

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

**FAO No. 1315 of 2007 (O&M)
Date of Decision: November 21, 2018.**

Sumitra and another

.....APPELLANT(s).

VERSUS

Virender Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Abhishek Sanghi, Advocate
Amicus-Curiae for the appellant (s).

Ms. Sheenu Sura, Advocate
for respondent No.2.

Mr. R.C. Gupta, Advocate
for respondent No.3-insurance company.

SURINDER GUPTA, J.

This is appeal by claimants against the award dated 01.05.2006, whereby the claim petition filed by appellants-claimants under Section 166 of Motor Vehicles Act seeking compensation for the death of Ram Parsad, husband of appellant No.1 and father of appellants No.2 to 4, was dismissed.

As per case of the appellants-claimants, Ram Parsad, aged about 40 years, died in accident with vehicle bearing registration No.HR-17C-0042 (Bolero). The details in this regard as given in para 24 of the claim petition are as follows:-

“That on 31.01.2002, the deceased Ram Parsad was

going on feet in the left side of the road. When he reached near FCI Godown, near Green Valley, Hansi in the mean time, a Bolero Car bearing Registration No.HR-17C/0042 being driven by respondent No.1 in a rash and negligent driving (sic manner), came from Hansi side and struck into the deceased Ram Parsad directly and caused this accident. Due to this impact, the deceased Ram Parsad fell down on the road and received multiple injuries on his body person and died at the spot. This accident was witnessed by Shri Shish Pal son of Dana Ram Caste Raggar, resident of Char Kutub Gate, Hansi who disclosed before the police that on 31.01.2002 he had gone to Hisar for his personal work and due to later hours, he was travelling in a Private Truck from Hisar to Hansi. When this Truck reached bear Power Grid in the meantime, a Bolero Car bearing registration No.HR17C/0042 being driven by respondent No.1 in a rash and negligent manner came from Hansi side and the respondent No.1 directly struck his car into deceased Ram Parsad and caused this accident. The respondent no.1 was identified by Shri Shish Pal who was previously known to him. After causing this accident, respondent No.1 fled away from the spot towards Hisar side. Said Shishpal asked the driver of the said Truck to help the deceased and to take him to the Hospital but the driver of the Truck did not agree with it. This accident took place due to rash and negligent driving of respondent No.1. Had respondent No.1 observed the traffic rules, then this accident could have been avoided and the precious life of deceased Ram Parsad could be saved.”

After the accident on 31.01.2002, matter was reported to the police vide FIR No.32 dated 01.02.2002, which was recorded on the

statement of Gopal son of deceased. Claimant No.2 Gopal has stated that his father was employed as Waterman and was posted in Judicial Courts at Hansi. On 01.02.2002, when he was going towards Fatehabad, he came to know about death of his father in accident. He found piece of glass of a vehicle lying at the spot. The police could not trace the offending vehicle for a period of about one year and eight months and driver of the offending vehicle was arrested on 04.09.2003 on the statement of Shishpal, who deposed in this case as CW4 as eyewitness of the occurrence. The tribunal discarded the statement of Shishpal with the observations in para 11 and 12 of the award, which are reproduced as follows:-

“11. The FIR in this case was registered by Gopal son of Ram Parsad. The FIR was registered at 8.35 A.M. On 01.02.2002. Ram Parsad's son was coming to Hansi to meet his father but found his dead body on the road side. The matter was reported to the police. It is the case of the claimants that Shishpal, a resident of Hansi had seen that accident and he made a statement to the police and the accused was arrested. Shishpal has not given any details in the statement but in his cross-examination when searching questions were put, the witness admitted that it was pitch dark. He could not tell the distance from where he had seen the accident. He stated that the accident was caused by Virender Singh, whom he knew personally as he used to take his car on hire. He stated that he was travelling in a truck and the truck driver did not stop the truck. He could not remember the registration number of the truck in which he was travelling or even the name of the driver. He stated that he got down at Hansi and went home and did not go to the police station. He stated that he remained out of

station for nearly two years for business purpose. It may be added here that the witness had stated that he was a labourer.

12. It appears strange that a person who has witnessed the accident and who knows the driver of the offending vehicle and is a resident of the same town, does not approach the police, does not lodge the complaint and remains silent for nearly two years and only opens up when Aman, son of deceased, comes to work with him. It also appears strange that a labourer would engage another person to work for him. The accident occurred at night. The registration number of the vehicle was not noted. A person who is travelling in another vehicle could not possibly see the driver causing the accident. The truck driver did not stop at the place of accident, how could the witness note the number or see the driver.”

Learned counsel for the appellants-claimants has argued that Shishpal was eyewitness of the occurrence. The claimants were not aware about this fact. Son of deceased started working with Shishpal and during conversation on a day about death of his father, he was apprised by Shishpal that he had witnessed that accident. It was at this juncture, statement of Shishpal was recorded by the police. Driver of the offending vehicle was arrested and challan against him was presented. Presentation of challan against the driver of the offending vehicle is sufficient proof of the involvement of that vehicle in the accident. The tribunal has committed grave error while observing that Shishpal is a procured witness. In reply to the claim petition, driver of the offending vehicle had not denied the accident. His plea is that the accident was not caused due to his rash and

negligent driving of the offending vehicle. The claimants have been able to prove that the accident was caused due to rash and negligent driving of the offending vehicle and are entitled to compensation under the provisions of Section 166 of Motor Vehicles Act.

Learned counsel for insurance company has argued that entire story as put forth by the claimants is based on concocted statement of a procured witness. Firstly, statement of Shishpal that about 6 months before the date of his statement, son of claimant No.1 discussed the death of his father with him, is not believable as his statement was recorded on 03.10.2005 and accident was took place on 31.01.2002 and claim petition was filed on 19.12.2003. Secondly, Shishpal is a labourer by profession and son of deceased was not having occasion to work with him as he was given compassionate appointment under ex-gratia scheme.

To prove that deceased was hit by offending vehicle, claimants have relied on the statement of Shishpal, who appeared as PW4 and stated in his examination in chief as follows:-

“That on 31.01.2002 deponent came to Hisar for his personal work. After finishing his work, the deponent was returning to Hansi in a truck. When the truck reached near FCI godown, near Green Valley near Power Grid, Hansi, then a Bolero Car bearing registration No.HR-17C/0042 came from the opposite direction. The driver of the car namely Virender was driving the car at a very high speed and in rash and negligent manner. The said car hit a person namely Ram Parshad who was coming on foot on the left side of the road. After causing the accident, the driver of the said car fled away from the place of accident along with his car. The deponent asked

the truck driver to shift the injured to the hospital so that he may be saved but the truck driver refused to do so. Later on the deponent came to know that the injured Ram Parshad had died at the spot due to the injuries sustained by him in this accident caused by Virender Driver. The police had recorded my statement in criminal case. This accident has been caused by the driver of the offending Bolero Car No.HR-17C/0042 while driving the car rashly and negligently.”

In his cross-examination, he has admitted the following facts:-

- (i) the truck, in which he was travelling, reached the place of accident at about 10.30 p.m. when it was total darkness;
- (ii) he could not tell as to from how much distance he had seen Ram Parsad deceased;
- (iii) he knew the driver of the offending vehicle personally as he used to take his car on hire basis.
- (iv) after the accident, the truck in which he was travelling to Hansi, was not stopped by its driver at the place of occurrence despite his request;
- (v) on arrival at Hansi, he went to his home and never visited police station or place of occurrence;
- (vi) he remain out of station for about 2 years after the accident in connection with his business and did not discuss the facts regarding the accident with his family members or friends;
- (vii) his statement was recorded by the police after a gap of one year and 8 months on 02.08.2003;
- (viii) he was not aware about the width of the road, where the accident took place.

The tribunal after examining the statement of this witness, has rightly observed that silence of this witness for a period of about one year

and eight months is a circumstance which do not inspire any confidence about veracity of his statement. It is a case where the driver of the offending vehicle was allegedly known to this witness. In case, he had seen the accident, he would not have remained silent for such a long period of about 20 months. The mere fact that police after investigation, has presented challan on the solitary statement of this witness, is no reason to take the version of the accident as stated by PW4 Shishpal, as correct. No person will behave in the manner as deposed by this witness. He would have certainly discussed the accident with his family and friends as driver of the offending vehicle was known to him. He has not deposed about his business which compelled him to remain out of city for a period of about 2 years. If this part of his statement is believed, the other part of his statement that about 6 months ago (either before his appearance as witness? or reporting the matter to the police?) son of deceased was working with him and discussed about death of his father in the accident is not reliable. If that period of six months is taken from the date of his statement, then there was no occasion for him to go to the police on 02.08.2003 as his statement was recorded on 03.10.2005. If the period of six months is taken from prior to filing of the claim petition filed on 19.12.2003, still that does not explain the recording of his statement by the police on 02.08.2003.

I am very cautious of the fact that in a claim petition filed under Section 166 Motor Vehicles Act, it is not required to produce strict evidence as is required to prove the accident in a criminal case but at the same time, evidence produced by the claimants should be of such nature which inspire confidence in the mind of the tribunal/court. The driver of the

offending vehicle has filed a very vague type of reply by avoiding to either admit or deny the accident. The plea taken by the driver of the offending vehicle is that it was deceased, who was rash and walking on the wrong side. He fell down on the road after seen the coming vehicle in question and met with an accident. He has avoided to plead that the deceased met with accident with offending vehicle. In the next line, it is pleaded that respondent No.1 has not caused any accident. It is nowhere his plea that the accident was caused by his vehicle or that the same was caused with his vehicle due to rashness and negligence on the part of the deceased.

Learned counsel appearing for respondent No.2 has argued that in the criminal case, Virender Singh, respondent No.1 has been acquitted.

All the above fact when taken together, strongly suggest the planting of the offending vehicle in the accident; statement of CW4 Shishpal is not reliable on the basis of which a firm conclusion can be drawn that the accident was caused due to rash and negligent driving of the offending vehicle.

As a sequel of my above discussion, I am of the opinion that the tribunal has rightly discarded the claim of the claimants while recording finding on issue No.1 that the accident was not caused due to rash and negligent driving of the offending vehicle by respondent No.1. I find no legal or factual infirmity in the impugned award passed by the tribunal, calling for any interference.

This appeal has no merits. Dismissed.

(SURINDER GUPTA)
JUDGE

November 21, 2018.
Sachin M.

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No