

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

FAO No. 2664 of 2011

DATE OF DECISION : 14.05.2018

Jeetu Ram and another

....APPELLANTS

Versus

Surender

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Ajit Sihag, Advocate,
for the appellants.

Mr. M.R. Verma, Advocate,
for the respondent.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 30.03.2010 passed by the Motor Accident Claims Tribunal, Bhiwani (for short, 'the Tribunal').

2. The grievance of the appellants is that the Tribunal erred in dismissing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

3. The legal aspect of the issue in the present appeal is well settled that if a claim petition under Section 166 of the Act is filed, the onus is on the claimants to prove involvement of the offending vehicle in the accident and that the offending vehicle was being driven rashly and negligently.

4. In the present case, the Tribunal held that the claimants failed to prove involvement of the auto rickshaw bearing registration No. HR-61-3668 (for short, 'the offending vehicle') in the accident. The findings recorded by the Tribunal are upheld for the reasons mentioned below.

6. The facts of the case are that on 17.04.2009 at about 9.30 PM, one Hardeva son of Chandgi Ram saw Ajmer lying injured near Talu minor and besides him, his Hero Honda motor cycle was also lying. Ajmer was taken to Government Hospital, Bhiwani. He was declared dead. Post mortem was conducted. FIR No. 161 dated 18.04.2009 was registered at Police Station Sadar Bhiwani.

7. A claim petition under Section 166 of the Act was filed by the parents of the deceased. The same was dismissed by the Tribunal, as the claimants failed to prove involvement of the offending vehicle.

8. There was no eye witness to the alleged accident. The only person who reached at the spot was Hardeva. He took Ajmer to Hospital. It was on his statement that the FIR was registered against an unknown vehicle and unknown person driving the vehicle. The claimants, in order to prove the involvement of the offending vehicle, relied upon the statement PW.1 Jeetu Ram, father of the deceased, as well as PW.3 Jagbir, brother of the deceased. It is admitted position that both these witnesses were not present at the time of the alleged accident. Rather, it has been stated that it was a common saying in the village that Pappu alias Surender had caused the accident. Their statements were based upon hear-say. In such

circumstances, their statements cannot be worth reliance. It is a fact that Hardeva never deposed before the Tribunal. Rather, RW.2 Jaibir had produced an affidavit of Hardeva Ex.R2 in which he had stated that he had not made any statement to the police that his cousin Ajmer died due to mistake and negligence of Surrender. Hardeva though was related to the claimants, yet he never stepped into the witness box. The mere reliance on the fact that Surrender was facing trial for commission of offences under Sections 279/304-A IPC in itself would not be sufficient to hold that he was the driver of the alleged offending vehicle and that the offending vehicle was involved in the accident. At this stage, it is worth to notice that Surrender had moved an application to S.P. Bhiwani raising grievance that he had been falsely implicated in the criminal case.

9. In the present case, involvement of the offending vehicle itself has not been proved, though there is another hurdle to be crossed i.e. to establish rash and negligent driving of the offending vehicle. In such circumstances, no blemish can be found in the findings recorded by the Tribunal.

10. The appeal is dismissed.

May 14, 2018
ndj

(AVNEESH JHINGAN)
JUDGE

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