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

**FAO No.1924 of 2015 (O&M)
Date of Decision: 15.11.2018**

Raj Kaur and others

Appellants

Versus

Kulwant Singh and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. S.K. Arora, Advocate
for the appellants.

AVNEESH JHINGAN, J (Oral):

The legal heirs of Dogar Singh (deceased) have assailed the award dated 02.12.2014 passed by the Motor Accident Claims Tribunal, Ferozepur (for brevity 'the Tribunal') dismissing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The facts emanating from the record are that on 08.12.2009, Dogar Singh alongwith his cousin Balkar Singh and nephew Gurwinder Singh had gone to Ferozepur from their village on their respective motorcycles for domestic work. At about 06:30 P.M., when they were returning to their village, Dogar Singh was 3-4 kilometers ahead of Balkar Singh and Gurwinder Singh. When Balkar Singh and Gurwinder Singh reached near Tikona Chowk, Mamdot, they saw many people gathered on a spot on account of an

accident. They stopped their motorcycle and saw that Dogar Singh was lying on the road in injured condition due to accident caused by some unknown vehicle. FIR No.157 dated 08.12.2009 was registered at Police Station Mamdot.

A claim petition under Section 166 of the Act was filed by widow, three children and father of the deceased. The driver of vehicle Trax Toffan bearing registration No.PB-05N-9288 (hereinafter referred to as 'alleged offending vehicle'); owner of alleged offending vehicle and insurer of alleged offending vehicle i.e. New India Insurance Company Ltd. were arrayed as respondents No.1 to 3 in the claim petition. The Tribunal, after considering the fact and appreciating the evidence adduced, dismissed the claim petition on the ground that claimants failed to prove the following:

- (i) that Dogar Singh died due to injuries sustained in motor vehicular accident in question;
- (ii) that the alleged offending vehicle was involved in the accident; and
- (iii) that accident occurred due to rash and negligent driving of the alleged offending vehicle.

Aggrieved of dismissal of the claim petition, the present appeal has been filed.

Heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants contended that the claimants were able to discharge onus regarding involvement of alleged offending vehicle in the accident and to the fact that the

accident was caused due to rash and negligent driving of the alleged offending vehicle. He further contended that broken pieces of number plate of alleged offending vehicle were found on the spot of the accident.

The contention raised by learned counsel for the appellants lacks merit. The twin requirements under Section 166 of the Act are that (i) involvement of the offending vehicle has to be proved and (ii) it is to be substantiated that accident was caused due to rash and negligent driving of the offending vehicle.

In the present case, cousin and nephew of the deceased deposed before the Tribunal that the deceased was 3-4 kilometers ahead of them at the time of accident. They further stated that they reached the place of accident after 10-15 minutes of the accident. It was further stated that the alleged offending vehicle, which had caused accident, was not there on the spot of accident. The nutshell of statement was that they were not present at the time of accident. Further, they have not even seen the alleged offending vehicle causing the accident.

The issue raised regarding broken pieces of number plate of the alleged offending vehicle on the spot of the accident does not enhance the case of the appellants. As per version of the police, after registration of FIR, Head Constable Jarnail Singh visited the spot of accident and found broken pieces of number plate. Upon verification of number plate from the District Transport Officer, Ferozepur, he transpired that the alleged offending vehicle was

owned by respondent No.2 (in the claim petition). Respondent No.2 gave statement to Head Constable Jarnail Singh that on the date of accident, respondent No.1 (in the claim petition) was driving the alleged offending vehicle and he caused the accident which resulted in death of one person.

It is pertinent to note that respondent No.2, in cross-examination before the Tribunal, denied that he had given any such statement to the police.

Be that as it may, mere recovery of broken pieces of number plate from the spot of accident may point only towards the fact that there was involvement of the alleged offending vehicle. The second limb required under Section 166 of the Act that accident occurred due to rash and negligent driving of the alleged offending vehicle is still missing.

In such circumstances, no shadow can be casted upon the findings recorded by the Tribunal. No interference is called for in the award of the Tribunal.

The appeal is, accordingly, dismissed.

[AVNEESH JHINGAN]
JUDGE

November 15, 2018

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| 1. Whether speaking/ reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |