

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

FAO-5298-2012 (O&M)

Date of decision: 01.07.2019

Sudesh and another

...Appellants

Versus

Rajinder Kumar and another

...Respondents

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

Present: Mr. Pankaj Middha, Advocate for the appellants.

Mr. Satbir Gill, Advocate for respondent No.1.

Mr. Tarun Sharma, Advocate for

Mr. P.S. Jammu, Advocate for respondent No.2.

H.S. MADAAN, J. (Oral)

This appeal is directed against award dated 14.02.2012 passed by Motor Accidents Claims Tribunal, Hisar, vide which, claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the Act) filed by claimants Smt. Sudesh and Mandeep against respondents Rajinder Kumar and others had been dismissed. The petitioners/claimants, who are appellants before this Court prayed that appeal be accepted, impugned award passed by the tribunal be set aside and the claim petition filed by them be accepted and compensation as prayed for, be awarded to them.

Briefly stated facts of the case are that petitioner/claimant Smt. Sudesh, aged about 40 years, wife and Master Mandeep, minor son of Balraj, an unfortunate victim of a road side accident had filed a claim

petition under Section 166 of the Act for grant of compensation against the respondents i.e. Rajinder Kumar-driver/owner, Gurbachan Singh-owner of Ford Tractor-3600-cum-trolley bearing registration No.RJ-10-R-1330 besides registered owner and insurer of said tractor trolley without mentioning their name and addresses, rather, written that these are not known to the petitioners/claimants and were to be disclosed by respondent Nos.1 to 3, claiming compensation to the tune of Rs.30 lacs.

As per version of petitioners/claimants on 10.02.2009, Satish Kumar was travelling on scooter No.HR-24-J-1762 going towards Sirsa, at about 6.30 PM when he reached Bhowdin Mandi road, a tractor trolley was found to be there on the road without any indicator or reflector. It was raining at that time. The scooter of Satish Kumar struck the tractor trolley from behind, resultantly, he suffered multiple injuries on his body including on his face, right foot, knee and below knee. He observed that a young boy had already met with an accident with the said tractor trolley and his motorcycle had also struck the rear portion of the trolley. Satish Kumar injured was taken to Civil Hospital Sirsa, where he was medically treated and medico-legally examined. On coming to know about admission of Satish Kumar injured in the said hospital, the local police came there and recorded his statement with regard to the accident on 11.02.2009. On the basis of that statement, formal FIR No.19 of even date was recorded at PS Ding, District Sirsa. After registration of the formal FIR, the matter was investigated. The Investigating Officer went to the spot and carried out spot inspection. The Investigating Officer found

driving license from the pocket of deceased Sandeep. Post mortem examination on the dead body of Sandeep was got conducted. Thereafter, the dead body of Sandeep was handed over to his parents. After completion of investigation, respondent Rajinder Kumar was challaned.

The petitioners/claimants had filed the claim petition in question asserting that deceased Sandeep was running a shop and earning Rs.12,500/- per month therefrom. The claimants were dependent upon his earnings. Notice of the claim petition was given to the respondents. Respondent Nos. 1 & 2 put in appearance and filed separate written statements. In the written statement submitted on behalf of respondent No.1, he raised various legal objections with regard to maintainability of the claim petition, cause of action etc. On merits, such respondent denied the material assertions in the claim petition, contending that he was neither the driver nor the owner of the tractor in question, rather, contending that a false FIR had been got registered against him.

In the written statement submitted on behalf of respondent No.2, he also took up various legal objections, challenging the maintainability of the claim petition, locus standi of the claimants to do so, asserting that the petition was bad for mis-joinder and non-joinder of necessary parties and no cause of action had arisen to the claimants to bring it. On merits, the answering respondent contended that he had no connection with the accident since he was not owner of the tractor trolley at the relevant time as he had sold the tractor in question much prior to the accident, handing over the possession of the tractor along with its RC

to respondent No.1. Both the respondents prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether the accident in question was caused due to rash and negligent driving of tractor bearing registration No.RJ-10-R-1330 by respondent No.1 in which Sandeep died? OPP.
2. If issue No.1 is proved in affirmative, as to whether the petitioners are entitled to compensation as prayed, or to what extent and from whom? OPP.
3. Whether petition is not maintainable in the present form? OPR.
4. Whether the vehicle in question was being driven by respondent No.1 in contravention of insurance policy at the time of accident? OPR.
5. Relief.

The parties led evidence in support of their respective claims. After hearing arguments, the Motor Accidents Claims Tribunal, Hisar decided issue No.1 against the claimants, whereas, issue No.2 was decided having become redundant. Issue No.3 was decided that claim petition was not maintainable, whereas, issue No.4 has not pressed. Resultantly, the claim petition was dismissed.

The petitioners/claimants felt aggrieved by the said award and have approached this Court, by way of filing the present appeal, notice of which was given to the respondents, who have since appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The petitioners/claimants had filed the claim petition under Section 166 of the Act alleging that the accident in which deceased

Sandeep had lost his life, had taken place due to rash and negligent driving of the offending tractor trolley by Rajinder Kumar-respondent No.1. A specific issue in that regard was struck as issue No.1. The parties were afforded opportunities to lead evidence with regard to that issue. The petitioners/claimants had led oral as well as documentary evidence. The first witness examined by the claimants being PW-1 Vinay Arora, Criminal Ahlmad, who had brought the summoned file titled State Vs. Rajinder bearing FIR No.19 dated 11.02.2009 for offences under Sections 283, 337 and 304-A IPC, Police Station Ding, Sirsa. This witness stated that the charge for offences under Sections 283, 337 and 304-A IPC had been framed against respondent No.1 Rajinder Kumar. He had proved copy of FIR as Ex.P1, copy of report under Section 173 Cr.P.C., as Ex.P2, copy of registration of tractor as Ex.P3. Though, petitioner/claimant Smt. Sudesh had appeared as PW-2 and had furnished her affidavit stating that her son Sandeep died due to injuries suffered by him in a road side accident on 10.02.2009 on account of negligence of respondent No.1, but since she was not an eye witness of the accident and whatever she narrated in her affidavit was based upon what she had learnt from others and not her personal knowledge, her testimony with regard to accident was rightly discarded by the tribunal.

Coming to the statement of PW-3 Satish who himself had suffered injuries in the accident and had lodged the FIR in that regard. He made a complete summersault, stating that he had not got registered any FIR and had not made any statement to the police, rather, his signatures

had been taken on blank papers. Though, he admitted that he had moved an application for taking the scooter on supardari which was according to him was given by the Court and he had furnished the supardari bonds. He further stated that he had been medico-legally examined but he feigned ignorance with regard to the accident. Interestingly, Satish was not got declared hostile witness by the claimants. In his cross examination, he had stated that he had suffered injuries in an accident but did not know the type of vehicle with whom his scooter had hit. He further stated that it was raining and it was a dark night. Under the circumstances, there was no cogent, convincing and reliable evidence to show that respondent No.1 Rajinder Kumar was author of the accident by his rash and negligent driving of the offending tractor trolley in the form of wrong parking of the tractor trolley on the road without any indicator or reflector or that his such rash and negligent act was direct and proximate cause of accident, resulting in death of Sandeep. PW-3 Satish had not uttered even a single word that he had seen the dead body of Sandeep along with his motorcycle at the spot having hit the rear side of the trolley. The claimants had not examined the Investigating Officer of the case, who could have provided the crucial evidence, connecting respondent No.1 with the accident in which Sandeep had lost his life. Though the claimants have got proved the copy of FIR lodged with regard to the accident by Satish as Ex.P1 but then, FIR is not a substantive piece of evidence and its contents are to be proved by leading positive evidence. Respondent No.1 has since been acquitted in the criminal case also, vide

judgment placed on record as Ex.R2. The tribunal has discussed that judgment observing that respondent No.1 had been acquitted for the reason that Satish Kumar complainant had not supported the prosecution story, however, the tribunal has recorded in para No.21 that it has emerged on the record from the file that neither respondent No.1 nor respondent No.2 was present at the time of alleged accident and it was during course of investigation that it came out that tractor trolley belong to respondent No.2 and was parked by respondent No.1 being its driver. Under the circumstances, though, it was not established on the record that the accident in question had taken place due to rash and negligent act on the part of respondent No.1 in parking the tractor trolley on the road without any indicator or reflector but at the same time from the facts and circumstances of the case, it comes out that Sandeep had lost his life in the accident, involving the offending tractor trolley. As such, in terms of Section 140 of the Act, providing compensation in certain cases of principle of no fault, respondent Nos. 1 & 2 should have saddled with liability paying compensation of Rs.50,000/-, rather than dismissing the claim petition in totality. It is specific case of the claimants that his mother Smt. Sudesh had lost her husband and younger brother Mandeep (minor) his father and deceased Sandeep was stated to be the only bread earning member of the family. This is pleaded in the claim petition. It being so, the petitioners/claimants had a right to file the claim petition under Section 166 of the Act and the claim petition at their instance is certainly maintainable. The tribunal has fallen in error in deciding this

issue against the claimants, that too without giving any proper reasoning. Therefore, finding of tribunal on issue No.3 is reversed, holding that the claim petition at the instance of the petitioners/claimants is maintainable.

Findings of the tribunal on issue No.2 is also wrong. The claimants deserve to be granted compensation of Rs.50,000/- under no fault liability. In view of the discussion above, the findings of tribunal on issue No.2 is set aside, holding that the claimants are entitled to get compensation of Rs.50,000/- from respondent Nos.1 & 2.

Similarly, findings of tribunal on issue No.5 is also reversed. Consequently, the appeal is accepted partly. The award passed by the tribunal is set aside and a compensation of Rs.50,000/- is awarded to the claimants, payable by respondent Nos.1 & 2 jointly and severally with interest @ 7.5% p.a. From the date of filing of claim petition till actual realization with costs throughout. Out of the compensation amount awarded, Rs.30,000/- would be paid to claimant No.1-Smt. Sudesh and Rs.20,000/- to claimant No.2-Mandeep. Since 10 years have elapsed from the date of filing of claim petition Mandeep aged about 12 years at the time of institution of the claim petition must have attained majority, therefore, no order is being passed for deposit of his share in some nationalized bank etc.

01.07.2019

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(H.S. MADAAN)
JUDGE

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