

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

FAO No. 4740 of 2014

DATE OF DECISION : 28.11.2017

Manjit Kaur and others

.... APPELLANTS

Versus

Paramjit Singh and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Jaideep Verma, Advocate,
for the appellants.

None for the respondents.

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AVNEESH JHINGAN, J. (Oral)

The present appeal is against the award dated 19.03.2014 passed by the Motor Accident Claims Tribunal, Rupnagar (for short. 'the Tribunal'), dismissing the claim petition filed by the legal heirs of deceased Balwinder Singh.

Balwinder Singh, aged 42 years, lost his life in a motor vehicular accident, that occurred on 14.03.2013. He was going on a motor cycle bearing registration No. PB-12-M-7406. As a result of the accident, he suffered head injuries and was taken to Civil Hospital, Ropar, from where he was referred to PGI, Chandigarh, where he ultimately lost his life on 11.04.2013. Rapat No. 25 (A) dated 11.04.2013 was registered by the police on the statement of Harpal Singh, uncle of the deceased.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased.

The said claim petition was dismissed by the Tribunal on the ground that the claimants were not able to prove that the deceased was a pillion rider of the motor cycle.

Aggrieved of the said award, the claimants have filed the present appeal.

I have heard learned counsel for the appellants and perused the paper book as well as the record.

Learned counsel for the appellants contends that the Tribunal has erred in dismissing the claim petition. He further contends that the eye witnesses PW.3 Daljit Singh and PW.5 Satwinder Singh supported the claim petition and it was proved that the accident occurred due to rash and negligent driving of Amolk Singh and the deceased was a pillion rider on the motor cycle. He further contends that reliance placed by the Tribunal on the statement of RW.1 Prem Chand Sub Inspector was uncalled for, as in his cross-examination, he stated that he had not investigated the matter but had gone by the version given by Harpal Singh. Learned counsel submits that the Tribunal should have decided the issue on the basis of material, which was available on record, rather than going on by the version of DDR.

No body has appeared on behalf of respondent No.3 – Insurance Company. Even on the last two dates also, none was present on its behalf, though earlier it was being represented by a counsel.

In the claim petition under Section 166 of the Act, the onus to prove rash and negligent driving is on the claimants. Reliance in this regard

is placed upon a decision of the Hon'ble Apex Court in **Surinder Kumar Arora and another Versus Dr. Manoj Bisla and others**, 2012 (4) SCC 552, wherein it has been held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

In the present case, there is a gap of almost 27 days between the accident, the death of Balwinder Singh and recording of the DDR. It is on the day, Balwinder Singh died, that the DDR was recorded on the statement of Harpal Singh.

In **Bimla Devi & Ors. Vs. Himachal Road Transport Corpn. & Ors.**, 2009 (3) RCR (Civil) 805, the Hon'ble Apex Court has held that strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. The claimants are merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt cannot be applied.

The depositions of PW.3 Daljit Singh and PW.5 Satwinder Singh are being assessed in view of the law laid down by the Hon'ble Apex Court in **Bimla Devi's case** (supra).

PW.3 Daljit Singh stated that ahead of his motor cycle, the deceased along with Amolk Singh was going on a motor cycle. He further stated that Amolk Singh was driving the motor cycle rashly and negligently, as a result of which the motor cycle skidded and Balwinder Singh suffered injuries. Similarly, PW.5 Satwinder Singh stated that he was getting his motor cycle repaired at the place of accident and the accident occurred due

to rash and negligent driving of Amolk Singh.

So far as the aforesaid two depositions are concerned, prima facie it appears that it has been proved that Balwinder Singh lost his life due to rash and negligent driving of Amolk Singh. That may not be so, as there is another version to the said accident. Harpal Singh made a statement to the police, on the basis of which DDR was recorded. In the said statement, there was no mention that the deceased was the pillion rider on the motor cycle and that the same was being driven by Amolk Singh. It would be pertinent to mention here that this DDR was recorded on the same day, on which Balwinder Singh died, i.e. 27 days after the accident. The recording of DDR after a period of almost 27 days will ensure that Harpal Singh was aware of the facts. In the DDR, it was specifically mentioned by Harpal Singh that deceased Balwinder Singh was his *Bhatija* (nephew) and he was present at the place of accident.

In view of these contradictions, statements of PW.3 Daljit Singh and PW.5 Satwinder Singh will have to be weighed against the statement of Harpal Singh. PW.3 Daljit Singh changed his version in a statement recorded by the police under Section 175 Cr.P.C. The said statement was produced as Ex.R13. In this statement, it was nowhere mentioned that the motor cycle was being driven by Amolk Singh and Balwinder Singh was a pillion rider. Though he took a stand that the police got blank papers signed from him, but he never made any complaint with regard to his signatures being obtained on blank papers. The contradictions in his two statements show that his evidence is not worth reliance.

PW.5 Satwinder Singh in his statement supports the version

given in the claim petition. In his cross-examination, he admits that Harpal Singh was the relative of the deceased and he was present at the time of the accident. Once this fact is fortified with the cross-examination of Satwinder Singh, then it would not be appropriate to ignore the version put forth by Harpal Singh.

Firstly, Harpal Singh was related to the deceased and secondly, even Satwinder Singh stated that Harpal Singh was present at the place of accident and he took injured Balwinder Singh to Hospital. It would be pertinent to note that Amolk Singh, the alleged driver of the motor cycle, never appeared in the witness box. Even if story of the claimants is taken to be correct, it would not be a case where Amolk Singh would have been a stranger to the deceased, as they were travelling on the same motor cycle. In such circumstances, he was the star witness and for the reasons best known, the claimants never examined him.

For the reasons recorded above, no fault can be found in the award passed by the Tribunal, dismissing the claim petition.

Consequently, the appeal is bereft of any merit and the same is dismissed.

November 28, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes