

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

FAO-883-2010 (O&M)

Date of decision: 06.03.2019

Santosh Kumari and another

...Appellants

Versus

Nandi Verma and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Vivek Suri, Advocate
for the appellants.

None for respondent No.1.

Mr. Maninder Arora, Advocate for respondent No.2.

H.S. MADAAN, J. (Oral)

As per case set up by the claimants in the claim petition, on 01.10.2006, Dalip Kumar was going on scooter bearing No.PB-11-P-3490, when he met with an accident on Patiala-Rajpura Road, suffering injuries in that mishap. He was taken to A.P. Jain Hospital, Rajpura from where, he was referred to Govt. Medical College & Hospital, Sector-32, Chandigarh, where he succumbed to the injuries on 08.10.2006. An FIR No.239 dated 08.10.2006 regarding the accident was registered with Police Station City Rajpura. Legal representatives of the deceased, namely, his mother Smt. Santosh Kumari and brothers Jatinder Kumar and Harvinder Kumar @ Honey, had brought a claim petition under Section 163-A of the Motor Vehicles Act, 1988 impleading Nandi Verma,

registered owner and National Insurance Company-insurer of scooter No.PB-11-P-3490 as respondents. That claim petition was contested by the respondents. The Motor Accidents Claims Tribunal, Patiala, vide award dated 01.10.2009 dismissed the claim petition.

The claimants Santosh Kumari and Harvinder Kumar @ Honey felt aggrieved by the said award and have approached this Court by filing the present appeal, notice of which was given to the respondents, however, only respondent Nos.1 & 2 had put in appearance through counsel, whereas, respondent No.3 was proceeded against ex parte. Subsequently, counsel for respondent No.1 stopped appearing in the Court. Now, the appeal is being contested by respondent No.2- Insurance Company only.

At the very outset, learned counsel for the appellants has submitted that he is confining his argument with regard to the entitlement of the claimants to compensation of Rs.50,000/- as no fault liability in terms of Section 140 of the Motor Vehicles Act, 1988. He has submitted that it is proved on record that the deceased had expired while riding scooter bearing No.PB-11-P-3490, in that way, the owner and insurance company of the scooter are liable to pay the amount of Rs.50,000/- to the claimants. In support of his such contention, he has referred to judgment by a Division Bench of this Court i.e. **New India Assurance Company Ltd., Vs. Shyamo Chauhan & Ors.**, 2005(1) Civil Court Cases 618 (P&H).

On the other hand, learned counsel for respondent No.2 has contended that it is not proved on record that the deceased had died while

riding the scooter in question, therefore, the claimants are not entitled to get any compensation. He has further pointed out that Jatinder Kumar (respondent No.3 herein) and Harvinder Kumar @ Honey (appellant No.2), statedly brothers of deceased are not entitled to get any compensation, rather, the appeal is without merit and should be dismissed.

After hearing learned counsel for the parties and going through the record, I find that it has come on file that formal FIR with regard to the accident in question had been recorded i.e. FIR No.239 dated 08.10.2006 for offences under Sections 279 and 304-A of IPC with Police Station City, Rajpura. Copy of that FIR has been proved on the record as Ex.P5. The FIR was got recorded by Bhagwan Dass son of Telu Ram, resident of Rajpura, who during the trial had got his statement recorded as PW-3 and supported the case of the claimants. A perusal of the FIR goes to show that it is recorded therein that deceased had suffered injuries while he was driving a scooter when some unknown vehicle being driven in a rash and negligent manner had hit the scooter. A perusal of post mortem report Ex.P4 goes to show that on the basis of information provided by the Investigating Officer, it is mentioned to be case of suffering injuries in a road side accident. The claimants have led oral evidence in that regard also, though, none of the witnesses examined had himself/herself seen the accident. Respondent No.1 had not appeared in the witness box to rebut the evidence adduced by the claimants. The insurance company had examined two witnesses i.e. Sampuran Singh,

Clerk, DTO Office, Patiala as RW-1 to show that licence said to have been issued in the name of deceased, had not been issued by that office. RW-2 Randhir Singh, Investigator, has tendered in evidence his affidavit Ex.RW2/A proving his report Ex.R3, however, I find that there is sufficient evidence available on the file to show that the deceased had died while riding the scooter in question and the tribunal wrongly came to the conclusion that it was not so.

Under the circumstances, Smt. Santosh Kumari, mother of deceased is found entitled to get compensation under no fault liability to the tune of Rs.50,000/-. Accordingly, the appeal is accepted; the award passed by the tribunal is set aside and the claim petition is allowed qua appellant No.1-Santosh Kumari. Resultantly, compensation of Rs.50,000/- along with interest @ 6% p.a., from the date of filing of claim petition till actual realization is granted to appellant No.1-Santosh Kumari, payable by respondent Nos.1 & 2, jointly and severally.

06.03.2019

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No