

FAO No. 2138 of 2012 (O&M)

-1-

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

FAO No. 2138 of 2012 (O&M)

Date of Decision: May 16, 2019

Sukhjinder Kaur

..... Appellants(s)

Versus

Amit Kumar and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Deepak Gupta, Advocate
for the appellant.

Mr. Siddharth Gupta, Advocate
for respondent no.1.

Mr. R.M Dutta, Advocate with
Mr. Nitin Jain, Advocate
for respondent no.2.

Mr. R.C. Gupta, Advocate
for respondent no.4.

None for respondent nos.3, 5 to 7.

LISA GILL, J. (oral)

This appeal has been filed by the claimant against the award dated 24.12.2011, passed by the learned Motor Accident Claims Tribunal, Bathinda (hereinafter referred to as 'the Tribunal) dismissing the claim petition under Section 166 of the Motor Vehicle Act, 1988, filed by the appellant alongwith two children who are arrayed as respondents no.6 & 7 in the present appeal.

FAO No. 2138 of 2012 (O&M)

-2-

Brief facts of the case are that on 28.03.2006, at about 10:10 AM, Jail Singh (since deceased) alongwith Nirmal Singh (since deceased) and Amit Kumar were going to village Dhapali from village Ghanda Bana to collect books, in a Maruti Car bearing registration No. CH-01-Z-7911, driven by Amit Kumar - respondents no.1. Nirmal Singh (deceased) was sitting adjacent to Amit Kumar and Jail Singh (deceased) was sitting on the back seat of the car. It is pleaded that Amit Kumar was driving the car at a very fast speed, in a rash and negligent manner. When they reached one kilometer ahead of village Ghanda Bana, Amit Kumar without noticing the pot hole on the road, ran the car into the hole. As a result thereof, Amit Kumar lost control over the car and struck against a tree, situated on the right side of the road. As a result of the accident, Jail Singh, Nirmal Singh suffered multiple injuries. Jail Singh was taken to Bharat Brain Hospital, Bathinda and he remained admitted there from 28.03.2006 to 04.04.2006 and ultimately succumbed to his injuries on 04.04.2006. DDR No.11 dated 29.03.2006 was registered in this regard at Police Station Phul, District Bathinda. It was pleaded that Jail Singh was treated at Omega Diagnostic Centre by Dr. Kamal Sharma and expense of about Rs.1,00,000/- was incurred on his treatment. It is pleaded that Jail Singh was working as a Government Teacher at Government Elementary School, Ghanda Bana and was drawing salary of Rs.11,000/- per month besides cultivating 8½ acres of his own land and earning Rs.1,00,000/- from the agricultural land.

Following issues were framed by learned Tribunal:-

1. Whether Jail Singh died on account of rash and negligent driving by respondent no.1 of car No. CH-01-Z-7911 in an accident which took place on 28.03.2006 at about 10:30 A.M. in the area of village Dhandabana on account of rash and negligent driving by respondent no.1? OPP
2. Whether claimants are entitled to compensation, if so how, much from whom, being legal representative of Jail Singh? OPP
3. Whether the driver of the car in question was not holding valid and affected driving licence at the time of accident? OPR-4
4. Whether the car in question was not holding fitness certificate, if so, its effect? OPR-4
5. Relief.

Learned Tribunal on considering the evidence on record concluded that the claimants have failed to prove that Jail Singh died on account of rash and negligent driving of the offending car bearing registration No.CH-01-Z-7911, driven by respondent no.1 – Amit Kumar. Reference is made to DDR Ex.A1 wherein registration number of the offending vehicle is not mentioned and it is stated that due to the car hitting against a pot hole on the road it could not be controlled by its driver and the car hit against a tree. Therefore, none is stated to be at fault for the accident. Learned Tribunal also referred to the statement of Sukhjinder Kaur, widow of Jail Singh (present appellant) Ex.R-2 and the Panchayatnama Ex.R-3. Accordingly, claim petition was dismissed.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that learned Tribunal has grossly erred in dismissing the claim petition filed by the appellant. Evidence on record clearly proves that the accident in question was caused due to rash and negligent act of the driver of the offending vehicle. It is wrongly presumed that the vehicle in question has been subsequently planted in this case. Merely because it is mentioned in the DDR that the accident did not take place due to any rash and negligent act on the part of the driver cannot be accepted to be gospel truth. Moreover, statement of Sukhjinder Kaur Ex. R-2 and the Panchayatnama Ex. R-3 are at best relevant for the purpose of the criminal proceedings against Amit Kumar. Reference is made to investigator's report appointed by the insurance company Ex. AW4/A to submit that there is no dispute regarding the involvement of the offending vehicle. It is proved that it is this vehicle itself which was involved. It is submitted that the registered owner of this vehicle, respondent no.2 in this appeal, as well as the LR of Nirmal Singh who also died in this accident and on whose statement the DDR was registered, have been duly impleaded as parties to the claim petition. It is contended that both the registered owner and Manjit Kaur the LR of Mehar Singh were proceeded against ex-parte. Therefore, the application moved on behalf of respondent no.2 in the present appeal seeking to place on record an affidavit of one Amandeep Singh to show that the Maruti car in question was sold to Amandeep Singh, be dismissed.

Learned counsel for the respondents pray for dismissal of the appeal while submitting that a well reasoned and logical decision has been rendered by the learned Tribunal.

FAO No. 2138 of 2012 (O&M)

-5-

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Learned counsel for the appellant is unable to deny that DDR Ex. A-1 was indeed entered but the registration number of the vehicle has not been mentioned in the DDR. Statement of Nirmal Singh, who had also passed away ultimately in account of the injuries received by him in the accident also does not point to the rash and negligent driving of the vehicle in question. It is a matter of record that the claimant Sukhjinder Kaur is not an uneducated/illiterate person but was working as a Nurse at Civil Hospital, Ghanda Bana. In her statement Ex.R-2, before the police authorities, Sukhjinder Kaur stated that none was at fault for the accident, which occurred on 28.03.2006 due to which Jail Singh died on 04.04.2006. The compromise deed Ex.R-3 is also a matter of record. There is no merit in the argument raised by learned counsel for the appellant that Ex. R-2 and Ex. R-3 should be ignored for the purposes of the present proceedings and accepted to be correct for the purposes of the criminal proceedings alone. Such a dichotomous stand is not justified in the given facts and circumstances of the present case.

To succeed in a claim petition under Section 166 of the Motor Vehicles Act, it is incumbent upon the claimants to prove the rash and negligent act of the driver of the offending vehicle. Needless to say, it is on the touchstone of preponderance of probabilities, that the claimants have to prove their case but at the same time, it is difficult to accept that a totally diverse stand by the claimants is permissible in the given facts and circumstances of the case.

FAO No. 2138 of 2012 (O&M)

-6-

I have perused the Investigator's report Ex. AW4/A, which has been vociferously pressed into service by learned counsel for the appellant, to say that there is no dispute regarding the identity of the vehicle in question. In view of the observations in the foregoing paras, even if the identity of the vehicle is established, it cannot be held in the factual matrix of the case that driver of the offending vehicle was guilty of any rash and negligent act keeping in view the specific stand of the claimant herself, as discussed above.

Keeping in view the facts and circumstances of the case, I do not find any ground whatsoever to interfere in the finding returned by learned Tribunal. Therefore, in view of not finding any rash and negligent act on the part of the driver of the vehicle in question, I do not find it necessary to go into the question whether Jail Singh died due to the injuries received by him or due to improper and insufficient medical treatment being afforded to him as it was pointed out by learned counsel for the respondents, during the course of arguments, that though the deceased was advised to be shifted to PGIMS, Chandigarh or DMC, Ludhiana, but he was not taken to the said hospitals as is apparent from a consent form dated 28.03.2006, given by the relatives of the deceased at Bharat Brain Hospital, Bathinda.

There is no illegality, infirmity or perversity in the impugned award dated 24.12.2011, passed by the learned Motor Accidents Claims Tribunal, Bathinda, which calls for any interference by this Court at the instance of the appellant.

No other argument has been addressed.

FAO No. 2138 of 2012 (O&M)

-7-

Appeal is accordingly dismissed with no order as to costs.

As the main appeal is being dismissed, no further orders are required on any of the pending applications.

May 16, 2019.
Sunil

(LISA GILL)
JUDGE

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