

FAO No.1315 of 2013 (O&M)

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

FAO No.1315 of 2013 (O&M)

Date of decision: 18.11.2019

Smt. Pawan Kumari and others

.....Appellants

versus

Satpal Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Ashish Gupta, Advocate, for the appellants.
Ms. Vandana Malhotra, Advocate, for respondent No.3.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, claimants have assailed award dated 07.02.2013 of the Motor Accident Claims Tribunal, Gurgaon (in short 'the Tribunal'), whereby their claim petition under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act'), claiming compensation for the death of Subhash Yadav in a motor vehicular accident, was dismissed.

Briefly, in the night of 09.02.2012, Subhash Yadav son of Buta Ram died in Rajasthan. His widow, minor son and parents, claiming his death in a motor vehicular accident, allegedly caused by Indica Car bearing registration No.HR-26-AL-0593, driven by respondent No.1, owned by respondent No.2 and insured with respondent No.3, filed claim petition under Section 166 of the Act for compensation of ₹1.15 crore along with interest @ 15% per annum from the date of filing claim petition till realization before the Tribunal, who, after holding trial, dismissed the claim petition holding that alleged offending vehicle had not caused accident,

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rather was falsely involved to extract compensation from the Insurance Company in an illegal manner.

Learned counsel for the appellants *inter alia* contends that the Tribunal illegally rejected the claim of the appellants on account of delay in lodging the FIR, ignoring the fact that attendants of deceased Subhash Yadav remained busy in taking care of deceased and thereafter in his last rites. Thus, FIR could not be registered promptly. The Tribunal failed to appreciate that post-mortem report (Ex.P35), wherein the cause of death of Subhash Yadav was shown in a roadside accident. The Tribunal illegally rejected the claim petition on presumptions and assumptions, despite definite evidence on record that accident had occurred on account of negligence of respondent No.1 and offending car, which resulted in death of Subhash Yadav.

On the other hand, refuting above submissions, learned counsel for the Insurance Company, pleading the legality and validity of impugned award, contends that mechanical report of the offending vehicle also goes against the appellants inasmuch as according to PW3 Dinesh Kumar, alleged witness and occupant of the car at the time of accident, their car had turned turtle twice, but in the mechanical report only scratches have been shown to it. The deceased was taken to the hospital by a friend and brother of the deceased and not by PW3 Dinesh Kumar, though he was allegedly occupant with the deceased in the car at the time of accident. Appellants-claimant did not explain as to why he did not accompany deceased to the hospital or lodged FIR promptly, though he had not received any injury.

Having given thoughtful consideration to the rival submissions,

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this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

For ready reference, relevant findings of the Tribunal are reproduced hereunder: -

“10. After hearing learned counsel for the parties and going through the record of the case, this court is of the considered opinion that the claimants have failed to prove that the accident as a result of which Subhash Yadav expired, had taken place due to rash and negligent driving of offending vehicle by respondent no.1. The accident took place on 9th February 2012 at about 9/9.30 p.m. The other two co-passengers also suffered minor injuries. No doubt, when such a tragic death took place, the other occupants of the car and family of the deceased would have got busy in performing his last rites. However, at the same time, it has to be borne in mind that the delay in lodging of the FIR has to be satisfactorily explained. No information to the police was given with regard to the accident. At least no such evidence has been brought on record. The other two co-passengers had suffered only minor injuries. Their statements could very well have been recorded. The FIR was lodged only on 14.02.2012 i.e. after a delay of 5 days. The claimants have not been able to prove as to why this delay took place. The FIR also does not mention about any information with regard to the accident having been received in the police station on 9th February, 2012. Where such an accident takes place, information to the police would be very natural. There is no police information given by the hospital to the police. The MLRs etc. also do not mention the manner in which the accident took place. The accident

took place in Rajasthan at about 9.30 p.m. The place where the accident took place is more than 150 kms. away from Gurgaon. The offending vehicle had the registration number of Gurgaon. It would be very unlikely that at 9.30 p.m. in Rajasthan a car from Gurgaon would meet with an accident with another car from Gurgaon itself. The story somehow does not inspire confidence. The non appearance of respondent no.1 in the witness box strengthens the suspicion. There has been a halfhearted contest to the claim petition by respondents no.1 & 2. No evidence has been led by respondents no.1 & 2. There seems to be a prima facie collusion between both sides. No doubt, claim petitions should not normally be rejected only on the ground of delay in lodging FIR, provided other circumstances show that the accident had taken place in the manner suggested in the claim petition. The offending vehicle was not recovered from the spot and it was arrested much after the registration of the FIR. In an accident of this kind normally the offending vehicle would not be recovered from the spot. The accident has been denied even by the respondents. In the considered opinion of this court, the claimants have failed to prove that unfortunate demise of Subhash Yadav had taken place due to the rash and negligent driving of the offending vehicle by respondent no.1 and they have failed to prove that the offending vehicle was at all involved in the accident.

*11. I have gone through the judgments relied upon by learned counsel for the claimants in this regard. In the case of **Ravi Vs. Badrinarayan & others (supra)**, the Hon'ble Supreme Court of India held that through the lodging of an FIR was vital in deciding Motor Accident*

Claims cases. The delay in lodging the same should not be treated as fatal for such proceedings if the claimant has been able demonstrate and has given cogent reasons for the delay. In that case, there was a delay of three months in lodging of the FIR, The claim petition was rejected by the Motor Accident Claims Tribunal. The appeal was dismissed by the Hon'ble High Court. The Hon'ble Supreme Court then, on the basis of other circumstances proved on record, allowed the claim petition. This, judgment, would not be applicable to the facts of the present case. In that case through there was a delay of three months in lodging of the FIR, there were other circumstances which proved that the accident had taken place in the manner suggested in the claim petition. There was in fact an admission. It had come on record that the police had gone to the hospital on the very next day the accident to record the FIR but since the driver/owner was a neighbor, it would felt that it would not be desirable to lodge an FIR and that the matter should be settled amicably. In response to a notice issued to the owner of the offending vehicle in that cases under section 133 of the Motor Vehicles Act, the owner had admitted that his vehicle had met with an accident and that he had been intimated about the same on phone on the same day. No such fact is there in the present case. No one has even uttered a word about any information to the police when the accident took place nor is there any admission on behalf of the owner/driver of the offending vehicle.”

Above observations of the Tribunal shows that after delving with the issue involved very minutely, it came to the conclusion that alleged offending car was not involved in the accident, rather was falsely involved.

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Mechanical reports (Ex.P-15 & Ex.P-26) of the car in which the deceased was travelling and the offending car falsify statement of PW3 inasmuch as their car turned turtle twice before halt, but in the mechanical report only a scratch has been shown to it, which is always impossible in case, a vehicle rolls over twice. PW3 Dinesh Kumar seems to be a procured and false witness inasmuch as despite rolling of their car twice he did not receive even a single injury. He did not subject himself to any medical examination. That apart, he has not given any genuine explanation except that he remained busy in taking care of the deceased for not lodging FIR promptly, which too has no legs to stand inasmuch as body of deceased Subhash Yadav was taken to the hospital by his brother and a friend. As to why Dinesh Kumar did not accompany dead body of deceased Subhash Yadav, though at that time he was accompanying the deceased at the time of accident, is unexplained on the file.

In view of above discussion, I do not find any illegality or perversity in the impugned award.

Dismissed.

(Ramendra Jain)
Judge

November 18, 2019
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No