

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1354 of 2007

Date of Decision: 26.02.2018

Smt. Rajbala and Others

....Appellants

V/S

Ajit Singh and Others

....Respondents

BEFORE: HON'BLE MS. JUSTICE RITU BAHRI

Present : Mr. G.S.Gopera, Advocate,
for the appellants.

Mr. Aakash Sridhar, Advocate, for
Mr. Ashwani Talwar, Advocate,
for respondent No.3.

RITU BAHRI, J.(Oral)

This appeal has been filed by the claimant-appellants against the award of Motor Accident Claims Tribunal, Narnaul (hereinafter referred to as 'the Tribunal') dated 26.07.2006, vide which claim petition filed by the claimants on account of death of Ashok Kumar in a motor vehicular accident which took place on 22.01.2005, has been dismissed.

FACTS NOT IN DISPUTE

Brief facts of the case are that, on 22.01.2005, Ashok Kumar was coming from Nasibpur to Narnaul on foot at about 10.30 pm when he reached near Power House, Narnaul as jeep bearing registration No. HR34B/0120 being driven by respondent No.1 rashly, negligently and at a very high speed came ther. The jeep came on the wrong side and hit Ashok Kumar due to which he received multiple injuries which proved fatal. PW Umrao singh saw the accident. Respondent No.1 fled away from the spot.

In this regard, an FIR Ex.PW2/B lodged in the police station city, Narnaul for the offence punishable under Sections 279/304 A of IPC against respondent No.1.

Consequently, claimants-appellants filed a claim petition before the Tribunal.

Upon notice respondent Nos. 1 and 2 filed joint written statement and respondent No. 3 filed separate statement controverting the averments of the petitioner. No replication was filed. As per pleadings of the parties following issues were framed as under:

- (1) Whether the motor vehicle accident that took place on 22.01.2005 is an outcome of rash and negligent driving of jeep No. HR-34B/1020 by respondent No. 1?OPP.
- (2) Whether the petitioners are entitled to compensation for the death of Ashok in the aforesaid accident, if so, in what amount?OPP.
- (3) Whether respondent No.3 is entitled to repudate the contract of insurance on the grounds alleged?OPR.
- (4) Relief.

On the basis of evidence led by the parties, petitioner failed to prove that accident took place due to rash and negligent driving of the Jeep in question by respondent No.1 and Tribunal dismissed the claim petition.

Feeling dissatisfied with the findings of the Tribunal, the claimant-appellants have preferred the present appeal.

I have heard learned counsel for the parties and perused the record.

A perusal of the award shows that, Ashok Kumar who lodged

the FIR, examined as PW4 and stated that during the night of 22.01.2005 at about 10.30 PM he was watching TV and he heard the noise of accident. Thereafter, he came out and saw that one person was lying at the spot and he gave information to the police. He did not see any vehicle at that time. In his affidavit Ex.PW4/A, he further stated that Jeep in question was being driven rashly and negligently by respondent No.1. Since, the statement he had made before the police, he did not mentioned name of the respondent No.1 and number of the Jeep. As per his statement, it cannot be presumed that the respondent No.1 had caused this accident. Moreover, it is also observed that, statement made by PW8 and PW12, wherein they stated that respondent No.1 came to them on 23.02.2005 and admitted the accident in question before them and also requested to produce him before the police and had also given extra judicial confession to them. It is clear that, PW8 and PW12 are resident of Gehli, whereas respondent No. 1 is resident of Village Mohanpur. Instead of approaching them, he could have approached the Sarpanch or Lamberdar of his Village. As per claimants, the accident took place on 22.01.2005, whereas respondent No.1 appeared before them on 23.2.2005. It appears to be a concocted version and cannot be believed.

Though it is not proved that the accident took place due to rash and negligent driving of the jeep in question by respondent No. 1 and Tribunal findings are on right side, does not reflect any material irregularity or perversity which warranting interference by this Court. Hence the present appeal stands dismissed.

26.02.2018

Riya Grover

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned Yes
Whether reportable No