

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

FAO No.8664 of 2014 (O&M)

Date of Decision: 07.08.2018

Saroj Devi and another

.....Appellants

Versus

Vinod Kumar and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Robin Singh Hooda, Advocate
for the appellants.

Mr. Deepak Suri, Advocate
for the respondent No.3.

TEJINDER SINGH DHINDSA J.(ORAL)

CM-23608-CII-2014

In view of the averments made in the application duly supported by an affidavit of applicant/appellant No.2, sufficient cause has been shown for condonation of delay of 120 days that has occurred in filing the accompanying appeal.

Prayer is allowed.

Delay condoned.

Application disposed of.

Main Case

Claimants-appellants have filed the instant appeal assailing the decision dated 18.02.2014 of the Motor Accident Claims Tribunal, Rohtak and whereby a claim petition filed by them seeking compensation of an amount of ₹15,00,000/- on account of the death of their son in a motor vehicle accident that took place on 23.02.2012, has been dismissed.

Briefly, it may be noticed that a claim petition was filed under Section 166 of the Motor Vehicles Act, 1988 by the appellants herein seeking compensation of an amount of ₹15,00,000/- on the averments that on 23.02.2012 Anil Kumar (since deceased) was pillion riding on a motor-cycle which was being driven by a co-villager namely Kapil. At about 7.00 AM when they reached near police post of Village Kharawar, District Rohtak a Canter-Truck bearing Registration No.HR-59A-0140 being driven at a high speed and in a rash and negligent manner by Vinod Kumar-respondent No.1-struck against the motor cycle after coming on the wrong side. As a result, Anil Kumar sustained grievous injuries and succumbed to the same on 23.02.2012 itself. Claimants asserted that their son Anil Kumar at the time of accident was 20 years of age and in good health. He was pursuing a diploma in computers and was also undergoing training in First Aid from Modern Institute of Technology, Lakhan Majra, Tehsil Meham, District Rohtak. Deceased was stated to be earning Rs.6,000/- per month by doing typing work in spare time. Claimants i.e. parents asserted that they were dependant upon their son. Compensation amount of ₹15,00,000/- was claimed from the owner as also insurer of the offending vehicle.

Claim petitions having been contested the following issues were framed by the Tribunal.

- 1. Whether the accident in question resulting into the death of Anil Kumar son of Shri Rajender Singh took place due to the rash and negligent driving of Canter bearing registration No.HR-59A-0140 by the 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 there are violation of the terms and conditions of the insurance policy, if so to what effect? OPR-3*

4. *Relief.*

On Issue No.1 findings have been recorded by the Tribunal against the claimants and it has been held that the offending vehicle was not involved in the accident and the same was introduced subsequently by the claimants in collusion with the police authorities to claim compensation. In view of such finding recorded on Issue No.1, the claim petition was dismissed vide impugned award dated 18.02.2014.

Learned counsel representing the claimants-appellants has argued that the Tribunal has not appreciated the evidence brought forth in the correct perspective. It is urged that the deposition of Kapil PW2 who was driving the motor cycle and on which deceased Anil Kumar was pillion riding as also the deposition of PW4 Umed Singh and PW3 Jagroop Singh have been brushed aside in a casual manner. Further submitted that the owner and driver of the vehicle just to escape liability got a false case registered against respondent No.1-Vinod Kumar, Driver, under Section 11 of the Prevention of Cruelty to Animals Act, 1960 and the Tribunal has given undue weightage to the same. It is argued that the entire approach of the Tribunal while dismissing the claim petition was erroneous inasmuch as the principle of preponderance of probabilities ought to have been applied whereas Tribunal has proceeded in a manner as if conducting a criminal trial and seeking strict proof.

Per contra learned counsel representing the respondent-Insurance Company has supported the impugned decision dated 18.02.2014 passed by the Tribunal and has argued that the same is founded on cogent

and valid reasoning and does not call for any interference.

Having heard learned counsel for the parties at length and having perused the pleadings as also records of the case, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

This Court is in agreement with the view taken by the Tribunal that the offending vehicle was not involved in the accident.

As per version of the claimants, the accident is alleged to have been caused by the offending vehicle at 7.00 A.M. on 23.02.2012 and after having caused the accident the offending vehicle is stated to have fallen into the road side pit. Claimants examined Umed Singh as PW-5 and who in his deposition claimed to be an eye-witness to the accident. He had tendered in evidence his affidavit Exhibit PW5/A stating that on 23.02.2012 he was returning to his house after the morning walk and at about 7.00 AM when he reached near Police Post, Kharawar, the offending Canter bearing registration No.HR-59A-0140 carrying buffaloes came from Rohtak side and being driven at a high speed in a rash and negligent manner and hit the motor-cycle on which two persons were riding and both of them had fallen on the road and sustained injuries and the offending vehicle had fallen in the road side pit. Claimants had also examined Jagroop Singh as PW3 and who tendered in evidence his affidavit Exhibit PW3/A stating that on 23.02.2012, he was informed about the accident by Rajender Singh, father of the deceased. On receiving information, he along with other villagers went to the place of the accident and on reaching there, came to know that the injured had been taken to PGIMS, Rohtak. He further stated that upon reaching the spot of the accident the offending Canter bearing registration No.HR-59A-0140 was found lying in the road

side pit and the motor-cycle on which deceased had been pillion riding was also lying there.

Strangely, even though PW5-Umed Singh, claims himself to be an eye-witness and PW3 Jagroop Singh also stated that he had seen the offending vehicle in the road side pit yet the registration number of the offending Canter-Truck was not disclosed to the police authorities. The testimony of PW-3 Jagroop Singh and PW-5 Umed Singh would have to be seen as untrustworthy.

Even PW-2 Kapil who was driving the motor-cycle got his statement recorded before the police authorities at 12.10 PM on 23.02.2012 and stated that no accident had taken place and rather the motor-cycle that he was driving and on which Anil Kumar (since deceased) was pillion riding had slipped on account of having applied brakes on seeing an oncoming vehicle. However, later in point of time at 7.30 PM on 23.02.2012 Kapil PW-2 made yet another statement claiming that the accident had been caused by a Canter carrying buffaloes. The Tribunal has rightfully taken a view that if the version set-up by the claimants as offending canter/truck having fallen into a road side pit after causing the accident is correct then Kapil PW-2 who was driving the motor-cycle would have certainly disclosed the registration number of the same in a statement recorded subsequently at 7.30 PM on 23.02.2012.

The Tribunal upon due appreciation of evidence and on the strength of documents Exhibit R4 to Exhibit R6 has recorded a finding that the offending vehicle was impounded by the police on 23.02.2012 at about 9.30 AM in a case under Section 11 of the Prevention of Cruelty to Animals Act 1960, when it was stopped by the police at Kharawar Naka and was found carrying 25 calves. Respondent No.1 Vinod Kumar was driving the

canter-offending vehicle and another person namely Ram Kumar who was travelling in the canter were arrested. They were produced before the learned Area Magistrate on the following day and were fined on their pleading guilty to the charge. This in itself would negate the version of the claimants as regards accident involving canter-truck bearing Registration No. HR-59A-0140 at 7.00 AM on 23.02.2012 and that the offending vehicle having fallen into the road side pit.

The findings recorded by the Tribunal on Issue No.1 are well-reasoned and on due appreciation of evidence adduced on record. This Court does not find any patent infirmity or perversity in the findings recorded by the Tribunal.

No merit.

Appeal is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

August 07, 2018

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No