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

**FAO No.5366 of 2003 (O&M)
Date of Decision: 12.09.2019**

GURPAL KAUR AND ORS.

.....Appellants

Vs

GURDIAL SINGH AND ORS.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. S.S. Rangi, Advocate
for the appellants.

Mr. Gopal Mittal, Advocate
for respondent No.3-Insurance Company.

RAJ MOHAN SINGH, J. (Oral)

[1]. This appeal has been preferred against the award dated 11.09.2003 passed by the Motor Accidents Claims Tribunal, Fatehgarh Sahib (for short 'the Tribunal) whereby the claim petition filed by the claimants was dismissed in *toto*.

[2]. The accident took place on 15.05.1998, when Harchand Singh @ Harcharan Singh was going on his bicycle towards Khamanon for repair of hand pump at Samadh Baba Hari Singh. One Ambassador car came from Ludhiana side in a rash and negligent manner and struck against the bicycle of

Harchand Singh @ Harcharan Singh, resulting in multiple and serious injuries on his person. He was removed to PGI, but succumbed to his injuries.

[3]. Perusal of the record would show that at one point of time, an Advocate was impleaded as respondent No.2, but thereafter his name was deleted vide order dated 27.08.2003. A DDR was recorded by Rajinder Singh son of the deceased. The facts narrated in the DDR are suggestive of the fact that author of the DDR claimed himself to be an eye witness. Another eye witness namely Ram Singh was examined as AW-1. Testimony of AW-1 Ram Singh stands discarded solely on the basis of version recorded in the DDR i.e. the overt act played by the deceased himself by taking abrupt turn. Driver of the car has not been examined. Rajinder Singh author of DDR has also not come to depose in favour of the claimants, though he was one of the claimants.

[4]. The Tribunal dismissed the claim petition after finding that the material on record was not sufficient to connect the offending vehicle with the accident. The claim petition under Section 166 of the Motor Vehicles Act was dismissed. However, the claimants were held entitled to the compensation of Rs.50,000/- in terms of Section 140 of the Motor Vehicles Act along with interest.

[5]. I have considered the submissions made by learned counsel for the parties.

[6]. The testimony of Ram Singh as AW-1 has been discarded by the Tribunal solely on the ground of conflicting version recorded in the DDR/Rapat No.25 dated 16.05.1998. The rapat has been exhibited as Ex.R-9 by respondent No.4/Insurance Company.

[7]. It is a settled principle of law that mere exhibition of documents does not dispense with proof of its execution. The version arising out of DDR can only be appreciated, in case execution of the Ex.R-9 is proved with reference to the summoned record and by the person, who had appeared along with the record in Court. No such effort was made by the respondents to prove execution of Ex.R-9.

[8]. As per hospital record viz. post mortem report Ex.A-1, the deceased was brought by the police, who had sustained injuries on his person. It was also recorded that the accident took place when the bicycle of the deceased hit by an Ambassador car. The cause of death was opined as 'Hypovolemic shock due to Haemoperitoneum. Haemothorax and multiple fracture sustained by the deceased in a road side accident'. The documents viz. post mortem report of Harchand Singh @ Harcharan Singh was tendered in the statement of

Sh. Sanjeev Kapoor counsel for the claimants as mark 'A'. The affidavit Ex.A-1, death certificate of the deceased as Ex.A-2 and copy of milk account book as Ex.A-3. In case of death, it is very shocking that only DDR was recorded by the police and no further investigation was done.

[9]. The Tribunal has proceeded to discard the statement of AW-1 Ram Singh solely on the basis of Rapat No.25. There was no effort made by the respondents to prove execution of the *rapat*.

[10]. In my considered opinion, the impugned award needs to be revisited by the Tribunal. Consequently, the impugned award is set aside and the case is remanded to the Tribunal for fresh decision after affording reasonable opportunities to the parties to lead their evidence.

[11]. Both the parties are directed to appear before the Tribunal on 01.10.2019. Record of the Tribunal be also sent back.

September 12, 2019

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No