

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

FAO No.6453 of 2012
Date of Decision: 20.09.2018

Poonam and others

...Appellants

Versus

Manoj and others

....Respondents

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

Present: Mr. Mani Ram Verma, Advocate
for the appellants.

Ms. Puneeta Sethi, Advocate
for respondent No.3.

B.S.WALIA, J (Oral).

1. Appeal has been filed against the dismissal of the claim petition seeking compensation on account of death of Yogender Kumar, husband of appellant No.1, father of appellant Nos.2 and 3 and son of appellant Nos.4 and 5.

2. The claim petition was dismissed by the learned Motor Accidents Claims Tribunal, Bhiwani (hereinafter referred to as 'the Tribunal') on the ground that issue No.1 with regard to the accident having taken place on account of rash and negligent driving of vehicle No.HR61A-5997 was not proved.

3. Learned counsel for the appellants contended that no doubt FIR was registered by Jai Parkash on 28.11.2011 against an unknown vehicle and driver thereof, but a supplementary statement was made by him

to the police on the next day on the basis of which, the driver of offending vehicle No.HR61A-5997 was prosecuted. Learned counsel further contended that the finding of the learned Tribunal in paragraph No.14 of the impugned award that apart from statement given by the informant on 28.11.2011 to the police, no supplementary statement had been given, was factually incorrect, as was evident from the evidence of PW-5, who stated that he had given intimation to the police on 28.11.2011 and also made supplementary statement on the next day.

4. Per contra, learned counsel for respondent No.3 contended that the claim petition was false and the accident as alleged to have taken place had not occurred in the manner and with the vehicle as alleged. Learned counsel further contended that in fact PW-5, Jai Parkash, was none-else then the uncle of the deceased and he had informed the police on 28.11.2011 that the accident had been caused by an unknown vehicle and unknown driver and due to darkness he could not identify the vehicle nor the person who was driving the said vehicle and it was beyond normal course of human conduct that the person causing the death of Yogender Kumar, after having fled away from the spot of accident, thereafter come came to the house of the deceased on the next day and make a confessional statement. Learned counsel states that the aforementioned stand could have been accepted but for the fact that the involvement of the owner of vehicle No.HR61A-5997 in the manner as alleged by Jai Parkash in his supplementary statement was an implication with a view to extract compensation from the Insurance Company as is evident from the fact that the criminal case registered against the driver of the offending vehicle

resulted in his acquittal in view of none-else then PW-5, Jai Parkash having stated in the evidence before the criminal Court that he did not know as to who had caused the accident nor did he know who was driving the offending vehicle nor did he identify the accused present in the Court. Neither did he make any reference to the supplementary statement made by him to the police on the basis of which the offending vehicle was implicated in the instant case. On being declared hostile, PW-5, Jai Parkash in his cross-examination denied having given any supplementary statement Ex.PW4/A to the police and further denied the suggestion that he had not identified the accused on account of compromise between the parties or that he was deposing falsely. The learned trial Court acquitted the driver of the offending vehicle on the ground that PW-5, Jai Parkash, was the material witness and he had not supported the case of the prosecution and when the complainant had not supported the case of the prosecution, the very basis of the prosecution case was eroded. No appeal is stated to have been filed against the acquittal of the driver of the offending vehicle.

5. I have considered the submissions of learned counsel for the parties and perused the record. Admittedly, on 28.11.2011 FIR was got registered by PW-5, Jai Parkash i.e. uncle of the deceased against an unknown vehicle and unknown driver thereof who had caused the accident, whereafter on the next day a supplementary statement was made by him to the police implicating the driver of offending vehicle No.HR61A 5997 on the ground that the said driver had on the next day come to the house of the deceased and made a confessional statement. However, the criminal case registered against the driver of the offending vehicle on the statement of

PW-5, Jai Parkash culminated in acquittal of the accused on the ground that PW-5, Jai Parkash stated before the criminal Court that he did not know as to who had caused the accident nor did he know who was driving the offending vehicle nor did he identify the accused present in the Court and further, he did not make any reference to the supplementary statement made by him to the police. Though PW-5, Jai Parkash, was declared hostile but in his cross-examination, he denied having given any supplementary statement Ex.PW-4/A to the police and further denied the suggestion that he was not identifying the compromise having taken place between the parties or that he was deposing falsely. No appeal is stated to have been filed against the acquittal of the driver of the offending vehicle. Accordingly, once the very basis for implication of the offending vehicle and the driver of the offending vehicle has not been established in the criminal Court on account of refusal of the person making the supplementary statement on the basis of which the criminal case was registered, no circumstances exist warranting interference with the rejection of the claim petition by the learned Tribunal.

6. Resultantly, finding no merit in the appeal, the same is dismissed.

(B.S.WALIA)
JUDGE

20.09.2018.

rajesh.k.khurana

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