

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

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**CM-20648-CII-2018 in/and
FAO-1221-2005 (O&M)
Date of Decision : 27.9.2018**

Hazari Lal (since deceased) and others

....Appellants

vs.

Ranjit and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Kartar Singh Malik-I, Advocate
for the appellants.

Ms. Gurdeep Kaur, Advocate for
Mr. Sandeep K. Sharma, Advocate
for respondents No.1 and 2.

Ms. Shamsher Kaur, Advocate
for the respondent No.3-insurance company.

AJAY TEWARI, J. (Oral)

CM-20648-CII-2018

This is an application for placing on record the amended memo
of parties.

For the reasons recorded in the application, the same is allowed
and amended Memo of Parties is taken on record.

By consent, main case is taken on board today itself for final
decision.

Main Case

This appeal has been filed against the dismissal of the claim
petition on the ground that the identity of the offending vehicle /driver was

not proved.

Brief facts of the case are that on 14.9.2000 Sukhbir Singh son of Hazaari Lal was going from Shital Nagar, Rohtak to village Karor on scooter with his relative Pardeep. Then the offending car being driven rashly and negligently hit them. As a result of the accident, Sukhbir Singh died and Pradeep suffered injuries. FIR was got registered by Pradeep but no name and no number of vehicle was given. Thereafter, two claim petitions were filed.

During the evidence, one Rajesh appeared and testified that he had seen the accident and had shifted the injured to the hospital and he gave number of car. The Tribunal held that once Pradeep did not mention any number of the vehicle, and even presence of Rajesh was not mentioned in the FIR, the appellants were not able to prove that the accident had taken place with the offending vehicle and dismissed the claim petition. Hence, the present appeal.

Learned counsel has argued that the Tribunal has acted in a most pedantic manner in deciding the claim petition and the mere omission to mention the presence of Rajesh in the FIR could not be taken to completely discredit his testimony. Counsel for the insurance company has defended the judgment.

In my considered opinion, argument of the appellant is more weighty. It cannot be lost sight of that civil cases have to be decided on the basis of preponderance of probability.

I have gone through the testimony of Rajesh and nothing has been elicited in cross-examination, which may support claim of the

insurance company. Merely because his name was not mentioned by injured Pradeep in the FIR would not enough to completely negate his testimony. In the circumstances, I have no hesitation in setting aside finding of the Tribunal. I hold that the issue No.1 has to be decided in favour of the appellants and against the respondents.

Counsel for the insurance company has then pointed out that if this finding is recorded, the matter has to be remanded back to the Tribunal because no assessment of the compensation has been made. There is considerable weight in the argument and consequently, the appeal is allowed and the matter is remanded back to the District and Sessions Judge, Rohtak for a fresh decision.

Counsel for the appellants states that evidence had been led and only arguments have to be now heard and therefore, Tribunal should be directed to decide the case expeditiously. I find this to be a fair request. In the circumstances, the Tribunal is directed to decide the matter expeditiously within three months from the date of receipt of the record. There would no requirement to serve any parties. Parties through counsel are directed to appear before the Tribunal on 12.11.2018. Registry is directed to send the record (as existing) to the Tribunal.

The appeal stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

27.9.2018
anuradha

(AJAY TEWARI)
JUDGE

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