

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

F.A.O No. 1240 of 2013 (O&M)

Date of Decision:- 30.11.2017

Smt. Gelo Bai & Ors.

.... Appellants

Versus

Dalip Singh & Ors.

.... Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Ajay Jain, Advocate, for the appellants.

None for respondent Nos. 1 and 2.

Mr. Ravinder Arora, Advocate, and
Mr. Neeraj Khanna, Advocate, for respondent No.3.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 08.12.2012 passed by Motor Accident Claims Tribunal, Hisar (for short, 'the Tribunal'). The grievance in the present appeal is that the claim filed by the legal heirs of Hukma @ Hukam Singh, under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was dismissed by the Tribunal on the ground that that the claimants were not able to prove the involvement of the offending vehicle in the accident.

On 16.10.2011, Hukma @ Hukam Singh was going on his by-cycle and he was allegedly hit by rashly and negligently driven motor-cycle bearing (temporary) registration No. HR-99-GM (T)-9913, now registration No. HR-20X-2579 (for short, 'the offending vehicle'). Hukam Singh died on the spot. FIR No. 846 was registered at Police Station Sadar Hisar on 17.10.2011. The said FIR was registered on the statement of Balbir Singh son of the deceased Hukma @ Hukam Singh. The FIR was against the

unknown vehicle.

A claim petition under Section 166 of the Act was filed by the legal heirs of the deceased. In support of the claim petition Balbir Singh son of the deceased appeared as PW-2 and Manga Singh deposed as PW-3. Certain documents were exhibited as Exhibit P/1 to P/5. The claim petition was dismissed by the Tribunal

I have heard learned counsel for the parties, perused the paper-book and record.

Learned counsel for the appellants argued that Manga Singh PW-3 deposed in favour of the claimants. He was not related to the deceased, he stated that he had seen respondent No.1 driving the offending vehicle in a rash and negligent manner on the date of accident. He further deposed that after 15-20 days Dalip Singh the alleged driver of the offending vehicle told him that 15-20 days back there was an accident with his motor-cycle, as a result of which one cyclist died. Learned counsel contended that it is proved that the offending vehicle was involved in the accident. He further argued that even a charge-sheet was filed against respondent No.1. He contended that in post-mortem report Exhibit P/5 the cause of death was mentioned as road accident.

Learned counsel for the insurance company argued that there was no eye-witness to the accident. He contended that Dalip Singh in his written statement denied that he was involved in any accident.

The legal aspect on the issue involved in the present appeal is well settled. The Hon'ble Apex Court in case of ***Surender Kumar Arora and another Vs. Manoj Bisla and others, 2012 (4) SCC 552*** held that in proceedings under Section 166 of the Act, the onus is on the claimant to

prove the involvement of the offending vehicle and rash and negligent driving of the offending vehicle.

In the present case, it has to be seen whether the claimants were able to discharge the onus casted upon them under Section 166 of the Act or not. The main reliance of the appellants is on the deposition of PW-3 Manga Singh. In the deposition Manga Singh only states that on the date of accident he had seen respondent No.1 rashly and negligently driving the offending vehicle. He admits that he had not seen the accident. He further states that after 15-20 days Dalip Singh confessed before him that 15-20 days back his motor-cycle met with an accident as a result of which a cyclist died. He further stated that on the fateful day respondent No.1 was looking puzzled. He signaled him but he never stopped. The entire deposition nowhere states that Hukam Singh died in an accident involving the offending vehicle. The only thing which can be derived is that respondent No.1 on 16.10.2011 was rashly and negligently driving the offending vehicle.

It is also worth mentioning that Dalip Singh in his written statement denied the fact of his being involved in any accident. The FIR was registered on next day and it was against an unknown vehicle. The contention of the learned counsel that in post mortem report the cause of death was given road accident will not be of any help because in the proceedings under Section 166 of the Act it is not only to be shown that the death was a result of motor vehicular accident but claimant has to prove the involvement of the offending vehicle and its rash and negligent driving.

The presentation of charge-sheet against respondent No.1 will not prove in itself the involvement of the offending vehicle and the rash and

negligent driving of the offending vehicle. The law is well settled that under Motor Vehicles Act, the Tribunal and the Courts have to come to a conclusion on the basis of evidence produced before it and have not to rely on the evidence in the criminal proceedings. Reliance in this regard is placed upon decision of the Apex Court in ***Anguri Devi and others vs. Lakhvinder Singh alias Lakha and others, 2017(3) PLR 86*** has held as under :-

“16. It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the driver as the Tribunal is required to act upon the evidence adduced before it. To support this view reference can be made to case Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582. In a latest judgment titled as Kamlesh and others Vs. Attar Singh and others 2016(1) RCR (Civil) 24 the Hon'ble Apex Court has laid down that though the police has registered a case against the driver of the Tempo and filed the charge sheet but the same cannot be said to be conclusive.”

From the perusal of the above decision, it is evident that the result of criminal proceedings should not effect the claim proceedings under the Act rather it is to be established on the evidence produced in claim proceedings

It is important to note that the deceased, Manga Singh PW-3 and Dalip Singh respondent No.1, they all are from the same village. If the deposition of Manga Singh PW-3 is correct and Dalip Singh made a confession before him, there was no occasion for Dalip Singh to deny the accident in written statement.

Be that as it may, the evidence produced by the appellants was not enough to prove the involvement of the offending vehicle and rash and negligent driving of the offending vehicle.

In such circumstances, no fault can be found in the award of the Tribunal dismissing the claim petition. The appeal is devoid of any merit and the same is dismissed accordingly.

November 30, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No