

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 3223 of 2008 (O&M)
DECIDED ON: MAY 06, 2019

MEENA KUMARI AND OTHERS

.....APPELLANTS

VERSUS

KULDEEP SINGH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Arshdeep Bhullar, Advocate for
Mr. SPS Bhullar, Advocate
for the appellants.

Mr. Aseem Aggarwal, Advocate
for respondent No.3.

AVNEESH JHINGAN J. (ORAL)

Aggrieved of the dismissal of the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as the 'Tribunal'), vide award dated 11.02.2008, the present appeal has been filed.

The widow, minor daughter and father of Jasinder Singh (deceased) are the appellants. The driver of Qualis car bearing registration No. HR-55-T-9944 (hereinafter referred to as the 'offending vehicle'), owner and insurer (i.e. National Insurance Company Ltd.) of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The record of this appeal was burnt and from the salvaged record of the partially burnt cases, the same was reconstructed subject to all just exceptions and further verification.

The facts in brief are that on 01.07.2006, Jasminder Singh (deceased) was driving the motorcycle bearing registration No. CH03-N-1977. He had gone to meet his uncle, thereafter, he was going towards Panchkula from Baltana. It is alleged that on his way he was hit by the offending vehicle. As a result of the impact, he sustained grievous injuries and succumbed to the injuries on 12.07.2006. FIR No. 282, dated 12.07.2006 was registered at Police Station Derabassi on the statement of Chandi Ram, uncle of the deceased.

In the claim proceedings, Chandi Ram, uncle of the deceased deposed as PW-1 to prove the involvement of the offending vehicle and that the accident took place due to rash and negligent driving of the offending vehicle. The deposition was not found worth reliance considering the fact that there was delay of 11 days in registering the FIR and number of the offending vehicle was not mentioned in FIR. The Tribunal dismissed the claim petition, hence the present appeal.

Heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants contends that the Tribunal erred in dismissing the claim petition as the onus cast upon the claimants under Section 166 of the Act was discharged by the deposition of PW-1-Chandi Ram.

In spite of service none appeared on behalf of respondents No.1 & 2.

Learned counsel for respondent No.3 argues that there was a delay of 11 days in lodging the FIR and registration number of the vehicle was not mentioned in the FIR. He argues that it is an after-thought story for claiming

compensation.

The contention raised by the learned counsel for the appellants is not well founded and deserves rejection.

From the perusal of relevant record, it is apparent that FIR was registered at the instance of Chandi Ram on 12.07.2006. In the FIR Chandi Ram has stated that when Jasinder Singh was returning after meeting his uncle, at a distance of about 100 yards, his motorcycle was hit by a rashly and negligently driven offending vehicle. In the FIR it was stated that he could not note the registration number of the offending vehicle. In his deposition before the Tribunal, he narrated the entire incident by stating that the deceased was hit by a rashly and negligently driven offending vehicle and the registration number of the offending vehicle was mentioned in his affidavit. No explanation was given as to how Chandi Ram came to know about registration number of the offending vehicle

The law is well settled that the onus in proceedings under the Act is not as heavy as in criminal proceedings. The claimants have to establish their case mere on the touchstone of preponderance of probabilities. Reliance in this regard is placed upon the decision of the Supreme Court in **Parmeshwari Vs. Amir Chand and others, AIR 2011 SC 1504** wherein, it was held as under:

*“The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in **Bimla Devi and others Vs. Himachal Road Transport Corporation and others [(2009) 13 SCC 530]** are very pertinent.*

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in

mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

In the present case there is no evidence on record to show that the claimants were able to prove the involvement of the offending vehicle and the fact that the accident was caused due to rash and negligent driving of the said vehicle.

No interference is called for in the findings recorded by the Tribunal.

The appeal is dismissed.

(AVNEESH JHINGAN)
JUDGE

MAY 06, 2019

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<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether reportable :</i>	<i>No</i>