissed.

Briefly, the facts of the case, as made out in the claim petition are that deceased-Sanjay was going from his village Kohli towards village Adampur on a motorcycle on 9.1.2011. On reaching about 2 km. away from Adampur towards Daab Mandir road, a tractor made Holand bearing temporary No. HR-99-GP(T)-6528 came from opposite direction which was

being driven at a high speed in a rash and negligent manner. Said tractor struck with the motorcycle being driven by Sanjay due to which he fell down and suffered multiple injuries including head injury. The accident was stated to be witnessed by Dalip and Balwan who got shifted Sanjay to Medicity Hospital, Hisar for treatment. He remained admitted in the hospital upto 11.1.2011 and ultimately succumbed to his injuries. An FIR bearing No. 12 dated 11.1.2011 was also registered under Sections 279, 304-A IPC relating to aforesaid accident.

Learned counsel for the appellant submits that the learned Tribunal has dismissed the claim petition only on the ground that name of respondent No.1 (driver) and number of offending vehicle was not mentioned in the FIR. It is not necessary that every detail is to be mentioned in the FIR and the FIR cannot be said to be the encyclopedia of the facts of the accident. Learned counsel also submits that the impugned award is totally non-speaking and evidence adduced by claimants have not been taken into consideration and claim has wrongly been rejected.

Heard arguments of learned counsel for the claimants and have also perused the impugned order and other documents available on the file.

Facts relating to filing of claim petition under Section 166 of Motor Vehicles Act, 1988 and dismissal of claim petition are not disputed.

The issues framed by the Tribunal read as under:-

“1. Whether accident in question resulting in death of Sanjay alias Gandhi took place on 9.1.11 on

account of rash and negligent driving on the part of respondent No. 1 while driving vehicle bearing temporary No. HR-99GP (T)/ 6528 ? OPP.

2. If issue No. 1 is proved whether the petitioners are entitled to claim compensation, if so how much and from whom? OPP.

3. Whether insured/owner of the vehicle has violated terms and conditions of the insurance policy, if so to what effect? OPR 3

4. Relief.”

Appellant-claimants examined Dr. Ram Kumar as PW-1, Dr. M.K. Garg, as PW-2, Satish Kumar, Ahlmad as PW-3, Suresh Kumar as PW-5, Pawan as PW-6, ESI Ishwar Singh as PW-7 and claimant Roshni stepped into the witness box as PW-4.

On the other hand, respondents No. 1 and 2 i.e. Driver and owner respectively of the offending vehicle tendered verification of driving licence Exhibit R1, Form 15, 21 and Bill Mark 'A' to Mark 'C' and also insurance policy as Exhibit R-2. It is also not disputed that FIR No. 12 dated 11.1.2011 was registered under Sections 279, 337, 427, 304-A IPC at Police Station, Adampur which was exhibited as P-7. Said FIR was registered on the basis of statement of one Balwan Singh, who stated that while going from Adampur to Asrawan, he saw that one boy was lying on the road in an unconscious condition and had suffered injuries. He raised an alarm and called the residents of nearby dhanis. Thereafter, injured was shifted to Adampur Hospital in one car. He also stated that

parentage and address of injured was not known to them and some unknown vehicle caused the accident. Thereafter, he returned to the village and subsequently came to know the name of the injured and his address. The statement was made to police on 11.1.2011 at 7.30 p.m. Neither the registration number of the offending vehicle nor its make was mentioned.

Learned Tribunal has dismissed the claim petition on the ground that involvement of offending vehicle was not established and it was not proved on record that the offending vehicle was involved in the accident which took place due to rash and negligent driving of respondent No.1. It was also recorded by the Tribunal that the statement of complainant PW-6-Pawan is also highly unnatural that he did not tell anybody regarding the accident in spite of being present at the place of occurrence and did not mention the registration number of the offending vehicle or its make.

Admittedly, the accident took place on 9.1.2011 at about 6.00 p.m. It was Balwan Singh who found the deceased lying on the road in an injured condition. FIR was recorded on 11.1.2011 after a delay of two days. As per statement of Balwan, he reached at the place of occurrence but no one was present and he called the residents of nearby dhanis and thereafter injured was shifted to hospital in a passersby car. In the FIR, it is not mentioned that prosecution witnesses Pawan or Dalip were present at the spot or they witnessed the accident. Even the registration number of the offending vehicle was not known upto 11.1.2011. During cross-examination, PW-6 Pawan Kumar has admitted that injured was known to

him as they belong to the same village but still he did not accompany the injured to the hospital. As per MLR, Exhibit P-1, prosecution witness Dalip, was brother of the deceased. The FIR was registered at the instance of Balwan, whereas, as per MLR, prosecution witness Dalip was accompanying the injured. Being of the same village, Pawan was not aware of the name and address of the deceased and it was specifically mentioned in the statement made while lodging of the FIR. As per statement of PW-6-Pawan, the police recorded his statement on 19.01.2011 wherein he stated that he did not inform the police regarding accident immediately and his conduct appears to be unnatural. The presence of Balwan and Pawan at the spot appears to be doubtful. Even as per statement of PW-7, Ishwar Singh, the make of the tractor was told by the villagers. He also admitted in his statement that make of the vehicle and name of the driver was not disclosed by the informant while lodging the FIR. It has not been mentioned as to by whom the make of the tractor was informed.

On perusal of statement of the complainant, it could not be proved on record that the alleged offending vehicle was involved in the accident and the accident took place due to rash and negligent driving of the driver.

By considering the submissions made by learned counsel for the appellants; the findings recorded by the Tribunal and on appreciation of evidence in the form of statement of complainant, it was not proved on record that the offending vehicle was involved in the accident. It was for the claimants to prove the involvement of the

offending vehicle.

Accordingly, the findings recorded by the Tribunal are based on proper appreciation of evidence and I find no infirmity and illegality in the findings recorded by the Tribunal and, therefore, the appeal being devoid of any merit is hereby dismissed with no costs.

April 07, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes