

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

FAO-5432-2016 (O&M)
Date of decision: 14.09.2018

ANIL AND ORS

... Appellants

Versus

VIKRAM AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Sushil Gautam, Advocate
for the appellants.

REKHA MITTAL, J. (Oral)

The present appeal directs challenge against award dated 19.03.2016 whereby application for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 has been dismissed on the basis of findings on issue No.1.

The plea of the claimants is that on 24.10.2015, Ram Chander (since deceased) was going on bicycle to Sector-15, Sonapat to teach students. When he did not return home, the claimants went in search of Ram Chander but could not find him. When they reached near Bharat Hospital, Sector-14, Sonapat, they saw bicycle of Ram Chander and reached Govt. Hospital, Sonapat and came to know that Ram Chander had died in an accident due to rash and negligent driving of scooty by Vikram respondent No.1. FIR No.361 dated 26.10.2015 for offence under Sections

279, 304-A IPC was registered at P.S. Civil Lines, Sonapat. The claimants prayed for grant of compensation on account of death of Ram Chander in the motor vehicular accident.

The driver and owner of the offending vehicle filed reply and in turn, denied plea of the claimants that accident took place with the alleged offending vehicle driven by respondent No.1 with the averments that respondent No.1 has falsely been implicated in collusion with local police. The insurance company also filed its reply denying its liability to pay compensation.

The controversy between the parties led to framing of following issues by the Tribunal:-

1. Whether the death of Ram Chander son of Sh.Ghadsa Ram is the result of accident which took place on 24.10.2015 due to rash and negligent driving of offending vehicle bearing No.HR-10Y-1362 by respondent No.1? OPP.
2. If issue no.1 is proved, to what amount of compensation the petitioners are entitled to and from whom? OPP
3. Whether respondent No.1 was not holding a valid driving licence at the time of accident and the offending vehicle had violated the terms and conditions of the insurance policy, if so, its effect? OPR-3
4. Relief

To prove their case, one of the claimants namely, Anil appeared and they examined Rakesh PW2, Brij Mohan PW3 and Sudhir, Criminal Ahlmad PW4.

The respondents tendered into evidence documents noticed in para 7 of the award.

The Tribunal determined issue No.1 against the claimants and as a consequence, the application for compensation has been dismissed.

A relevant extract from the award pertaining to findings on issue No.1, reads as follows:-

“In the instant case, FIR No. 361 dated 26.10.2015 was lodged on the statement of PW-2/Rakesh who is son of deceased Ram Chander. A bare perusal of the FIR would reveal that the same has been got lodged against an unknown driver of unknown vehicle. The author of the FIR, i.e. PW-2/Rakesh, in his cross-examination has fairly admitted that the accident in question did not take place in his presence. Likewise, PW-1/Anil has also admitted in his cross-examination that he was not present at the time of accident. Thus, no eye witness to the accident in question has been examined and in such circumstances mere framing of charge against respondent No. 1 would not make out that petitioners have proved that the accident in question took place on account of rash and negligent driving of respondent No. 1. Petitioners have neither examined the investigating officer nor have adduced any other evidence so as to make out the source of information qua the involvement of vehicle No. HR-10Y-1362 in the alleged accident. Neither any mechanical report of the alleged vehicle has come on record nor any other evidence has come on record whereby it could safely be concluded that the vehicle in question was in fact involved in the accident

in question and had caused fatal injuries to the deceased Ram Chander on account of rash and negligent driving of its driver. No doubt proceedings before this Tribunal are summary in nature and claimants are merely required to establish their case on the touch stone of preponderance of probabilities. However, it is well settled law that in a claim petition under Section 166 of the Motor Vehicles Act, onus lies upon the petitioners to establish by way of cogent evidence that the accident in question has been caused by the driver of the alleged offending vehicle due to his rash and negligent driving of the vehicle. Moreover, it is trite law that the Tribunal has to record its findings on the basis of evidence adduced before it and since there is not an iota of evidence qua the involvement of alleged offending vehicle in the accident in question, thus, the very involvement of vehicle in question bearing No.HR-10Y-1362 is in doubt and in such circumstances any question of rash and negligent driving on the part of driver of the said vehicle would not arise. In the light of foregoing discussion, this Tribunal holds that petitioners have failed to establish that the accident in question had been caused on account of rash and negligent driving of respondent No. 1 while driving vehicle bearing No. HR-10Y/1362, even on the touch stone of preponderance of probabilities. Thus, this issue is accordingly decided against the petitioners and in favour of the respondents.”

Counsel for the appellants has not disputed factual findings recorded by the Tribunal that the claimants have not examined any witness to prove that accident in question took place due to rash and negligent

driving of the offending vehicle by respondent No.1. However, counsel would urge that even if the claimants have not been successful to prove the accident in view of testimonies of Anil PW1 and Rakesh PW2 but the fact that on due investigation of FIR lodged at the behest of Rakesh, respondent No.1 was put to trial is sufficient to establish plea of the claimants that accident is the result of rash and negligent driving of the offending vehicle by Vikram respondent No.1. In support of his contention, he has sought to rely upon judgments of this Court, **Girdhari Lal Vs. Radhey Shyam and others, 1993(2) PLR 109** and **Harbans Lal and others Vs. Harvinder Pal and others, 2015(54) RCR (Civil) 947**.

Be that as it may, it is undisputed position of the case that testimonies of Anil PW1 and Rakesh PW2, claimants in the case are not sufficient to prove that the accident was caused because of involvement of the offending vehicle much less the same is the result of rashness and negligence attributable to Vikram, stated to be driver of offending vehicle as they were not present at the spot.

In **Girdhari Lal's case (supra)**, Girdhari Lal sustained injuries in an accident that took place on 05.06.1983 but the application for compensation was filed on 18.05.1984. Girdhari Lal appeared in the witness box and stated on oath that the accident occurred on account of rash and negligent driving of motorcycle bearing No.DLZ-6839 by its driver. On account of injuries sustained in the accident, he remained as indoor patient for 15 days. Radhey Shyam, respondent appeared in rebuttal

and denied the accident. This Court, by taking into consideration the materials on record, has accepted the appeal by holding that the Motor Accidents Claims Tribunal has taken strict view and has tried to judge delay on the basis of provision contained in the Limitation Act. The judgment in **Girdhari Lal's case (supra)** cannot be applied in the present case as the claimants have failed to examine any witness to substantiate their plea that accident is the result of rashness and negligence on the part of offending vehicle by respondent No.1. In this view of the matter, I find myself unable to accept contention of the appellants that even in absence of the claimants proving the accident by examining witnesses in this regard, findings can be recorded with regard to rashness and negligence on the part of driver of offending vehicle merely on the basis of presentation of challan against the alleged offending driver. In this view of the matter, I do not find an error much less illegality in findings recorded by the Tribunal on issue No.1 whereby plea of the claimants has been rejected that accident is the result of rash and negligent driving of the offending vehicle.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine.

No order as to costs.

14.09.2018

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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No