

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

**FAO No. 94 of 2012 (O&M)
Date of Decision: 20.02.2017**

Kewal Kaur

... Appellant

vs.

Malkiat Singh and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. J.B.S. Gill, Advocate
for the appellant.**

**Mr. Sukhdarshan Singh, Advocate
for respondent No.3.**

ANITA CHAUDHRY, J.

The appellant-claimant has filed the instant appeal questioning the legality and propriety of the award dated 03.08.2011 passed by the Motor Accident Claims Tribunal, Hoshiarpur (for brevity, the Tribunal) dismissing the petition filed by the appellant seeking compensation for the death of her son Charanjit, aged 30 years. He was working as a helper at a eating joint. It was averred that on 14.10.2006 Charanjit was going to his work place on a scooter bearing registration No. PB07C-7867 and there was a head on collusion. It was claimed that the accident took place due to rash and negligent driving of Maruti Alto Car bearing temporary registration No. PB07-C(Temp-2006) 5302 by respondent No.1. The offending vehicle was owned by respondent No.2 and registered with respondent No.3.

Respondents No.1 and 2 denied the accident and it was averred that the police had given clean chit to respondent No.1.

Respondent No.3 claimed collusion between the claimant and respondents No.1 and 2. It was averred that no accident had taken place and no FIR was lodged with the police regarding the accident.

Evidence was led by both the parties.

The Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the deceased himself while he was in the process of overtaking a trolly and his scooter struck against the car coming from the opposite direction and there was no fault of the car driver. The claim petition was dismissed.

I have heard learned counsel for the parties and have perused the records carefully.

The submission of learned counsel for the appellant was that though it was held to be a case of contributory negligence, the Tribunal had gone wrong in dismissing the claim petition and at best the Tribunal ought to have awarded the compensation after fixing the liability of both the drivers of the vehicles in 50:50 ratio.

The contention is meritless. The Tribunal had held the deceased solely responsible for the accident. The onus to prove the negligence of the driver of the Maruti car was upon the claimant, but there was no evidence worth credence. Darshan Singh, the employer of the deceased was examined as AW2. It was claimed that he was present at the spot. It is relevant to mention here that the statement

(Ex.R1) of Darshan Singh was recorded by the police after twelve days of the accident on 26.10.2006, wherein he had stated that the accident had occurred per chance and the driver of the car was not at fault and he wanted no action against the driver. In the instant case no FIR was registered. A DDR(Ex.R2) was entered and Darshan Singh had claimed therein that there no fault of the driver of the car. While stepping into the witness-box, Darshan Singh took a somersault and claimed that respondent No.1 had driven the car rashly and negligently and struck against the scooter driven by the deceased. In his cross-examination he admitted that there was white strip marked on the road indicating the division in the road. He admitted that the car in question was coming on the left hand side of the road and when the deceased was in the process of overtaking the stationary trolly, the scooter struck against the car coming from the opposite direction. He admitted that his statement, Ex.R1 was recorded by the police. His statement was found inconsistent with the first version given to the police after the accident.

In the claim petition, it was averred that the accident was witnessed by Kamal Singh, but he was not examined by the claimant for the reasons best known.

The material available on record was itself suggestive of the fact that it was the deceased who was responsible in causing the accident. In absence of any evidence to prove the negligence on the part of the driver of the car, the Tribunal had rightly concluded that the accident had occurred due to the negligence of the deceased and his

legal representatives were not entitled to grant of compensation under the Motor Vehicles Act. The findings are based on the evidence adduced on record. No ground for interference is made out. The appeal is dismissed.

20.02.2017
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No