

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 25 of 2016

DECIDED ON: DECEMBER 15, 2018

LAKSHMI DEVI

.....APPELLANT

VERSUS

DAVINDER SINGH AND ANOTEHR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Ishan Cooner, Advocate for
Mr. J.S. Cooner, Advocate
for the appellant.

Mr. Pawan Kumar Sharma, Advocate
for respondent No.1.

Mr. Sanjeev Kumar Arora, Advocate
for respondent No.2.

AVNEESH JHINGAN, J (ORAL)

The award dated 15.10.2015 passed by the Motor Accident Claims Tribunal, Panchkula (for short 'the Tribunal') has been assailed by the claimant being aggrieved of the dismissal of claim petition preferred under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

The appellant-Lakshmi Devi is alleged sister of Kunwar Pal @ Kummar Pal. The driver-cum-owner of motorcycle bearing registration No. HP-54-A-9177 (hereinafter referred to as 'offending vehicle') and insurer of the

offending vehicle, i.e., National Insurance Company Ltd. have been arrayed as respondents No.1 and 2 respectively in the appeal.

The brief facts of the case are that on 04.09.2013, Kunwar Pal was going to his house and when he was crossing the road in front of BDO Office Kalka, he was hit by a rashly and negligently driven offending vehicle. As a result of the impact, he sustained multiple injuries, he was taken to Government Hospital, Kalka from where he was referred to Govt. Medical College and Hospital, Sector 32, Chandigarh and from there he was referred to PGIMER, Chandigarh where he succumbed to his injuries on 05.09.2013. FIR No. 115, dated 04.09.2013 was registered at Police Station Kalka.

A claim petition under Section 166 of the Act was filed. The Tribunal after considering the facts and appreciating the evidence adduced held that the claimant failed to prove her relationship with the deceased. Hence, the claim petition was dismissed.

Heard learned counsel for the parties, perused the paper book and the documents produced by the parties.

Learned counsel for the appellant contends that the Tribunal erred in dismissing the claim petition, as the claimant was residing with the deceased and she is an old lady.

Learned counsel for the insurer defends the award and argues that the deceased was issue less and earlier also one claim petition was filed by one Raju for seeking compensation on account of death of Kunwar Pal. The said claim petition was dismissed by the Tribunal vide award dated 09.07.2014. It was further argued that no evidence was adduced by the appellant to prove her relationship with the deceased.

This is a classic case where a death in a motor vehicular accident is being tried to be encashed by the persons who are not even able to show *prima-facie* that they were related to the deceased. Apart from the bald statement made before the Tribunal that the appellant was residing with the deceased, not even an *iota* of evidence is produced on record to substantiate the same. The issue is not that whether the appellant was residing with the deceased or not, as this itself will not entitle the appellant to claim compensation under Section 166 of the Act. It was for the appellant to prove that she was the legal heir of the deceased and was dependant upon him.

The appellant appeared before the Tribunal as PW-1 and in her cross-examination she admitted that she was having no proof that the deceased was her brother and he was residing with her. It would be pertinent to note all the contents of the deposition of Changa Ram (PW-2). Rather, Changa Ram who deposed as PW-2 in his cross-examination stated that 5 sons and 3 daughters of Laxmi Devi (appellant) are well settled and are living separately with their own families. Even, he was not able to state that the appellant was residing with the deceased.

Even before this Court nothing has been produced by the counsel for the appellant to even *prima-facie* show that the appellant was related to the deceased. In such circumstances, no shadow can be cast upon the findings recorded by the Tribunal.

In view of afore-said discussion, the present appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

DECEMBER 15, 2018

sham

Whether speaking/reasoned Yes/No

Whether reportable Yes/No