

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

**FAO No. 3450 of 2011 (O&M)
Date of Decision:- 02.02.2018**

Smt. Bimla & Ors.

....Appellants

Versus

Ramdiya & Ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. R.N. Lohan, Advocate, for the appellants.

Mr. Paul S. Saini, Advocate, for respondent No. 3.

AVNEESH JHINGAN, J. (Oral)

Motor Accident Claims Tribunal, Jind (for short,'the Tribunal') dismissed a claim petition vide award dated 05.02.2011. The legal heirs of Bani Singh filed a claim petition under Section 166 of Motor Vehicles Act, 1988 (for short,'the Act') claiming compensation alleging that Bani Singh lost his life in an accident involving Hero Honda Motor-cycle bearing temporary registration No. HR-99-FX(HQ) TP 5843 (for short, the motor-cycle'). The said claim petition was dismissed as the claimants failed to prove involvement of the said vehicle. Aggrieved of the dismissal the present appeal has been filed.

On 21.06.2010 Bani Singh after doing his labour-work at Rakhi Asudha Godown Kinana was returning to his village. He was sitting on the carrier of bicycle. The bicycle was being paddled by Parveen. Balwan Singh was following them on his bicycle. On reaching near school, the said bicycle was allegedly hit by rashly and negligently driven motor-cycle.

Bani Singh suffered injuries. He was taken to General Hospital, Jind, from where, he was referred to PGIMS, Rohtak, but he succumbed to injuries on his way to PGI. FIR 209, dated 22.06.2010 was registered at Police Station Sadar, Jind. The FIR was registered on the statement of Balwan Singh. The claimants in order to prove involvement of the motor-cycle examined Balwan Singh as PW-6 and Dharam Pal Punia as PW-7. The investigating officer in the criminal proceedings ASI Rishi Raj was examined as PW-4.

The legal position with regard to claim petition filed under Section 166 of the Act is that onus is casted upon the claimants to prove involvement of the vehicle and rash and negligent driving of the offending vehicle. Hon'ble the Apex Court in **Surender Kumar Arora & Anr. Vs. Dr. Manoj Bisla and Ors., 2012(4) SCC ST 2,** has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

There is no quarrel on the proposition that in proceedings under the Act, the onus casted is not as heavy as in criminal proceedings. The claimants have to prove as per the principle of preponderance only. The Hon'ble Apex Court in **Kusum Lata & Ors. Vs. Satbir & Ors., 2011(3) SCC 648** has held that the onus is to be discharged on the principle of preponderance of probability.

In view of the legal position it is to be analysed whether in the facts of the present case the claimants were able to discharge the onus casted upon them under Section 166 of the Act.

It would be important to note at this stage that Balwan Singh

was the alleged eye-witness to the accident. It was on his statement that FIR was recorded on 22.06.2010. In the FIR no registration number of motor-cycle was mentioned. In his cross-examination Balwan Singh admitted that he had not noted the registration number of the motor-cycle but he remembered orally. He further stated that he disclosed the registration number to the police on 12.07.2010 when he visited the police station. On 12.07.2010 itself the police arrested the driver of the motor-cycle. The contention of the learned counsel for the appellant is that once during the police investigation it was found that motor-cycle was involved in the accident there was no occasion for the Tribunal to doubt the same. The contention raised cannot be accepted. The Tribunal has to consider the evidence produced before it to reach the conclusion.

In the story put forth by the claimants there were many holes. Firstly there is an unanswered question that what was the reason for Balwan Singh for not mentioning the registration number of the motor-cycle while lodging the FIR. If he was remembering the registration number of the motor-cycle why he waited till 12.07.2010 for giving this information to the police.

ASI Rishi Raj, PW-4 in his cross-examination stated that he had recorded the statement of Balwan Singh regarding identification of the motor-cycle. The Tribunal summoned the criminal record. The record was produced by PW-3 Rajesh Kumar Ahlmad. On going through the record, it was found that no such statement was there on the file. Thereafter the investigating officer stated that he had recorded the statement of ex-Sarpanch Ramesh Kumar during the investigation. No such statement was

found in the criminal record. The investigating officer took a somersault and stated that he had enquired from the Sarpanch orally. It would be worth noting that the ex-Sarpanch never deposed before the Tribunal.

The claimants relied upon Dharam Pal Punia PW-7 who produced his motor-cycle along with driver. His statement was not found worth reliance. Nowhere in the investigation it came that the driver was arrested on statement of Dharam Pal Punia. There was no mechanical report produced before the Tribunal regarding the motor-cycle, showing that it had met with an accident.

Investigating officer failed to establish even prima facie that from which source he had come to the conclusion that the said motor-cycle was involved in the accident.

There is another angle to the entire proceedings. As per the claim petition the deceased was sitting on the carrier of the bicycle paddled by Parveen. He was the best witness available with the claimants. It is alleged that he also suffered injuries in the said accident. But for the reasons best known Parveen was not produced, as a witness. The claimants failed to prove the involvement of the motor-cycle itself. Apart from this they had another hurdle to cross that is to prove rash and negligent driving of the motor-cyclist.

Learned counsel for the appellants relied upon decisions of this Court in case **Lakhu Singh Vs. Uday Singh, 2008(1) RCR (Civil)** and in case **Raju and Ors. Vs. Sukhwinder Singh & Ors. 2007(1) Latest Judicial Reports 728.** The said citations are not applicable in the present case. In both the cases there was no dispute on the fact that registration numbers of

the offending vehicles were duly mentioned in the FIR. In the present case this itself is unexplained story that how the police concluded that the said motor-cycle was involved in the accident.

The appeal being bereft of any merit. The same is dismissed.

February 02, 2018
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(AVNEESH JHINGAN)
JUDGE

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