

FAO No.2624 of 2004

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

FAO No.2624 of 2004
Date of decision: 14.03.2018

Lakhpatri and another

.....Appellants

versus

Parveen Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Sawan Chaudhary, Advocate,
for Mr. Vikram Singh, Advocate, for the appellants.
Mr. Ashish Gupta, Advocate,
for Mr. Namit Sharma, for respondent No.2.
Mr. Nikunj Dhawan, Advocate,
for Mr. Harsh Aggarwal, Advocate, for respondent No.3.

RAMENDRA JAIN, J. (ORAL)

Unsuccessful claimants have filed the instant appeal for setting aside impugned award dated 12.05.2004 of the Motor Accident Claims Tribunal, Panipat (hereinafter referred to as the 'Tribunal'), dismissing their claim petition under Sections 166 and 140 of the Motor Vehicles Act (hereinafter referred to as the 'Act').

In nutshell, Sudama, husband of appellant No.1 and father of appellants No.2 to 4, around 8.30 p.m. on 18.10.2003 while returning from his job died in a motor vehicular accident in the area of village Patti Kalyana, allegedly caused by car bearing No. HR-51J-0006 driven in a rash and negligent manner by respondent No.1, owned by respondent No.2 and insured with respondent No.3. Consequently, FIR No.311 dated 20.10.2003 under Section 279 and 337 IPC was registered at Police Station Samalkha.

With these broad facts, the appellants filed claim petition under

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Sections 166 and 140 of the Act against the respondents claiming compensation of ₹20,00,000/- against the death of Sudama. The Tribunal after holding trial, dismissed the claim petition vide impugned award dated 12.05.2004.

Learned counsel contends that learned Tribunal failed to appreciate that respondents No.1 and 2 had specifically admitted the accident in question in their written statement, therefore, the respondents were liable to pay compensation on account of death of Sudama.

Having given considerable thought to the submission made by learned counsel for the appellants, I find the instant appeal completely devoid of any merit for the reasons to follow.

Respondents No.1 and 2 have not admitted their fault in causing the accident, which resulted into death of Sudama, rather categorically pleaded that accident in question had taken place on account of own fault of the deceased. Therefore, the alleged admission qua accident in question without admitting their fault or liability by respondents No.1 and 2 is of no consequence or by any stretch of imagination does not favour the appellants.

Pleadings cannot take place of proof. Therefore, any vague admission qua accident in question disclosing own fault of the deceased for his death cannot be substituted as an evidence in favour of the appellant-claimants.

In a case under Section 166 of the Act, the condition precedent for the claimants is to prove rash and negligent driving of the offending driver. Though, the appellant-claimants had pleaded that one Vinod, a co-

worker of deceased Sudama was accompanying him at the time of accident.

However, said Vinod was never examined by the appellant-claimants for the

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reasons best known to them. Consequently, adverse inference is required to be drawn against them that they did not adopt such exercise intentionally and deliberately knowing well that said procured witness Vinod would not support them falsely. Instead the appellant-claimants adopted a futile exercise of examination of one Om Parkash as PW2, whose presence on the spot has been declared by the Tribunal as doubtful for the reason that his name was not mentioned by the claimants as a companion of deceased and Vinod.

More-so, FIR was also recorded after two days of the accident on 20.10.2003. If author of the FIR PW2 Om Parkash had witnessed the accident, in that eventuality, there is no explanation on the file as to why the FIR was lodged after two days and not promptly on the same evening. This conduct of the appellants shows that Om Parkash was a procured witness and FIR after two days was lodged against car bearing registration No. HR-51J-0006 by concocting a false story in connivance with respondents No.1 and 2.

I have gone through the impugned award and find no illegality or perversity in the same.

In view of the discussion above, appeal fails and the same is dismissed. However, the appellants are held entitled to an amount of ₹50,000/- to be paid by all the respondents jointly and severally along with interest @ 9% per annum from the date of filing the claim petition till realization. Since aforesaid vehicle was insured with respondent No.3, therefore, it is directed to deposit the aforesaid amount along with interest within one month from today before the Tribunal for onward disbursement

of the same to the appellants according to the proportion so to be arrived at by the Tribunal, failing which respondent No.3 shall be liable to deposit the

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same with penal interest @ 15% per annum from the date of filing the claim
petition.

March 14, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.