

205

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

FAO-3372-2008

Date of Decision : 11.02.2019

Pushpa Devi

...Appellant

vs.

Rajbir and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Pratibha Yadav, Advocate
for the appellant.

Mr. Ashish Yadav, Advocate for
Mr. Gaurav Gupta, Advocate
for respondent No.1.

Mr. Chanderhas Yadav, Advocate
for respondents No. 2 and 2A.

Avneesh Jhingan, J. (Oral)

The award dated 22.05.2008 passed by the Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal') has been assailed by the mother of Rakesh @ Sheru, being aggrieved of dismissal of claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act').

The facts emanating from the record are that on 10.12.2005, the alleged accident took place which proved fatal for Rakesh @ Sheru. FIR No. 165 dated 12.12.2005 was registered against Rajbir s/o Sh. Ram Parshad Joshi.

A claim petition was filed under Section 166 of the Act. In order to discharge the onus of involvement of rash and negligent driving of the offending vehicle, PW-2- Jaivir (eye witness) deposed before the Tribunal. The said statement was ignored by the Tribunal by stating that the name of the driver of the Bus was not mentioned in the FIR even when there was a delay of 02 days in lodging the FIR and there was sufficient time with the complainant to give name of driver.

The FIR was registered on the statement of PW-1-Pushpa Devi, mother of the deceased who was not present at the time of accident but it cannot be ignored that the name of Jaivir finds mention in the FIR, itself. Further it has been stated that it was Jaivir, who took the deceased to the hospital. No proper reasons have been mentioned by the Tribunal for ignoring the statement of PW-2-Jaivir.

Learned counsel for the respondents vehemently defended the award and contended that the claimants miserably failed to discharge the onus cast upon them under Section 166 of the Act.

The impugned award is set aside and the matter is remitted back to the Tribunal to decide the claim petition afresh after providing opportunity to the parties to adduce evidence.

The parties are directed to appear before the Tribunal on 01.04.2019.

Disposed of accordingly.

11th February, 2019

shabha

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No