

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.2949 of 2003(O&M)

Date of Decision: 29.05.2018

Smt. Babli & ors..

... Appellants

Versus

Lal Chand & ors.

.. Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. R.S. Sailani, Advocate,
for the appellants.

Mr. Navin Kapur, Advocate,
for respondent No.3-Insurance Company.

RAMENDRA JAIN, J.(Oral)

Claimants through this appeal have laid challenge to award dated 20.03.2003 of the Motor Accident Claims Tribunal, Hisar (in short 'the Tribunal'), whereby their claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for award of compensation against the death of Inder Singh in a motor vehicular accident was dismissed.

According to the claim petition filed by the appellants-claimant, at around 9.00 P.M. on 20.07.1999, deceased Inder Singh, aged 33 years, a mechanic, running workshop of repairing leaf spring of the truck earning ₹8,000/- per month, died in a motor vehicular accident caused by truck bearing registration No.HR-06A/3155 driven by respondent No.1 in a rash and negligent manner, owned by respondent No.2 and insured with respondent No.3. The matter was reported to the Police Station Assandh, District Karnal, but the Police refused to register FIR on the ground that the same can only be registered at Police Station Hansi, District Hisar. When the appellants-claimant approached the Police Station Hansi, it also refused to

lodge FIR advising to re-approach Police Station, Assandhh. The dead body was brought to his native Village Hazimpur and cremated there, after recording the death of Inder Singh in the register of chowkidar of village. On 28.11.1999, appellant No.1-claimant wrote a letter to the Police Station, Assandh for lodging the FIR, but all in vain.

Learned Tribunal, after holding trial, dismissed the claim petition vide impugned award dated 20.03.2003.

Learned counsel for the appellants-claimant contends that learned Tribunal has erroneously dismissed the claim petition giving much weight to the contradictions regarding the date and time of accident, without appreciating that the same were only typographical mistakes. Learned Tribunal also failed to consider that registration of FIR is not necessary for success of a claim petition. Widow of deceased, namely, Babli (PW-1) and real brother of the deceased Ved Parkash (PW-2) have proved beyond any shadow of doubt that the death of deceased Inder Singh had occurred in a road accident on 20.07.1999 on account of rash and negligent driving of respondent No.1. Learned Tribunal also failed to appreciate that PW-2 Ved Parkash, brother of the deceased was eye witness to the accident. Therefore, believing his unrebutted testimony, learned Tribunal ought to have accepted the claim petition. Learned Tribunal erred in not considering the admission of respondents No.1 and 2 about the death of Inder Singh in a motor vehicular accident caused by respondent No.1. Learned Tribunal also erred in not relying upon entry in the register of Chowkidar of the village (Ex.P-4) mentioning that Inder Singh had died in accident.

On the other hand, learned counsel for respondent No.3, vehemently opposing the above submissions of learned counsel for the

appellants, pleaded legality and validity of the impugned award.

Having given considerable thoughts to the submissions made by both the sides, I find that the instant appeal is completely devoid of any merit on account of major significant contradictions in the date and time of accident, non-production of any eye witness, statement of PW-2 Ved Parkash as unworthy of any credence as he has been falsely shown to be an eye witness being interested and real brother of the deceased. Non-registration of FIR, discrepancies in the statements of PW-1 Babli, widow of the deceased and PW-2 Ved Parkash, brother of the deceased regarding their visit to the spot and taking dead body to Government Hospital, Assandh and then to Hansi etc.

In the claim petition, time of accident is mentioned as 9.00 PM on 20.07.1999, whereas Babli, widow of the deceased as PW-1 testified that her husband died in an accident on 02.07.1999 i.e. 18 days earlier(from the date mentioned in the claim petition), whereas her brother-in-law and real brother of deceased Ved Parkash as PW-2 testified that accident had taken place on 20.07.1999, at 9.00 A.M., contrary to the time of accident mentioned in the claim petition as 9.00 PM. PW-2 Ved Parkash, in his examination-in-chief, testified that on the date of accident itself, he had gone to Assandh to meet his brother Inder Singh and witnessed the accident at 9.00 AM. But in his cross-examination, he deposed that he had gone to Assandh two days before the date of accident to bring spare parts and stayed with his deceased brother. This witness also deposed that his deceased brother was shifted to Civil Hospital Assandh after half an hour of the accident. Meaning thereby that deceased in an injured condition, was shifted to Civil Hospital at the most by 10.00 AM. Contrary to it, PW-1 Babli, widow of deceased has

stated that she reached the place of accident at about 1.00/2.00 PM and the dead body was still lying on the spot. She also stated that dead body of her husband was shifted from Assandh to Civil Hospital, Hansi, contrary to the statement of PW-2 Ved Parkash that they have shifted injured Inder Singh to Civil Hospital, Assandh.

Though PW-2 Ved Parkash admitted that he was having the medical record regarding admission of his deceased brother Inder Singh at Civil Hospital, Assandh, but the said record did not ever see the light of the day for the reasons best known to the appellants-claimant. According to PW-1 Babli, when the police of Assandh and Hansi did not record any FIR qua the accident in question resulting into death of her husband Inder Singh, she sent a letter Ex.P1 after 5-6 days through registered post to take action, but still nothing had happened, contrary to the pleadings that she had written a letter dated 28.11.1999 i.e. after more than 4 months and 21 days of the date of accident.

More so, respondents No.1 and 2 admitted the accident in question in their written statement, but did not dare to enter in witness box for the reasons best known to them or to the appellants-claimant. Therefore, in the absence of any evidence, pleadings of respondents No.1 and 2 in the shape of their written statement cannot take place of proof.

The place of accident is also disputed, rather the appellants-claimant themselves are confused in disclosing the correct place of accident. According to them, the accident took place at Assandh, which falls in District Karnal, which is far away from District Hisar, where Sub Division Hansi falls. If the accident took place at Hansi, then why the appellants-claimant did not approach Police Station at Hansi. The conduct of the appellants-

claimant is completely suspicious throughout.

According to PW-1 Babli, widow of deceased Inder Singh, the accident was witnessed by Shamsher Singh, who was also running a workshop along with Mahender, Ved, Shanu and Kartar, but none of these alleged witnesses was produced by the appellants-claimant in the witness box, which required to draw adverse inference against them that they did not adopt any such exercise intentionally and deliberately, knowing well that the aforesaid persons as they have not witnessed the accident, would not falsely support the claimants.

Entry in the register of Chowkidar as Ex.P-4 mentioning death of Inder Singh in an accident also, does not help the appellants-claimant because it is silent about the mode and manner of accident.

Admittedly PW-1 Babli, widow of the deceased, had not witnessed the accident, inasmuch as she had reached the alleged place of accident after 4-5 hours. The sole testimony of PW-2 Ved Parkash, brother of deceased, in view of above discrepancies pointed out, is completely unworthy of any credence. He can safely be declared as an interested witness and deposed falsely for the success of the claim petition.

Remaining silent of the claimants for more than four months in not lodging any protest with the police or to the higher authorities for not recording their FIR about the alleged accident in question in which Inder Singh died, also draws an adverse inference against the appellants-claimant that things did not happen in the manner as narrated by them in the claim petition.

Judicial note of the fact is also taken that as and when an injured or dead body is taken to Civil Hospital, a medical ruqa is always sent

positively by the medical officer present there to the nearest police station. In case, the appellants-claimant or PW-2 Ved Parkash had taken the body of Inder Singh to Civil Hospital Assandh and Civil Hospital, Hansi, in that eventuality, the medical officer present there must have sent medical ruqa to the nearest police station, which is a mandatory requirement before admission of injured or accepting a dead body in Government Hospital. Non sending of any medical ruqa by Medical Officer, Civil Hospital, Assandh to the police station proves that Inder Singh dead or alive, was never taken for postmortem to hospital, rather was directly brought to the village and cremated.

In view of the major contradictions pointed out above, this Court is not inclined to differ with the findings of the learned tribunal and as such, dismiss the appeal. The impugned award is, accordingly, upheld.

29.05.2018
monika

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No