

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

**FAO No.4126 of 2016 (O&M)
Date of decision: 14.07.2017**

Manjay and others

.....Appellants

Versus

Lalit and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ram Pal Verma, Advocate,
for the appellants.

Ritu Bahri, J.

This appeal has been filed against the Award dated 19.11.2015 passed by the Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as 'the Tribunal'), whereby claim petition filed by the claimants-appellants under Section 166 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'the Act') seeking compensation on account of death of Sunita in a motor vehicle accident, has been dismissed. Appellant No.1 is husband and appellant Nos. 2 to 4 are the daughters of deceased-Sunita.

Brief facts of the case are that on 11.10.2014, at about 6.25 A.M., Manjay-appellant No.1 and his wife Sunita (since deceased) were coming back from fields towards their house in village Mandora after loading fodder in the rickshaw. Sunita was driving the said rickshaw on foot from front side, whereas Manjay was pushing the same from behind. When they reached near village Mandora, they parked their rickshaw on the side of the

road and thereafter, Manjay went inside the fields for urinating. At that time, his wife-Sunita was standing near the rickshaw. In the meantime, a car bearing registration No. DL-4C-AH-8378 being driven by Lalit-respondent No.1 in a rash and negligent manner, came there and struck against the rickshaw, as a result of which, Sunita, who was standing near the rickshaw, fell down on the road and received injuries on various part of her body. Thereafter, she was taken to CHC, Kharkhoda, where she was declared dead. With regard to the accident, FIR No.308 dated 11.10.2014, was registered at Police Station, Kundli on the statement made by appellant No.1. Consequently, the claimants-appellants filed a claim petition before the Tribunal.

Upon notice, respondent No. 1-driver filed written statement, whereby it has been stated that no accident had taken place by him and he has been falsely implicated in this case in order to extract the amount of compensation. He was having a valid driving licence at the time of alleged accident, therefore, he is not liable to pay any amount. .

Respondent No.2-owner filed a separate written statement by taking preliminary objections with regard to maintainability and cause of action etc. On merits, it was submitted that he has been falsely implicated in the case, as no accident had been taken place due to the rash and negligent driving of respondent No.1.

Respondent No.3-Insurance Company filed a separate written statement, whereby it has been stated that the accident in question had been cause due to the negligence of the deceased. The amount claimed was highly excessive and the appellants were not entitled for the same. All other allegations mentioned in the claim petition were denied and prayer for dismissal of the claim petition was made.

From the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the accident took place due to rash and negligent driving of vehicle bearing registration No.DL-4C-AH-8378 by its driver-respondent No.1 on 11.10.2014 at about 06.25 P.M. in the rear of near Canal, village Nahra, Police Station Kundli, District Sonipat, owned by respondent No.2 causing death of Sunit, as alleged? OPP
2. If issue No.1 is decided in favour of the claimants/petitioners, whether the claimants/petitioners are entitled to claim amount as claimed in the claim petition and from who? OPP
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of alleged accident or that violated the terms and conditions of the insurance policy, if so, to what effect? OPR-3
4. Relief.

On the basis of evidence led by the parties, the Tribunal has returned a finding on issue No.1 against the claimant-appellants and held that the claimants have failed to prove that the accident in question had taken place due to rash and negligent driving of the offending vehicle by respondent No.1. This finding has been recorded on the basis of the fact that Manjay (PW-1) was present at the spot when the alleged accident had taken place and thereafter, he got his statement recorded before the police on 11.10.2014, but, he had not given the name of driver at the time of recording of the FIR. However, on 12.10.2014, he got recorded his supplementary statement and gave the particulars of the offending vehicle as well as name

of the driver to the police. During investigation, ASI Siri Niwas (PW-2) came to know that driver of the offending vehicle belonged to the same village as that of the claimant. No explanation was given, as to why claimant-appellant No.1 had given a supplementary statement on 12.10.2014 when he had specifically stated that the police did not meet him after 11.10.2014. Moreover, no efforts were made by ASI Siri Niwas to investigate, whether the car in question was involved in the accident or not. With the above observations, the trial Court came to a conclusion that in fact, it was a hit and run case.

Keeping in view that the driver and the claimant-appellant No.1 were of the same village, the claim petition has been rightly dismissed by the Tribunal, as in the case of hit and run, an attempt was made to involve the driver of offending vehicle for the purpose of claiming compensation. Accordingly, after going through the impugned Award, this Court is of the view that in the absence of any cogent and convincing evidence with regard to involvement of the offending car in the alleged accident, the Tribunal had rightly dismissed the claim petition. The evidence has been appreciated in the right perspective. No ground is made out to interfere in the impugned Award.

Resultantly, the present appeal is dismissed.

14.07.2017
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No