

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

**F.A.O No. 4178 of 2007
Date of decision:- 18.04.2018**

Gopal and another		...Appellants
	Versus	
Om Parkash and others		...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashwani Gaur, Advocate,
for the appellants.

Mr. Surender Saini, Advocate,
for respondent Nos. 1 and 2.

Mr. Neeraj Khanna, Advocate,
for respondent No.3-Insurance Company.

RITU BAHRI J. (Oral)

This appeal has been filed by the claimants-appellants against the award dated 02.08.2007 passed by Motor Accident Claims Tribunal, Sonipat (hereinafter referred to as 'the Tribunal') whereby claim petition filed by the claimants on account of death of Yogender in a motor vehicular accident which took place on 21.01.2006 has been dismissed.

Brief facts of the case are that, on 21.01.2006, Yogender and one Jagmender were going from Sonipat to their village Karewari on a motorcycle. When they reached near Om Dharam Kanta on Gohana Road, Sonipat, at about 7.30/8.00 p.m., a truck bearing registration No.HR-57-0981 (hereinafter referred to as offending vehicle) driven by respondent No.1 rashly and negligently came there

from the side of Sonipat and applied sudden brakes as a result of which are motorcycle struck behind the truck. Deceased Yogender suffered serious injuries in the accident while pillion rider Jagmender received minor injuries. Yogender was shifted from the place of accident to City Hospital, Sonipat, but as his condition was serious, he was referred to PGIMS, Rohtak. However, he breathed his last while on the way to the hospital. In this regard, FIR No.26 dated 22.01.2006 under Sections 279/337/304-A IPC at P. S .City Sonipat.

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

From the pleadings of the parties, the following issues were framed by the Tribunal:

1. Whether the death of Yogender took place due to rash or negligent driving of truck No.HR-57-0981?OPP
2. Whether the petitioners are the only legal heirs of the deceased and entitled to compensation? If so, how much and from whom? OPP.
3. Whether respondent No.1 was not holding a valid driving licence at the time of the accident? If so, its effect? OPR.
4. Whether the claim petition has been filed by the petitioners in collusion with respondent No.1 and 2? if so, its effect? OPR-3.
5. Relief.

In support of their case, the claimants have examined Sanjeev Kumar as PW1, Man Singh as PW2, Jagmender Singh as PW3 and Chand as PW4 whereas no evidence in rebuttal was led by

any of the respondents.

After going through the record of the case, Tribunal dismissed the claim petition on the ground that the author of the FIR, named Jagmender, neither mentioned the number of the offending vehicle or the name of the driver while appearing as a witness. The accident took place on the night of 21.01.2006. The number of offending vehicle figured in the statement of Chand PW4 under Section 161 Cr. P .C., for the first time on 24.01.2006 inspite of the fact that the deceased was his co-villager. There is not reasonable explanation on the file as to why Chand kept mum for three days.

Feeling aggrieved with the decision of the Tribunal, claimants/appellants filed the present appeal.

I have heard the learned Counsel for the parties and perused the case file.

A perusal of the award shows that, PW3 Jagmender Singh eyewitness of the accident lodged the FIR very next morning of the accident at 9.00 a.m., neither mentioned the number of the offending truck nor the name of its driver in the report. Even on 19.01.2007, PW3 Jagmender Singh deposed that till date he did not know the number of the offending truck. The other evidence led by the claimants i.e. PW4 Chand who was milk vendor and eye witness of the said accident. He stated that he was returning from Sonipat to his village Karwari on his motorcycle at about 8.15 p.m., when he saw the accident and chased the truck on his motorcycle. He was a co-villager of the deceased Yogender. The statement of this witness recorded by the police for the first time on 24.01.2006 as Mark-A. As per this version, he deposed

that he had seen the accident but did not bother to see the injured and instead chased the truck. Even if PW Chand did not try to see the injured after the accident due to darkness, he must have come to know about the cremation of Yogender Kumar which took place in his own village on the next day and also the cause of death of Yogender Kumar. He kept mum for another two days i.e., from 22.01.2006 to 24.01.2006. The father of the deceased; name Gopal appeared as PW5 and deposed that Chand PW4 told him the number of the offending truck on 23.01.2006. There is no explanation as to why PW4 and PW5 did not disclosed the number of the truck to the Police till 24.01.2006. So, it can be safely presumed that Chand PW4 being a co-villager of deceased Yogender was later on introduced as a witness of the accident and truck No.981 as well as Om Parkash respondent No.1 were involved as the offending truck and driver thereof in collusion with respondent No.1 was having a valid driving licence for driving the truck and that truck was duly insured with respondent No.3. The Tribunal does not found any evidence to be reliable to hold the involvement of truck No.981 in the accident in question. The Investigating Officer who could give the details of the investigation and the involvement of truck No.981, if any, in the accident, was not examined as witness by the petitioners. The statement of Chand PW4 is not reliable to hold the involvement of the truck, the petitioners have not been able to prove that the accident was caused by Om Parkash respondent No. 1 by driving his truck No.981 rashly and negligently.

Keeping in view the facts and circumstances of the case, the Tribunal has rightly been dismissed the claim petition. The orders of

the learned Tribunal does not reflect any material irregularity or perversity which may warrant interference of this Court. Accordingly, the present appeal stands dismissed.

18.04.2018
Riya Grover

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>