

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

**FAO NO.1395 of 2001
Date of Decision:17.09.2019.**

Smt.Bala Devi and others.

....Appellants

Versus

Rohit Mitra and others

....Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr.Vinod K. Kanwal, Advocate for Mr.Ashit Malik
Advocate for the appellants.

Ms.Kamlesh, Advocate for Mr.Parminder Singh, Advocate
for respondents No.1 and 2.

Mr.Man Mohan, Advocate for respondent No.3- Insurance
Company.

JAISHREE THAKUR, J.

1. The instant appeal, the appellants here are seeking to challenge the award of the Motor Accident Claims Tribunal, Karnal dismissing the claim of the petition filed under Section 166 of the Motor Vehicles Act, 1988.

2. In brief, the facts are that on 23.04.1997 one Mam Chand son of Ram Singh was going to his village and when he reached near the fields of Ram Kishan he saw that a motor cycle No. HNW-2550 was lying on the road and a young man was lying unconscious nearby. Mam Chand stopped his tractor and identified the injured young man to

be Rakam Singh. He thereafter went to his home and informed the father of the deceased about the said incident. Jai Singh ,the uncle of Rakam Singh was also present on the said occasion. Mam Chand alongwith father of the deceased reached the place of incident along with Jai Singh and they took the injured Rakam Singh to the hospital at Gharaunda where he succumbed to his injuries. The matter was reported to the Police Post, Pucca Pul, Madhuban and FIR registered on the 24.4.1997.

3. Later on the occasion of marriage of son of the Sarpanch, one person by the name of Jagdish Singh of Uttar Pradesh met the father of the deceased and told him that on the fateful day he had gone to his native village when he witnessed that a jeep No. HR-26-E-0063 (henceforth called the offending vehicle) was going ahead of his motor cycle which was being driven in a rash and negligent manner. He further told that the jeep driver was over taking another motor cycle and in the process he hit the motor cycle from behind which resulted in the rider of the motor cycle falling off. Since he was in a hurry to reach his home and to avoid litigation he did not informed anyone, but was sure that the accident took place due to the negligent driving of the driver of the jeep. On receipt of this information, the father of the deceased went to the Police Station Pucca Pul, Madhuban to report the incident next day i.e. on 7.5.1998, but the police did not take any action on the representation. Thereafter, the widow of the deceased, two minor sons and the aged parents filed claim petition seeking compensation against the respondent

driver and the owner of the offending vehicle as well as the insurance company.

4. The claim petition was contested and the driver stated that the accident being on account of his rash and negligent driving was a concocted story and blamed that it was the motor cyclist who was driving in a rash and negligent manner. He stated that when he was in the process of over taking, the motor cyclist struck against him which resulted in him falling off the motor cycle. He did not stop fearing that people would give him a beating. The owner of the offending vehicle also admitted the fact that the accident took place, but threw the entire blame upon the deceased for causing accident. Respondent No.3 denied the accident in totality by contending that no accident has ever taken place with the offending jeep and that the claim petition has been filed in collusion with the respondent and driver only to grab compensation. It was claimed that it was a case of hit and run and the deceased had met with the accident with some unknown vehicle whose registration has not been traced out so far. It was also pleaded that the driver be directed to produce his valid driving license failing which it would be presumed that the vehicle was driven in contravention of the terms and conditions of the insurance policy.

5. The Motor Accident Claims Tribunal, Karnal framed following questions:-

i. *Whether Rakam Singh died in a motor vehicular accident, caused by Rohit Mitra Respondent No.1, while driving Jeep No.HR-26-0063, rashly or negligently?OPP*

ii. To what amount of compensation, if any, the claimants are entitled. If so, against whom? OPP

iii. Whether the driver of the jeep was not holding valid licence. If so, its effect? OPR3

iv. Relief

6. The claimants examined one Jagdish Singh son of Raghbir Singh as PW-2 who deposed that he saw the accident on 23.04.1997 and stated that the offending vehicle was being driven in a rash and negligent manner. He stated that on 06.05.1998 he happened to attend a marriage in village Kairwali when he came to know from the villager that one Rakam Singh had died on the said date in a motor vehicle accident and that is when he disclosed that he had witnessed the accident. PW-1 the widow of the deceased claimed that her husband had died on 23.04.1997 and they came to know about the accident on the next day. PW-5 Mam Chand deposed that on 23.4.1997 he was going home at 10:00 PM and when he reached the fields of Ram Kishan he saw that a motor cycle was lying on the edge of the road and a person was lying on the 'katcha' portion of the road. Thereafter, he went to his house after having identified the said person as Rakam Singh. He went to his village and informed the father of the injured and then they together took him to the hospital but he died on the way. PW-4 Sher Singh father of the deceased corroborated PW-5 Mam Chand.

7. On the other hand to rebut the evidence of the petitioners, the insurance company examined Ram Chander, Head Constable of the

Police Station Karnal who deposed that FIR No.624 dated 24.04.1997 under Section 279, 337, 304-A IPC was registered at Police Station Sadar, Karnal and that the vehicle involved in the accident could not be traced in the case so it was ultimately sent as untraced on 1.10.1997.

8. The Tribunal at Karnal dismissed the claim petition on the ground that there was no concrete proof that the offending vehicle as insured by respondent No.3 was involved in the accident, aggrieved, the instant appeal has been filed.

9. I have heard counsel for the parties and also perused the judgement and the pleadings as relied upon. There is no dispute that on 23.04.1997 the deceased Rakam Singh met with an accident and ultimately succumbed to his injuries. Consequently the FIR No.624 dated 24.04.1997 was registered under Section 279, 337, 304-A IPC at Police Station Sadar Karnal in this regard. The FIR was registered by Sher Singh father of the deceased who did not mention the number of any vehicle that would have been involved in the accident. Even Mam Chand did not mention the registration number of the vehicle involved in the accident rather only saw that a motor cycle was lying on the edge of the road and a person was lying on the katcha portion who he identified as Rakam Singh. The entire case has been built upon a witness introduced as PW-2 Jagdish Singh who disclosed that he has witnessed the occurrence and the said information was supplied after more than one year of the accident having taken place on 23.04.1997.

10. It is indeed strange that PW-2 Jagdish Singh who had purportedly seen the accident as per his statement did nothing thereafter and left the injured on the side of the road. He did not take any steps to inform any of the police authorities or any villager about the accident having taken place. It is only when he attended a marriage on 06.05.1998 that he was informed that one Rakam Singh had died on 23.04.1997 and that is when he disclosed about being an eye witness. He did not know the deceased- Why would a person mention to him about an accident that took place almost 14 months ago and that too at a wedding? Why was the matter not reported earlier? Therefore, considering the facts and circumstances and the detailed reasoning as given by the Tribunal, this court finds that reliance cannot be placed upon the statement of PW-2 Jagdish Singh . Admittedly the police has filed an untraced report since the FIR did not contain the details of the vehicle involved in the accident. Mam Chand who was the first person who had seen the injured also did not give any such particulars. Even the statement of Sher Singh the father does not mention the details of the vehicle involved, hence this is a classic case of hit and run.

11. Since there was no eye witness to give the details of the vehicle involved and the statement of PW-2 Jagdish Kumar is most unreliable, it cannot be said with certainty that the jeep was involved in the accident. The statement of the driver and the owner regarding the factum of the accident too do not inspire any confidence .

12. The appeal is dismissed accordingly.

(JAISHREE THAKUR)
JUDGE

17.09.2019
Raman

Whether speaking/reasoned Yes/No
Whether reportable Yes/No