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

**FAO No. 631 of 2012 (O&M)
Decided on: 08.09.2017**

Smt. Ritu and others**.....Appellants****versus****Kuljeet and others****.....Respondents****Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Vivek Suri, Advocate
for the appellants.

Mr. Aman Dhir, Advocate
for respondent No. 3-Insurance Company

Rajbir Sehrawat, J. (Oral)

1. This is an appeal filed by the claimants against the award of Motor Accident Claims Tribunal, Rohtak; whereby the claim petition filed by the present appellant was dismissed. The reason given for dismissal of the claim petition is that the claimants could not prove that the accident in question took place with the claimed offending vehicle.
2. The brief facts as claimed in the petition are that on 16.04.2010, Hari Om went to Rajiv Gandhi Stadium, Gohana Bye-pass, Rohtak for having a morning walk. After having walk at about 6.15 AM, he was going towards New Bus Stand, Rohtak on his motorcycle bearing registration No. HR-12L-8595. When he was on his way towards New Bus Stand, Rohtak on his correct side of the road, a car bearing registration No. HR-13B-8877 driven by its driver

rashly, negligently and at a high speed and without following traffic rules, came from the stadium side and struck against the motorcycle of Hari Om from behind and caused the accident. Due to the impact, Hari Om along with his motorcycle; fell down at a distance due to the velocity and impact of the offending vehicle and sustained serious and fatal multiple injuries. Later on, he succumbed to the injuries at the spot. The driver of the car fled away from the spot. FIR was also lodged regarding that accident. It was alleged that the accident in question was caused due to sole rash and negligent driving of the above said car, having registration No. HR-13B-8877, by the driver, i.e., respondent No.1.

3. Upon notice, respondents appeared and filed their written statement raising preliminary objections regarding the cause of action and maintainability of the petition etc. It was further pleaded that the driver/respondent was not having a valid driving license at the time of accident. It was further pleaded that the accident had taken place due to sole rash, negligent and high speed driving of the motorcycle by the deceased, who was going towards the New Bus Stand on the main road without following traffic rules. The deceased could not control the speed of motorcycle and struck against the car. It was denied that the driver of the car in question fled from the spot. It was submitted that car in question has been falsely involved in the accident just to get the compensation. In fact, no alleged accident took place with the said car.

4. In evidence, the claimant examined herself as PW-1, Satish as

PW-2, Satya Narain as PW-3, Rajvir as PW-4. Besides this, copy of postmortem report was placed on record as Ex.P1, Certificate of qualification of the deceased was placed on record as Ex.P2 and Ex.P3 and copy of FIR was placed on record as Ex.P4.

5. On the contrary, no evidence was led on behalf of the respondents.

However, respondent No. 3-Insurance Company had placed on record the copy of the driving license as Mark 'A' and copy of the insurance Policy as Mark 'B'. Besides this, copy of the judgment dated 28.10.2011, passed in the criminal case, as Ex.R1 and copies of the statements of Rajvir and Satish recorded in criminal case were placed on record as Ex. R2 and Ex.R3. Copy of the insurance as Ex.R4.

6. After hearing the learned counsel and appreciating the evidence led by the appellants and the respondents, Motor Accident Claims Tribunal dismissed the claim petition. Hence, the claimants have filed the present appeal.

7. Learned counsel for the appellants has argued that the Tribunal has wrongly dismissed the claim petition laying much stress on the acquittal of the driver of the vehicle in the criminal case. It is further argued that the Tribunal has wrongly appreciated the statements of the eye witness, PW-4, Rajvir. It is his argument that the statement of this witness clearly shows that he had witnessed the incident. Despite cross examination, nothing much could be extracted from the witness to falsify the statement that he was eye witness of the incident. On the other hand, learned counsel for the respondent-

Insurance Company has pleaded that it was the case of collusion. Therefore, the driver has been acquitted in the criminal case. But in the claim petition, the claimants could not prove that the accident had taken place with the offending vehicle in question.

8. After hearing the learned counsel for the parties, this Court finds merit in the arguments advanced by the learned counsel for the appellant. In fact, bare perusal of the pleadings shows that collusion has not even been pleaded by Insurance Company. The driver of the vehicle, though filed written statement denying the accident in question, however, he did not own these pleadings by appearing as witness before the Court. Besides this also, no other witness was examined by the respondents. Therefore, the stand taken by the respondents that the accident had not happened with the offending vehicle in question, cannot be accepted. There is one more reason for arriving at this conclusion. The plea taken by the respondents in the written statement is that the accident had taken place due to rash and negligent driving of the motorcycle by the deceased himself. If the respondents has taken this plea, trying to put the blame upon the deceased, i.e., the driver of the motorcycle, then they cannot turn around and also plead that no accident took place with their car at all. These pleas are mutually contradictory. Either the respondents could have pleaded that no accident happened with their car and they do not know anything about the accident or they could have taken a plea that accident took place due to the negligent driving of the deceased himself. In the present

case, though the later plea is taken by the respondents, as stated above, however, no evidence has been led on this point by the respondents. Hence, they shall be deemed to have waived this plea and admitted the accident in question.

9. The next point to be considered is that whether the claimants have succeeded in proving on record that the accident did take place with the offending car in question. A bare perusal of the record shows that PW-4, Rajvir, who is the eye witness of the accident, has categorically deposed that he had seen the number of the offending vehicle and he had seen the accident with his eyes. On the other hand, despite lengthy cross examination, nothing could come out of the testimony of this witness to impeach his credit or his version as stated by him. The Tribunal has wrongly drawn the inference that since witness had said that he reached spot after one and a half minute, therefore, he could not have seen the number of the offending vehicle. This inference is totally perverse. The witness has specified, in his statement, the path from where he was coming to the main road. The point where the witness had reached on the main road; from side-way; was towards that side only where the offending vehicle was approaching on the main road. The area is open area with very less population, being on bye-pass. Therefore, there is nothing wrong in the statement made by the witness that he saw the Registration number of the vehicle and he reached at the spot after about one and a half minute. If after causing the accident, the vehicle was moving towards the

point, where the witness was about to come on the main road, then, it is very natural that the vehicle would also take some time to reach that point where the witness had reached on the main road. Hence, he is right in deposing that he had reached the spot after one and a half minute and that he had seen the vehicle causing accident. There is nothing unnatural or improbable in the statement.

10.The Tribunal seems to have taken the cue from the fact that the driver of the offending vehicle has been acquitted in the criminal case. However, it goes without saying that the criminal proceedings has no relevance, so far as the claim of the claimants regarding the compensation is concerned. The criminal aspect of the accident has relevance only to show that the matter had been reported to the criminal machinery as well. Beyond this, the proceedings and the result of the criminal case is totally irrelevant for the purpose of determination of the liability in claim petition.

11.In view of the above, it is held that the findings recorded by the Tribunal are perverse. The same are set aside. The appeal is allowed.

12.However, since the amount of compensation, required to be paid to the claimants, in case it was proved that the offending vehicle was involved in the accident, has not been determined by the Tribunal, since it had dismissed the claim petition on the ground of the vehicle not being involved in the accident itself, therefore, it would be appropriate to remand the matter to the Tribunal, so as to

enable the parties to prove their case regarding the amount of compensation, required to be awarded in this case. Accordingly, the matter is remanded to the Tribunal with a direction to afford the opportunities to the parties to lead the evidence on the point of quantum of the compensation and thereafter, to decide the amount of compensation accordingly.

13.The parties are directed to appear before the Tribunal on **07.11.2017.**

14.The present appeal is allowed and disposed of with an order of remand as mentioned above.

8th September, 2017
shabha

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned	-	Yes
Whether reportable	-	No