

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

FAO No.8051 of 2014

Date of Decision: 26.04.2017

Usha Dagar and others

....Petitioners

Versus

Nihal and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Pratibha Yadav, Advocate
for the petitioners.

Mr. Varun Sharma, Advocate
for Mr. Ashwani Talwar, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

The present appeal has been filed by the appellants for setting aside award dated 19.09.2013 passed by the Motor Accident Claims Tribunal, Gurgaon (here-in-after called 'the Tribunal'), whereby, the claim petition filed by the appellants has been rejected.

Briefly, the facts of the case, as made out in the claim petition, are that a claim petition was filed by the appellant Usha Dagar and four others under Section 166 of the Motor Vehicles Act, 1988 (here-in-after called as 'the Act') for grant of compensation on account of death of Shri Sushil Dagar in a motor vehicular accident, which took place on 11.11.2010. An amount of ₹ 50 lakh was claimed as compensation by claimants who are widow, two minor daughters and parents of deceased-Sh. Sushil Dagar.

As per claim petition, deceased-Sushil Dagar along with his

brother-in-law Narender Singh, Rohit Dagar and Sanjay Chaudhary was going to Sector 46 from his house to give payment of ₹ 5 lakh to one Rajiv Jakhar at his home. They were travelling in car bearing registration No.HR-26-BE-7890 Cruze, which was being driven by the deceased. On reaching in front of Kapil Vatika, after taking U-turn from Jharsa Chowk, a truck bearing registration No.HR-74-2977, which was being driven by respondent No.1 in a rash and negligent manner and at a high speed without blowing horn, came from back side and hit the car. Due to overtaking, the car of deceased lost balance and fell down in the pitch to the left side of the road and turned turtle. The deceased sustained multiple and grievous injuries on his head and other parts of his body.

He was taken to Pushpanjali Hospital, Gurgaon by his brother-in-law and other co-passing passengers where he was declared dead by the doctor. The driver of the offending vehicle ran away from the spot along with his vehicle. An FIR No.429 dated 12.11.2010 was also registered under Sections 279 and 304-A IPC at Police Station City Gurgaon. The deceased was 40 years of age and was employed as JBT teacher in Sarvodaya Bal Senior Secondary Vidyalaya, Mehrauli Qutub, Delhi. He was getting ₹ 35,000/- per month as salary. It was mentioned in the claim petition that the deceased was only earning member of the family and there was no other source of income.

Learned counsel for the appellants submits that there is no proper appreciation of evidence available on record. It was a case of total rash and negligent driving of the driver of the offending vehicle and the FIR was also registered. The claim of the claimants has been rejected without giving any specific finding and on minor technicalities. Simply, it was to be

seen by the learned Tribunal as to whether the vehicle, in dispute, was involved in the accident or not. The accident had occurred due to rash and negligent driving of the offending vehicle. In case, it was a case of false implication, no complaint was made against the claimants.

Learned counsel for the respondents submits that the award is well reasoned and is based on proper appreciation of evidence. There was not only inconsistency but contradictions in the statements of witnesses of the claimants as neither the number of the truck nor the name of the driver was mentioned in the FIR. They were not able to connect the accident with the offending vehicle. The award is based on well reasoned findings and no interference is required by this Court in the appeal.

Heard the arguments of learned counsel for the parties and have also gone through the documents available on record.

The claim petition was filed by claimants-Smt. Usha Dagar (widow of the deceased) Vanshika, Gajal, (minor daughters of the deceased), Pohap Singh and Anarkali Devi (parents of the deceased). Later on, an application was moved for deleting the name of petitioners No.4 and 5 (parents of the deceased) from the array of the petition on the ground that they have passed away. The claim petition was contested by filing written statement by raising various objections regarding maintainability of the claim petition and entitlement for claim. The claim petition was dismissed vide order dated 19.09.2013 on the basis of findings, which are as under :-

“ With due regards to the rival contentions and facts on record, this Tribunal is of the view that this claim petition is nothing but a result of connivance between claimants and respondent No.1 driver-cum-owner of offending vehicle, to get the claim passed by hook or crook. To prove the death of Sh. Sushil Dagar in the

*accident on dated 11.11.2010, it was must for the claimants to have proved that it was the offending vehicle and not any other vehicle which had resulted into this accident. It is a matter of record that to prove this aspect, the claimants have examined PW-6 Narender Singh, who happened to be brother-in-law of deceased or brother of claimant No.1. This witness has claimed himself to be present in the ill-fated car with deceased at the time of accident. Surprisingly, this witness did not suffer any injury in this fatal accident as no proof of medical treatment got, is there on record. Thus, his presence appears to be doubtful on the spot. Otherwise also, during cross-examination, he had admitted that the FIR registered on dated 12.11.2010, on his complaint, did not have mention of number of truck, nor, had mention of its colour or name of its driver. He has also stated that it was dark at that time and do not remember the name of the person who had told, him about the particulars of truck and its driver. Even, the Investigating Officer of the criminal case, has not been examined by claimants to prove as to how he had connected respondent No.1 and his truck, with the alleged accident. Even PW-6 Narender despite having been asked about the name of the person who told him about number of the offending vehicle, has refused to name such person. In the given circumstances, where the claimants have failed to connect the offending vehicle and its driver respondent No.1, with the alleged incident, mere registration of FIR or facing of criminal trial by respondent No.1, are not the circumstances, which indicate negligence of respondent No.1. It has been held by our Hon'ble High Court in **Surinder Kaur vs. Raj Kumar Vol. CV (1993-3) PLR 709** that where there is no mention about the name of the driver as well as name of the offending vehicle in FIR and there is also no convincing evidence to prove the involvement of the*

*alleged offending vehicle in the accident, the truck in question can't be held to be involved in the accident. Similar are the findings of our Hon'ble High Court in **Smt. Sarla Devi vs Mool Chand and others 2004(1) RCR (Civil) 403 (P&H), Smt. Chand Kaur and others vs Mohinder Singh and others 2001(1) Criminal Court Judgments 648 (P&H), Gajjan Singh and another vs M/s Jujhar Tour and Travels and others 2011(4) LJR 631 (P&H), Lachhmi and others vs Baljit Singh and others Vol. CVI (1994-2) PLR 695 (P&H).***

*Our Hon'ble High Court in **Ram Karan vs Zile Singh 2001(3) RCR (Civil) 582 (P&H)** held that mere registration of an FIR, framing of charge and even judgments of conviction or acquittal of criminal court, is not binding on the Tribunal. The onus of proving negligence is always upon the claimants and they have to discharge it before the Tribunal. In **Oriental Insurance Co. Ltd. Vs Premlata Shukla and othes 2007(3) RCR (Civil) 301 (SC)**. Hon'ble Apex Court held that proof of rashness and negligence on the part of the driver of the vehicle is sine qua non for maintaining an application under Section 166 of the Act.”*

From a perusal of statement of witnesses of the claimants, it appears that while recording the statement of claimant-Smt. Usha Dagar, the widow of deceased, she had deposed during cross-examination that she had not witnessed the accident. The FIR was registered against unknown driver and unknown truck. It has also been admitted in the cross-examination that Narender Singh is her real brother. She admitted that her husband was injured on 05.10.2010 because of beatings given by Parveen @ Kukki @ Tinny and an FIR was registered in this regard.

Eye-witness Narender Singh was examined as PW-6. He, during cross examination, has deposed that he is brother-in-law of the

deceased. He was sitting on co-driver's seat of the car, which was being driven by the deceased. The police had recorded his statement on 12.11.2010 in the mortuary. He admitted the suggestion that in the statement given to the police, he had stated that he had not noted down the number of the truck and that the truck had fled away from the spot. He also deposed that his statement was not recorded after 12.11.2010 and he received minor injuries on the back but no medical examination was conducted. It has also been admitted that it was a dark night and their car had fallen down in the pit so he could not see the truck nor had noted down its number. He has also stated that he cannot disclose the name of the person who had told him about number of the truck. Even there was no mention of number of the truck nor the name of the driver in the FIR.

The learned Tribunal has given a specific finding that the claim petition was a result of connivance, between claimants and respondent No.1 driver-cum-owner of offending vehicle to get the claim passed by hook or crook. It was for the claimants to prove that it was the offending vehicle and not any other vehicle, which had resulted into the accident. PW-6 Narender is brother-in-law of deceased and brother of claimant No.1 (widow of the deceased). Said witness has stated that he was present with the deceased in the car at the time of accident but he did not suffer any injury in such a serious accident and no proof of medical treatment was placed on record. He has stated that it was dark at that time and he did not remember the name of the person who had told him about the particulars of truck and its driver. Even the Investigating Officer of the criminal case was not examined by the claimants to prove as to how he had connected respondent No.1 and his truck with the alleged accident.

On perusal of evidence adduced by the witnesses, it was not proved on record that the offending truck was involved in the accident. The onus of proving negligence was upon the claimants and proof of rashness and negligence on the part of the driver was necessary for maintainability of petition under Section 166 of the Act.

Section 140 of the Act lays down as under :-

“140. Liability to pay compensation in certain cases on the principle of no fault.-

(1)Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2)The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of fifty thousand rupees and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of twenty-five thousand rupees.

(3)In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4)A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share

of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this Section or under Section 163-A.”

On perusal of above said provisions, it is apparent that these provisions are independent from Section 160 of the Motor Vehicles Act. Even if the claimant is not in a position to prove the rash and negligent driving on the part of the driver of the offending truck, still, he has a right to claim compensation on account of principle of “no fault liability”.

In the present case, there is no evidence on record, from which, it can be inferred reasonably that the deceased has died in the accident. It has been proved that he was taken to hospital before death and remained admitted there. Thereafter, he was declared dead by the doctor. In such circumstances, the claimants are entitled to the compensation under “no fault liability.”

However, the occurrence of accident and identity of the vehicle involved in the accident is not in issue. It has been held in ***Eshwarappa @ Maheshwarappa and another v. C.S. Gurushanthappa and another 2010 (4) R.C.R. (Civil) 102 : 2010(5) Recent Apex Judgments (R.A.J.) 31 : 2010 (8) SCC 620*** as under :-

“15. Seen in isolation the above provisions might appear harsh, unreasonable and arbitrary in as much

as these create the liability of the vehicle(s) owner(s) even where the accident did not take place due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned but entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made but the above provisions must be seen along with certain provisions of Chapter XI. Section 146 forbids the use of the vehicle in a public place unless there is in force, in relation to the use of the vehicle, a policy of insurance complying with the provisions of that chapter. Section 147 contains the provisions that are commonly referred to as 'Act only insurance'. The provisions of sections 146 and 147 are meant to create the large pool of money for making payments of no fault compensation. Thus the liability arising from section 140 would almost invariably be passed on to the insurer to be paid off from the vast fund created by virtue of sections 146 and 147 of the Act unless the owner of the vehicle causing accident is guilty of some flagrant violation of the law.

16. Seen thus, the provisions of chapter X together with sections 146 and 147 would appear to be in furtherance of the public policy that in case of death or permanent disablement of any person resulting from a motor accident a minimum amount must be paid to the injured or the heirs of the deceased, as the case may be, without any questions being asked and independently of the compensation on the principle of fault.

17. The provisions of section 140 are indeed intended to provide immediate succor to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under section 140 is made at the threshold of the proceeding and the payment of

compensation under section 140 is direct to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim under section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under section 140 was issued due to the over-sight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy.”

Since the claimants-appellants have failed to prove that the accident took place due to rash and negligent driving on the part of the driver of the offending vehicle and the learned Tribunal has rightly dismissed the claim petition and as such, the award warrants no interference and the present appeal, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

26.04.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes