

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-5859-2010 (O&M)

Date of decision: 22.05.2018

Savita Rani

..... Appellant

Versus

Piare Lal and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Atul Jain, Advocate for the appellant.

Mr. Vijay Rana, Advocate for respondent No. 1.

Mr. Gopal Mittal, Advocate for respondent No. 3-Insurance Co.

RAMENDRA JAIN, J. (ORAL)

1. Through this appeal, the claimant has prayed for grant of compensation, setting aside the impugned Award dated 30.08.2010 of the Motor Accident Claims Tribunal, Jalandhar (in short-'the learned Tribunal') dismissing her claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as-'the Act'), for award of compensation against the death of her husband-Sham Sunder.

2. In nutshell, on 26.07.2007, Sham Sunder, husband of the appellant-claimant aged around 52 years died in a motor vehicular accident caused by respondent No. 1-Piare Lal (owner and driver of the offending vehicle), while driving Maruti Gypsy bearing registration No. DDV-8093, and insured by respondent No. 3-Insurance Company. His widow filed a claim petition under Section 166 of the Act, claiming compensation of ₹ 15 lakhs, on account of death of Sham Sunder which after holding trial was

ground that the claimant has failed to prove the main ingredient of rash and negligent driving of respondent No. 1, for grant of compensation under Section 166 of the Act, therefore, her petition was not maintainable.

3. Learned counsel for the appellant contends that learned Tribunal, has failed to appreciate that the appellant as PW-1 categorically testified about the rash and negligent driving of respondent No. 1 in which her husband lost life. The learned Tribunal has wrongly dismissed the claim petitioner of the appellant-claimant.

4. On the other hand learned counsel for respondents No. 1 and 3, have strongly refuting the above submissions of learned counsel for the appellant-claimant, pleaded the legality and validity of the impugned Award.

5. Having given considerable thought to the rival submissions of learned counsel for both the parties, this Court finds the instant appeal completely devoid of any merit for the reasons to follow:

6. To claim compensation under Section 166 of the Act, rash and negligent driving of the driver is necessarily to be proved, whereas in a claim petition under Section 163-A of the Act, only involvement of the vehicle is to be proved. Admittedly, the appellant had not witnessed the accident. No eye-witness of the accident was examined by her, who could prove rash and negligent driving of respondent No. 1, in causing the accident in which husband of the appellant-claimant lost life. Respondent No. 1 as RW-1, specifically denied about his rash and negligent driving. Instead, he testified that he was not at fault in causing accident. He acted as a good and vigilant driver. In order to avoid accident on seeing a car overtaking his Gypsy in a rash and negligent manner, he turned his Gypsy

towards the extreme left side of the road and in that process, his Gypsy struck against a Eucalyptus tree.

7. It is pertinent to mention here that after the accident, respondent No. 1 lodged DDR No. 19 dated 26.07.2007, with the police disclosing that no one was at fault for the accident in question. The same had occurred by chance, while avoiding a major accident, on seeing a car overtaking his gypsy in a rash and negligent manner.

8. There is no evidence on the record that the appellant herself or through any of her family member ever made any effort to lodge FIR against respondent No. 1 or to narrate true facts of the case negating the version of respondent No. 1 in the DDR lodged by him. Even she did not ever tried to approach higher authorities of the police to lodge her protest for non-taking any action against respondent No. 1-driver of the offending vehicle, with regard to false DDR. The above conduct of the appellant requires to draw an adverse inference against her that the appellant did not adopted any such exercise intentionally and deliberately, knowing well that respondent No. 1 was not at fault in causing the accident in question, resuting into death of her husband.

9. I have gone through the impugned Award and find no illegality or perversity in the same. However, under issue No. 1, the learned Tribunal held that the offending vehicle was insured by respondent No. 3-Insurance company vide insurance policy Ex. R-3. Therefore, the appellant is granted a sum of ₹ 50,000/- under Section 140 of the Act, under the head of 'no fault liability', which shall be deposited by respondent No. 3-Insurance Company, before the learned Tribunal within two months from today, along with up-to-date interest @ 7.5% per annum, from the date of filing of claim petition

till realization, for onward disbursement of the same to appellant-claimant, in accordance with law against proper receipt and identification.

10. Under issue No. 5, the learned Tribunal has held that the driving licence of respondent No. 1-Piare Lal was found to be fake, therefore, respondent No. 3-Insurance Company, is given recovery rights to recover the aforesaid awarded amount of ₹ 50,000/- along with interest from respondent No. 1.

11. It is, however, made clear that non-deposit of enhanced amount of compensation within the stipulated period would entail interest @ 12% per annum with quarterly rests.

May 22, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No