

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

FAO No.3777 of 2011

Date of Decision: 13.08.2018

Ravinder Kumar and another

...Appellants

Versus

Raj Pal and another

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Ashit Malik, Advocate for the appellants.

Mr. Govind Rana, Advocate for
Mr. Harkesh Manuja, Advocate for respondent No.1.

Mr. Tajender Joshi, Advocate
for respondent No2-Insurance Company.

B.S.WALIA, J. (Oral)

1. Appeal has been filed against dismissal of the claim petition by the learned Motor Accidents Claims Tribunal, Sonapat (hereinafter referred to as the Tribunal) vide award dated 31.03.2011.

2. Learned counsel contends that the claim petition was dismissed on the ground that testimony of PW-3 Mahender on whose statement the offending vehicle had been implicated in the accident, had been wrongly disbelieved by the learned Tribunal, despite his evidence being crystal clear with regard to the involvement of the offending vehicle in the accident. Learned counsel contends that in the circumstances the appeal is liable to be allowed and dismissal of the claim petition set aside.

3. Per contra, learned counsel for the respondents have reiterated the reasoning adopted by the learned Tribunal for dismissal of the claim petition and have contended that the claim petition was rightly dismissed.

4. I have considered the submissions of learned counsel for the parties and have gone through the record. Accident took place on 16.02.2010, in which the mother of the appellants/claimants namely Kamla died. PW-1 Rajinder in his examination-in-chief stated that the mother of the appellants/claimants died in an accident on being hit by a Bolero Jeep but in his cross examination he admitted that he did not know that the accident had been caused due to negligent driving of the Bolero Jeep and further that he had not mentioned involvement of Bolero Jeep in statement made by him to the police.

5. PW-3 Mahender in his examination-in-chief stated that he had witnessed the accident of Bolero jeep bearing registration No.HR-61-8373 and the same was being driven rashly and negligently by respondent No.1 Rajpal. However, the statement of PW-3 was disbelieved by the learned Tribunal on the ground that it was beyond comprehension as to why if he had witnessed the accident on 16.02.2010, he had not disclosed the involvement of the alleged offending vehicle to the Investigating Officer on the day of the accident itself. The learned Tribunal observed that had Mahender i.e. PW3 actually witnessed the occurrence on 16.02.2010, he would not have stayed back but would have come forward with details of the accident to the police but he neither informed the police about the accident nor contacted the police when it was investigating the accident on the spot nor took the injured to the hospital. The Tribunal further took note

of the fact that the Investigating Officer had also not been examined by the appellants/claimants despite the fact that the Investigating Officer could have explained the entire circumstances as to how the offending vehicle and respondent No.1 i.e. its driver had been involved in the accident. The learned Tribunal recorded that respondent No.1 i.e. owner-cum-driver had admitted the factum of the accident but the respondent-insurance company had alleged collusion between the claimants and the local police in falsely implicating vehicle No.HR-61-8373 to grab compensation.

6. However, the death knell to the claim of the appellants/claimants has been sounded by learned counsel for the respondents by disclosing that the criminal case registered against the owner-cum-driver of the alleged offending vehicle i.e. respondent No.1, had resulted in acquittal of respondent No.1 Rajpal on account of both witnesses i.e. PW1 and PW3 Rajinder and Mahender having resiled before the Criminal Court of having witnessed the accident.

7. Learned counsel for the appellant has not been able to controvert the aforementioned position.

8. In the circumstances no infirmity is found with the order passed by the learned MACT, Sonapat. Accordingly the appeal being bereft of merit, is dismissed.

(B.S.WALIA)
JUDGE

13.08.2018
sandeep

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No