

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 4970 of 2017 (O&M)

Date of Decision: 9.10.2017

Smt. Sheela and others

.....Appellants

Versus

Ravinder and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Saurabh Dalal, Advocate
for the appellants.

AVNEESH JHINGAN, J.

The present appeal has been filed against the award dated 20.10.2016 passed by the Motor Accidents Claims Tribunal, Jhajjar (for short 'the Tribunal').

The brief facts necessary for adjudication of the present appeal are noted:

On 14.12.2014 Mahesh son of Ramesh while going on his motorcycle to his fields, met with an accident and lost his life. On 15.12.2014 at about 7:30 a.m. one Ravinder found the dead body of Mahesh lying on the side of the road, he informed about the accident to the police as well as family members of Mahesh. FIR No. 868 dated 15.12.2014 was registered at the instance of Ravinder.

The claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the widow, three minor children and mother of the deceased.

The said claim petition was dismissed as the claimants were not

No.HR-26-BR-3496 in the accident.

Aggrieved of the said award, the present appeal has been filed.

Learned counsel for the appellants has argued that the Tribunal has erred in dismissing the claim petition inspite of the fact that it was evident that Mahesh lost his life in a motor vehicular accident.

I have heard learned counsel for the appellants. He has not been able to point out any illegality or any defect in the award passed by the Tribunal.

The onus is upon the claimants to prove the involvement of the vehicle in the accident and that the accident had occurred due to rash and negligent driving of the said vehicle.

Hon'ble the Apex Court in *Surender Kumar Arora and another Versus Dr. Manoj Bisla and others*, 2012 (4) SCC 552, has 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 claimants.

In this case, the claimants have failed at the threshold itself. There was no witness or eye witness to the accident. The dead body was found by Ravinder who appeared as PW2 before the Tribunal, at his instance the FIR was registered. In the FIR no detail or registration number of the vehicle involved in the accident was given. The claim petition was filed claiming that owner-cum-driver of Toyota Etios Car bearing registration No. HR-26-BR-3496 came to Ravinder for compromise and thereafter the claimants came to know that the said vehicle was involved.

To support the claim petition, the mother of the deceased Smt.

Sheela deposed as PW1; Ravinder also appeared as PW2; FIR was exhibited

as Ex.P3; HC-Amit Kumar, Investigating Officer of the criminal case, also deposed as PW4 and Sanjeev Kumar Jakhar, Ahlmad appeared as PW5 and had also brought the criminal case file to establish that the charge-sheet had been filed against the driver of the said vehicle.

The driver-cum-owner filed the written statement before the Tribunal and denied the involvement of the vehicle. It was further pleaded that he has been falsely implicated in the FIR in collusion with the police.

In all the witnesses and the evidence produced by the claimants, not an iota of evidence was brought on record to establish the involvement of the said car. The star witness of the claimants Ravinder (PW2) in his cross-examination admitted that he had not witnessed the alleged accident. He further stated that the accident took place with an unknown vehicle and he is not in a position to say with which vehicle the accident occurred.

Though the criminal proceedings as such are not relevant for the claim made under the Act but in the present case, since we are at preliminary stage to decide the involvement of the vehicle, therefore, the criminal proceedings also have some relevance. In the criminal proceedings, PW-2 Ravinder, categorically stated that he never made any statement to the police to the effect that respondent No.1 and the car in question were involved in the alleged accident and that respondent No.1 came to him for compromise. After this admission, the entire case of the claimants falls flat.

Learned counsel while arguing the present appeal fairly stated that the criminal case against the driver-cum-owner of the vehicle has been dismissed. It is important to note that PW4 HC Amit, the Investigating Officer, also failed to explain before the Tribunal as to how he was able to

fix the identity of the car in question as well as of its driver in the alleged accident. He simply stated that the owner-cum-driver was arrested on the basis of supplementary statement made by Ravinder. This cannot be a basis as firstly Ravinder backed out from the supplementary statement in the criminal proceedings and secondly, in his cross-examination before the Tribunal, he admitted that he was not aware as to which vehicle was involved.

No other issue has been raised while arguing the appeal. No defect can be pointed out in the award passed by the Tribunal.

The present appeal is dismissed being without any merit.

Since the main appeal has already been decided, the application regarding delay has only academic relevance.

9.10.2017
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No