

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

FAO No. 1266 of 2011

DATE OF DECISION : 16.03.2018

Smt. Kanchan and others

.... APPELLANTS

Versus

Sushant Nasa and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sawan Choudhary, Advocate, for
Ashish Gupta, Advocate,
for the appellants.

Ms. Monika Jangra, Advocate, for
Ms. Vandana Malhotra, Advocate,
for respondent No.3 – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

This appeal arises from the award dated 11.10.2010 passed by the Motor Accident Claims Tribunal, Sonipat (for short, 'the Tribunal').

2. The appellants are the legal heirs of Gulshan who lost his life in a motor vehicular accident that occurred on 02.02.2008. Respondents No.1 and 2 are the owner, driver and respondent No.3 is insurer of motor cycle bearing registration No. HR 10L-7777 (for short, 'the offending vehicle').

3. On 02.02.2008, Dushyant (respondent No.2) was driving the motor cycle. Gulshan was the pillion rider. They attended a birthday party at Murthal and were coming back. It was alleged that respondent No.2 was

rashly and negligently driving the motor cycle and it struck with a road side pole. Gulshan fell down, sustained multiple injuries and died on the spot. FIR No. 20 dated 03.02.2008 was registered on the statement of one Ricky, alleged to be an eye witness.

4. A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') was filed by the legal heirs of the deceased. The claim petition was dismissed as the claimants failed to prove the involvement of the offending vehicle and its rash and negligent driving.

5. Aggrieved of dismissal of the claim petition, the present appeal has been filed by the claimants.

6. Learned counsel for the appellants argued that the Tribunal erred in dismissing the claim petition. He relied upon the written statement filed by respondent No.2 to submit that there was an admission regarding the accident and involvement of the motor cycle. He contended that FIR was registered, which itself was a proof of rash and negligent driving.

7. Learned counsel for the insurer argued that the claimants failed to prove involvement of the offending vehicle and that it was being driven rashly and negligently.

8. In proceedings under Section 166 of the Act, onus is casted upon the claimants to prove involvement and rash and negligent driving of the offending vehicle. Except Kishori Lal (PW.1), father of the deceased, no one else appeared as witness before the Tribunal. He was not present at the time of the accident.

9. Reliance on the pleading made in written statement of respondent No.2 will not support the case of appellants. Relevant portion is re-produced below :

“24. That the para no. 24 of the claim petition is wrong and hence vehemently denied. However, it is admitted that the respondent no.2 was driving the motor cycle in question at a very moderate and normal speed. The respondent no.2 has a valid driving licence w.e.f. 4.3.2006 to 3.3.2026. Photo copy of the driving licence is attached with this reply for the kind perusal of the Hon'ble Court. It is wrong that the respondent no.2 was driving the motor cycle at a very high speed, in a zig-zag manner. It is further wrong that the motor cycle struck with the road side pole suddenly. However, the deceased fell down on the road suddenly and sustained fatal injuries. Rest of the para is wrong and hence vehemently denied.”

In the written statement, the only admission by respondent No.2 is that there was an accident. The factum of accident and involvement of the motor cycle stands admitted by respondent No.2. This itself will not be enough to allow the claim petition. Respondent No.2 specifically denied the fact that the accident occurred due to his rash and negligent driving.

10. No material was produced before the Tribunal to prove the rash and negligent driving of the motor cycle. The alleged eye witness, namely Ricky, on whose statement the FIR was recorded, was not examined for the

reasons best known to the appellants. The deposition of PW.1 Kishori Lal is of no help, as he was not present at the time of the accident.

11. The Supreme Court in the case of **Surender Kumar Arora and another Vs. Dr. Manoj Bisla and others, 2012 (4) SCC 552** has held as under :-

“9. Admittedly, the petition filed by the claimants was under Section 166 of the Act and not under Section 163-A of the Act. This is not in dispute. Therefore, it was the entire responsibility of the parents of the deceased to have established that respondent no.1 drew the vehicle in a rash and negligent manner which resulted in the fatal accident. May be, in order to help respondent no.1, the claimants had not taken up that plea before the Tribunal. Therefore, High Court was justified in sustaining the judgment and order passed by the Tribunal. We make it clear that if for any reason, the claimants had filed the petition under Section 163-A of the Act, then the dicta of this Court in the case of Kaushnuma Begum (Smt.) & Ors. (supra) would have come to the assistance of the claimants.” (Emphasis supplied)

12. The onus casted upon the claimants under Section 166 of the Act has not been discharged.

13. The contention raised by learned counsel for the appellants that registration of FIR against the driver of the motor cycle itself is a proof of rash and negligent driving has no substance.

14. The Supreme Court in case of **Kamlesh and others Vs. Attar Singh and others, 2015(15) SCC 364** held that registration of case by the police against the driver and filing of the charge-sheet cannot be said to be conclusive. The Supreme Court held as under :-

“8. We have heard learned counsel for the parties and perused, inter alia, the evidence on record of Ram Parshad PW2 and Devender PW.3. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles, that is the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo Attar Singh and has filed a charge sheet but the same cannot be said to be conclusive. Though, Attar Singh has stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may. It appears both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner

in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint 'tort-feasors', thus, liable to make payment of compensation." (Emphasis supplied)

15. In view of the aforesaid facts and circumstances, no fault can be found in the award of the Tribunal dismissing the claim petition.

16. From the written statement of respondent No.2, it is proved that Gulshan lost his life in a motor vehicular accident involving the motor cycle being driven by respondent No.2, therefore, the claimants would be entitled to a sum of ₹ 50,000/- under Section 140 of the Act.

17. Appeal is disposed of in the aforesaid terms.

March 16, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes

Whether Reportable Yes