

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

FAO No. 3527 of 2001

DECIDED ON: DECEMBER 04, 2018

PUSHPA DEVI AND OTHERS

.....APPELLANTS

VERSUS

RATTAN SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. C.L. Sharma, Advocate
for the appellants.

None for the respondents.

AVNEESH JHINGAN, J (ORAL)

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

In spite of service no one has put in appearance on behalf of respondents.

The award dated 04.05.2001 passed by Motor Accident Claims Tribunal, Hoshiarpur (for short 'the Tribunal') has been assailed by the legal

heirs of Jagga Singh (deceased).

The brief facts of the case are that on the intervening night of 10th and 11th October, 1998, Jagga Singh was going to his village Khizapur on his scooter bearing registration No. PB-08-C-5855. He lost his life in an accident. At about 9/9.30 AM, when his brother and nephew were going on tractor trolley bearing registration No. PB-1636 to their fields they found the scooter of Jagga Singh lying in the bushes and Jagga Singh was lying dead near the scooter. They found a bumper of a truck entrapped in scooter on which the registration number was written as DEG-5375. FIR No. 58, dated 11.10.1998, under Sections 279, 304-A and 427 IPC was registered on the statement of Hazara Singh at Police Station Hajipur.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the legal heirs of Jagga Singh (deceased). It was pleaded by the claimants before the Tribunal that the deceased was working as Assistant Store Keeper in the Punjab State Electricity Board and was drawing a salary of ₹6162/- per month. The claim petition was dismissed by the Tribunal on the ground that the claimants failed to prove rash and negligent driving of the offending vehicle.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellants argued that the Tribunal erred in dismissing the claim petition as the claimants duly proved the rash and negligent driving by the Statement of Hazara Singh, who deposed that the deceased lost his life in a motor vehicular accident and the accident was caused due to rash and negligent driving of the offending vehicle. He further argued

that the bumper recovered from the place of accident was having a number plate bearing registration number DEG-5375, in fact, the registration number of the truck was PB-08-C-9457 and DEG-5375 was an old registration number of the same truck.

The contention raised by learned counsel for the appellants lacks merit.

In the claim petition filed under Section 166 of the Act, twin conditions are required to be satisfied by the claimants.

1. Involvement of the offending vehicle;
2. The accident was caused due to rash and negligent driving of the offending vehicle.

In the present case there is no eye witness of the accident. It was only in the morning that Hazara Singh and the nephew of the deceased saw the scooter and the dead body of Jagga Singh lying on the side of a road. As per the pleading and the statement of Hazara Singh, a bumper of truck was entrapped in the scooter, this may be an indicator to the fact, that the offending vehicle bearing registration No. DEG-5375 was involved in the accident. The case of the claimants was that the actual registration number of the offending vehicle was PB-08-C-9457 and the driver was driving the truck by putting a number plate with an old registration number. From perusal of the record, it is evident that no evidence was lead by the claimants to show that the registration number of the truck changed from DEG-5375 to PB-08-C-9457. Reliance was placed on the fact that the owner of the truck admitted that the registration number was changed and the driver was plying the truck with old registration number. The

said statement is of no help to the claimants as the owner of the truck never deposed before the Tribunal and the statement relied upon was made before the police.

Even, if it is considered that the offending vehicle was involved in the accident, yet the second requirement that the accident was caused due to rash and negligent driving of the offending vehicle still remains to be substantiated. It is only the statement of Hazara Singh, which is being relied upon to prove that the accident was caused due to rash and negligent driving of the offending vehicle. Admittedly, he was neither an eye witness nor present at the place of accident.

In such circumstances, no shadow can be cast upon the findings recorded by the Tribunal that the claimants failed to prove rash and negligent driving of the offending vehicle.

The appeal is, accordingly, dismissed.

DECEMBER 04, 2018
sham

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No