

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

**FAO No.805 of 2017 (O&M)
Date of Decision: 12.07.2018**

Sukhbir Kaur and others

... Appellants

Versus

Balwinder Singh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Akshay Sandhir, Advocate,
for the appellants.

TEJINDER SINGH DHINDSA, J.(ORAL)

The instant appeal has been filed assailing the order dated 13.07.2016 passed by the Motor Accident Claims Tribunal, Moga and whereby a claim petition filed under Section 166 read with Section 140 of the Motor Vehicles Act preferred by the claimants/appellants herein had been dismissed.

Counsel representing the appellants would submit that the claim petition had been dismissed on three grounds i.e. delay in registration of the FIR, post-mortem having not been conducted on the deceased and there being no eye witness to the alleged accident.

It is vehemently argued that delay in registration of the FIR in itself would not defeat the claim of the claimants. It is also argued that even if there was no post-mortem conducted on the deceased, it was imperative for the Tribunal to have appreciated and examined other evidence on record and as such non-existence of the PMR itself would not be conclusive. In the same

breath, an argument is raised that even if there be no eye witness to the accident yet other circumstances and evidence brought forth by the claimants could have been considered to draw necessary inferences.

An attempt has also been made to suggest that PW-1 Jaswant Singh i.e. father of the deceased was in fact an eye witness to the occurrence and such aspect has been overlooked by the Tribunal while passing the impugned order rejecting claim petition.

Counsel for the appellants has been heard at length and pleadings on record have been perused.

Briefly, it may be noticed that the case set up by the claimants was that Gurbhej Singh i.e. husband of the claimant/appellant No.1 was proceeding on a motorcycle make Hero Honda Splendor bearing registration No.PB-38C-7106 on 22.05.2015 and when he reached near the bus stand of a particular village then a tractor make Ford 3600 came at a fast speed and being driven by respondent in a rash and negligent manner and struck against the motorcycle being driven by Gurbhej Singh and who as a result thereof suffered serious injuries and succumbed to the same on the spot. Concededly, FIR No.31 was lodged on 29.05.2015 i.e. a week after the accident under Sections 304-A/427 IPC at Police Station, Fatehgarh Panj Toor. Claimants stated that deceased was 20 years old, was married and was an agriculturist having 05 acres of land and had taken an additional 10 acres on lease/theke. It was further claimed that deceased was also

running a dairy farm and was earning Rs.10 lakhs in all per annum.

The claim for compensation to the tune of Rs.85 lakhs was set up.

Claim was resisted by respondent Nos.1 and 2 i.e. the driver of the alleged offending tractor as also the owner of the tractor i.e. respondent No.2 by filing written statements and wherein the occurrence was denied.

Upon pleadings on record, the following issues were framed:-

- 1. Whether Gurbhej Singh has died in Motor Vehicular Accident on 22.05.2015 in the area of bus stand village Mundi Jamal caused by respondent No.1 Balwinder Singh while driving tractor trolly bearing registration No.HP-20-0807 in a rash and negligent manner?OPP***
- 2. Whether the claimants are entitled to compensation. If so to what amount and from whom? OPP***
- 3. Whether respondent No.1 Balwinder Singh was in possession of valid and effective driving licence on 22.05.2015? OPR1***
- 4. Whether the claim petition is not maintainable? OPR***
- 5. Relief.***

Perusal of the impugned award would reveal that while returning findings against the claimants on issue No.1 it had been noticed that the FIR had been registered after a delay of 07 days and for which no explanation had come forth. That apart even though PW-1 Jaswant Singh i.e. father of the deceased in his cross-examination stated that he had witnessed the accident/occurrence but in his evidence adduced on record in the shape of an affidavit, it was nowhere stated that he was with the deceased at the time of

accident and as such was an eye witness to the accident. It has also gone uncontroverted that no post-mortem examination of deceased Gurbhej Singh had been conducted so as to ascertain the cause of death.

This Court is satisfied that it is a case where the claimants have failed to adduce on record any cogent and credible evidence to even prove the factum of accident and that Gurbhej Singh having died on account of injuries suffered therein.

This Court does not find any infirmity in the impugned decision of the Tribunal whereby the claim petition has been dismissed on account of lack of evidence on the part of the claimants to establish the cause of death of deceased Gurbhej Singh in the alleged accident as also with regard to negligence of the driver in question.

The reasoning adopted by the Tribunal while determining findings against the claimants on issue No.1 are found to be valid and cogent and upon due appreciation of law.

No interference is warranted.

Appeal is dismissed.

Since the main appeal itself has been decided, pending application(s), if any, shall also stand disposed of.

12.07.2018

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE****Whether speaking/reasoned
Whether Reportable****Yes/No
Yes/No**