

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

**FAO No.6986 of 2011(O&M)**

Date of Decision: February 23, 2018

Beero Bai and another  
Versus  
Nand Pal and another

...Appellants

...Respondents

**CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present: Ms.Jaideep Kaur Advocate for  
Mr.J.S.Thind, Advocate for the appellants.

Mr.Krishan Kant, Advocate for  
Mr.Tejinder K.Joshi, Advocate for  
Insurance Company – respondent No.2.

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**HARINDER SINGH SIDHU, J.**

Challenge in this appeal is to the impugned Award dated 27.8.2011 of Motor Accident Claims Tribunal (Fast Track Court), Sirsa (for short 'the Tribunal'), whereby, the petition filed by the appellants under Section 166 of the Motor Vehicles Act, 1988, seeking compensation for the death of their son Jasbir Singh in a vehicular accident, has been dismissed.

In brief, the facts as pleaded in the claim petition, are that on 31.7.2009, Jasbir Singh along with Bahadur Singh, Sonu, Mohinder Singh was going from Rania to Sirsa in Tavera Jeep No.HR-38L-4611, being driven by Darshan Singh, who was driving the Jeep in a rash and negligent manner. At about 8.10 PM when their vehicle reached near village Bhamboor and was in the process of overtaking a bullock cart, the driver lost control over it. As a result, the vehicle struck against a tree by the side of the road and its occupants suffered injuries. The driver Darshan Singh died on the spot.

On the same day i.e. 31.7.2009, the Police recorded Rapat No.11.

The legal representatives of deceased Jasbir Singh as also the injured persons filed different claim petitions before the Tribunal, which have been dismissed vide the impugned award. It has been held that the claimants have failed to prove that the accident was caused by rash and negligent driving on the part of Darshan Singh (since deceased).

Learned counsel for the appellants – claimants has contended that the Tribunal has dismissed the claim petition simply on the ground of non-registration of the FIR for the alleged accident and the oral evidence was not at all considered.

I have heard learned counsel for the parties and perused the record with their assistance.

The Tribunal had framed the following issue regarding the negligence of the driver of the Tanker:-

*“1. Whether the accident in question took place on 31.7.2009 at about 8.30 am near Village Bhambhoor on Sirsa-Rania road, due to rash and negligent driving on the part of respondent No.1 while driving vehicle i.e. Tavera jeep bearing registration No.HR38L/4611 in which all the three petitioners sustained multiple and serious injuries as well as permanent disability whereas, Jasbir Singh has lost his life, as alleged? OPP”*

The Tribunal returned a finding that it is not proved that the accident was caused due to rash and negligent driving of the Tavera jeep, observing as under:-

*“13. xxx    xxx    xxx    In the instant case, however, no case was registered against the driver simply DDR was recorded*

*wherein too it is not mentioned that the accident took place owing to rash and negligent driving on the part of Darshan Singh – driver (since deceased). Thus, the ingredients of Section 166 of Motor Vehicles Act are not proved. xxx xxx”*

It is clear from the above that the Tribunal has not appreciated the oral evidence produced by the claimants. Mohinder Kumar, who was also travelling in the Jeep while appearing before the Tribunal as PW1, stated that he along with Sonu, Bahadur Singh and others was going from Rania to Sirsa in Jeep No.HR-38L/4611, which was being driven by Darshan Singh at a very high and uncontrollable speed and in a rash and negligent manner. He stated that at about 8.30 am, when the said Jeep reached near village Bhamboor, its driver overtook a bullock cart and lost control over the jeep and struck against a tree by the side of the road. All the occupants of the jeep received injuries, whereas, the driver died on the spot. He specifically deposed that *“the aforesaid accident took place due to rash and negligent driving of Tavera Jeep No.HR-38L-4611”*. On the same day, a rapat No.11 was recorded by the Police twisting the facts. He also stated that further action could not be taken by him as the driver of the offending vehicle, who had caused the accident, had also died.

The evidence of PW2 Bahadur Singh and PW3 Sonu, who were also travelling in the offending vehicle, is also on the similar lines and fully corroborates the version of PW1 Mohinder Singh. In other words, all these witnesses, namely Mohinder Singh, Bahadur Singh and Sonu, who deposed before the Tribunal as PW1, PW2 and PW3, respectively, testified the fact that the accident had been caused due to rash and negligent driving of the offending vehicle by its driver Darshan Singh, who too died in the accident.

In view of the above evidence, the claimants have discharged

their onus of proving the negligence of the driver of the offending vehicle. Though, only a *rapat* was recorded by the police regarding the accident and no FIR was lodged against the deceased driver of the offending vehicle. But that has been well explained by the oral evidence that the matter could not be pursued with the Police as the driver, who drove the offending vehicle in a rash and negligent manner, died in the accident. The oral evidence adduced by the claimants was sufficient to establish that the cause of the accident was the rash and negligent driving of the offending vehicle by Darshan Singh deceased. Merely because the Police failed to register an FIR can be no basis to disbelieve the version of the injured eye-witnesses of a vehicular accident.

In view of the above, the finding of the Tribunal on issue No.1 cannot be sustained and the same is reversed. It is accordingly held that the accident had taken place due to rash and negligent driving of the Tavera Jeep by Darshan Singh.

The Tribunal has not adjudicated upon other issues i.e. Loss of dependency or the liability to pay the compensation.

Hence, the appeal is allowed. The award passed by the Tribunal is set aside. The matter is remanded to the Tribunal for adjudication on the other issues, in accordance with law.

Parties through their counsel to appear before the Tribunal on 27.03.2018.

February 23, 2018

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**( HARINDER SINGH SIDHU )**  
**JUDGE**

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|-----------------------------|----------|
| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |