

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

FAO No.7707 of 2015 (O&M)

Date of Decision: January 23, 2017

Smt. Sariyam and others

..Appellant(s)

Versus

Israil and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sarfraj Hussain, Advocate
for the appellants.

ANITA CHAUDHRY, J.

The unsuccessful claimants aggrieved by the award dated 20.08.2015 passed by the Motor Accident Claims Tribunal, Mewat have filed this appeal.

Sariyam along with two children filed a claim petition under the Motor Vehicle Act seeking compensation for the death of Abdul Sattar aged 60. He was a mason earning Rs.10,000/- per month. Regarding the accident, an FIR no.155 was registered on 09.03.2014 under Sections 279, 304-A IPC at Police Station Nuh, on the statement made by Mohd. Rijwan son of Fajruddin. It was claimed that the deceased was treated also at a hospital in Delhi and a sum of Rs.87,651/- was spent.

Respondents no.1 & 2 in their joint written statement pleaded that the claim was false and no accident had taken place and the

story given by the claimants was frivolous. The insurance company also took the same plea. It was also denied that the deceased was having an income of Rs.10,000/- per month or that he was a mason.

On the pleadings of the parties, following issues were framed:-

1. Whether accident in question resulting death of Abdul Sattar son of Noor Mohd. Took place on 08.03.2014 in the area near Fakru Petrol Pump, Nuh, P.S. Nuh, because of rash and negligent driving of vehicle No.HR-74-1887 by its driver/respondent no.1? OPP
2. If issue no.1 is proved, whether the petitioners are entitled to get compensation. If so, to what amount and from whom? OPP
3. Whether respondent no.1 was not holding a valid and effective driving licence to drive the offending vehicle at the time of alleged accident. If so to what effect? OPR-3
4. Whether respondent no.2 has violated the terms and conditions of the insurance policy as alleged. If so to what effect? OPR-3
5. Relief.

The Tribunal recorded the following finding:-

“12. After hearing rival contentions and appreciating the evidence on record, I find substance in the contention of learned counsel for the respondent no.3. Needless to say, onus to prove the act of rash and negligent driving of the driver of the vehicle in MACT cases, is always on the claimant. The same law has been laid down in SK Arora Vs. Dr. Manoj Bisla 2012 SC, page 118 wherein it has been laid down that the

onus to prove the negligence in MACT petitions, is always upon the claimants and they are bound to discharge it before the Tribunal by leading cogent and clinching evidence, though the element of proving negligence under the Motor Vehicles Act is not the same as the standard of proof necessary in a criminal case. When the FIR refers to the involvement of the insured vehicle and there is a witness, who refers to the fact that he arrived at the spot immediately after the accident, it is not too difficult for anyone to make an inference as to what was the vehicle which was involved that resulted in a fatal accident. Even in the absence of eye-witness to the occurrence, the Tribunal which conducts the summary proceeding should weight the other material produced to determine the issue as to whether there was negligence on the part of the driver of the offending vehicle. In the case in hand the alleged incident of accident was witnessed by Rijwan son of Fajruddin on whose instance the FIR no.155 Ex.P12 was lodged on the next day of the occurrence. However, by the time of reporting the matter to the police the said so called eye-witness was not knowing about the registration number of the offending vehicle or name of its driver. While stepping in the witness box he has failed to prove that the occurrence was actually witnessed by him. Undoubtedly by way of tendering affidavit Ex.PW1/A in his chief he has reiterated the contents of the petition on oath but his credibility has been impeached in his cross wherein he has stated that before reaching his at the spot, the passerby had already shifted to the injured to Medical College, Nalhar. Meaning thereby he came to know about the

incident after rushing the injured to hospital and at the time of accident he was not present. Even at one place in his cross he says that he did not see the alleged accident. He also admits that on 9.3.2014 while lodging the FIR he failed to tell the name of the driver of registration number of the offending vehicle.

13. Similarly, the version of PW3 is also not reliable or trustworthy. Perusal of the report u/s 173 Cr.P.C. Ex.P1 and accompanied documents Ex.P2, Ex.P6, Ex.P12 and Ex.P13 shows that the name of this witness does not find place in the list of witnesses prepared by the investigating agency. Had he been eye-witness of the occurrence, certainly his statement u/s 161 Cr.P.C. would have been recorded and his name would have been cited as one of the witnesses. It means this witness has been introduced afterthought just to cover up the lapses in proving the negligence of respondent no.1 or involvement of alleged offending vehicle. Thus, there is no value of the testimony of this witness.

14. Admittedly PW2 was not the eye-witness. In his cross, he was specifically stated that he did not witness the occurrence. There is no dispute that mere non mentioning of the registration number and name of the driver while lodging the FIR is not fatal to the claim petitions wherein the involvement of the vehicle and its driver is otherwise proved but here in the case in hand, the alleged incident is of 8.3.2014. As already stated above the FIR was lodged against the unknown vehicle and unknown driver. There is nothing on the file to show how this vehicle has been connected with the alleged incident. There is no evidence as to whether the respondent no.1 and 2 had admitted the involvement of

the vehicle in the alleged accident. Obviously, both the alleged eye-witnesses namely Rijwan son of Fajruddin and Umarddin son of Yusuf could not note down the registration number of the vehicle actually involved in the accident. Since the PW1 has stated that before reaching his at the spot, the passerby had already shifted to the injured to Medical College, Nalhar and PW3 has also failed to tell the registration number of the offending vehicle and name of its driver. Moreover, name of the PW3 is not mentioned in the list of witnesses nor his statement was recorded by the police. It all shows that the accident was caused by some unknown vehicle being driven by some unknown person but the alleged offending vehicle HR-74-1887 which is insured with the respondent no.3, has been planted with the active connivance of the respondents no.1 & 2 just to procure compensation from the respondent no.3, insurance company.”

Records of the trial Court have been summoned.

I have heard the counsel for the appellant at great length.

Rijwan was the eyewitness and had lodged the FIR. The copy of the FIR is available. According to it an unknown vehicle and an unknown driver had caused the accident. It is mentioned in the FIR that some persons who were around, had shifted the injured to the hospital and he had reached the spot after some time. The incident had taken place at 2:30 PM on 08.03.2014. The FIR had been lodged the next day at 10:30 AM but while submitting his affidavit Rijwan had mentioned that he had witnessed the accident and the accident had occurred due to

the rash and negligent driving of respondent no.1. In the cross-examination, he stated that he had made a statement to the police on the same day at 4:00 PM, which is contrary to the record. The witness, however, had admitted that he had not given the driver's name on the same day and he had not seen the accident but he added later on that he had seen the accident from a distance of 100 meters and he gave the statement again on 19.03.2015. He admitted that he had not taken the injured to the hospital. He stated that before he could reach the spot, the injured was taken to the hospital by some other persons but he could not give their names. It stands proved that Rijwan was not present at the spot at the time of the accident and was not a witness to the accident and it is, therefore, he could not give the details of the vehicle. Khalid PW2 is not an eyewitness. He has admitted this fact in the cross-examination. We are thus left with the statement of Umarddin PW3. He had asserted that he was an eyewitness and the accident had occurred very close to his Dhaba. He stated that he was making tea at his shop near the Nuh Bus Stand when the vehicle came and hit Abdul Sattar.

The Tribunal rejected the statement of Umarddin as he did not go and make a statement to the police. His statement under Section 161 Cr.P.C. was not recorded. The site plan is available on record, it does not indicate the shop of Umarddin. It appears that the witness is procured. He was rightly held to be a witness who had been introduced in July, 2015.

The author of the FIR did not shift the injured to the hospital. The reason is that he had arrived late and therefore, he could not give the details of the vehicle. The onus to prove the negligence and about the involvement of the vehicle was upon the claimants, which they had failed to discharge. There is no reason to take a different view.

The findings are affirmed. The appeal is dismissed in limine.

(ANITA CHAUDHRY)
JUDGE

January 23, 2017
sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No