

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

FAO-1720-2007 (O&M)
Judgement reserved on 22.10.2018
Date of Decision: 15.11.2018

Veena & others

--Appellants

Versus

Rang Lal and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Rajesh Arora, Advocate for the appellants.

Mr. Shiv Kumar, Advocate for respondents no.1 & 2.

Mr. D.P. Gupta, Advocate for respondent no.3.

TEJINDER SINGH DHINDSA.J

Appellants have filed the instant appeal raising a challenge to the award dated 1.12.2006 passed by the M.A.C.T, Faridabad and whereby the claim petition preferred by them under Section 166 of the Motor Vehicle Act seeking just and fair compensation on account of death of Sh. Chander Bhan in a motor vehicle accident, has been dismissed.

Counsel for the appellants has vehemently argued that even though the FIR in question had been registered against an unknown vehicle/unknown driver but thereafter on the statement of Santosh Raj, the driver namely Rang Lal as also the offending vehicle bearing registration no. HR-29C-8343 were involved. It is argued that since driver was facing the charge of causing accident and death of Chander Bhan by driving in a rash and negligent manner, the Tribunal has erred in dismissing the claim petition. It is further contended that the evidence in the shape of testimony of PW-2 Santosh Raj has been brushed aside by the Tribunal merely on conjectures and surmises. Counsel further urges that deceased Chander Bhan left behind a widow and three minor children and under such

circumstances when the sole bread earner of the family had been killed in an accident, the Tribunal ought to have taken a lenient view considering the gravity of the circumstances.

Per contra, counsel representing the respondents have supported the award. It is contended on behalf of the respondents that it is a clear case of connivance and collusion and the vehicle in question has been involved only to claim the compensation amount.

Counsel for the parties have been heard at length and the records of the case have been perused.

Briefly, it may be noticed that claim petition under Section 166 of the Motor Vehicle Act was preferred by the claimants/appellants herein on the pleadings that Chander Bhan (since deceased) was posted at Police Station, Sadar Gurgaon and was proceeding back to his house after attending his duties and during the late night/early morning hours i.e. at about 3.30 A.M on the intervening night of 13/14.11.2002, he was crushed to death by a truck which was being driven recklessly and negligently. Case set up by the claimants was that the driver of the offending vehicle had escaped from the scene along with the vehicle but thereafter approached Sh. Santosh Raj and had admitted regarding the accident and had sought help from Sh. Santosh Raj to have the matter resolved through negotiations as brother of Santosh Raj was posted as S.D.O, Panchayati Raj, Gurgaon.

Concededly, it is a case where there was no eye witness to the alleged accident. The solitary evidence with regard to the accident is in the shape of testimony of Santosh Raj, PW-2. As per PW-2, his statement had been recorded on 16.2.2003 by the police officials and wherein he had stated that he had gone to meet his brother posted as S.D.O, Panchayati Raj,

Gurgaon about 2-2 ½ months prior and at that point of time Rang Lal had met him in village Nangal Jat and had disclosed with regard to the accident in which one person had died as also the involvement of truck bearing registration no. HR-29C-8343. PW-2 Santosh Raj himself stated that he did not approach the police authorities in such regard and it is only subsequently that on 16.2.2003 he had got his statement recorded as regards the accident that purportedly occurred on the intervening night of 13/14.11.2002.

In the considered view of this Court, the Tribunal in its award dated 1.12.2006 while dismissing the claim petition had rightfully observed that the statement of PW-2 Santosh Raj does not inspire confidence.

That apart, there would be no quarrel with the proposition that mere registration of the criminal case does not establish negligence on the part of the driver. Negligence has to be established from evidence adduced before the Tribunal. The Apex Court in ***Kamlesh and others Vs. Attar Singh and others, 2016(1) R.C.R (Civil), 24*** laid down that even though the police has registered a case against the driver of the tempo and filed the charge sheet but the same cannot be said to be conclusive with regard to rash and negligent driving of the offending vehicle.

The onus of proving negligence is always upon the claimants and they have to discharge such onus. Undoubtedly, the claimants are not required to prove the case as is required to be done in a criminal trial, yet, some credible evidence must come forth to record a finding with regard to rash and negligent driving even by applying the principle of “Preponderance of Probability”.

In the present case, even assuming that the offending/insured vehicle was involved, yet, not even an iota of evidence has been led by the claimants/appellants herein as regards rash and negligent driving by the driver and which was imperative for a petition under Section 166 of the Motor Vehicle Act to succeed.

In view of the reasons assigned above, no infirmity is found in the order dated 1.12.2006 passed by the Tribunal dismissing the claim petition.

No merit, appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

15.11.2018

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No