

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

FAO No. 271 of 2016 (O&M)

Date of decision : October 16, 2019

Jasbir Kaur

.....Appellant

Versus

Davinder Kaur and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Kushagra Mahajan, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed by the claimant – appellant challenging award dated 07.08.2015 passed by the learned Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as the 'Tribunal') whereby her petition under Section 163-A of the Motor Vehicles Act has been dismissed.

The appellant – claimant filed the above said petition seeking compensation on account of death of her son Kulwinder Singh due to injuries received by him in a motor vehicle accident which took place on 24.09.2014 due to the use of Alto car being driven by Manjinder Singh, her other son. It is pleaded that on 24.09.2014, Manjinder Singh alongwith his brother Kulwinder Singh (deceased), Mahabir Singh and Gurchet Singh were going from their village towards Amritsar in Alto car bearing registration No. PB-46-R-8559, driven by Manjinder Singh. When they reached near village Bohru, a tractor trolley loaded with paddy was going a little ahead of their car. When Manjinder Singh was trying to cross the said tractor trolley, suddenly a cow came in front and in trying to avoid collision,

he lost control over his car, which collided with the said tractor trolley from behind. As a result thereof, Kulwinder Singh succumbed to his injuries.

The petition was contested by the respondents. Respondent No. 1 – the owner of Alto car admitted the accident in question, while stating that the said vehicle was duly insured with the insurance company who would, in any case, be liable to pay compensation.

Respondent - insurance company resisted the claim petition while asserting that neither respondent No. 1 is the owner of the vehicle in question nor any accident caused with it and the driver of the Alto car was not holding any legal, valid and effective driving licence. It is stated that claim petition is not maintainable under the provisions of Section 163-A of the Act as the claimant is neither the legal heir nor dependant upon the deceased. It is further stated that the Alto car was not insured with the insurance company as no original policy was supplied. If the original policy is supplied and the same is found legal, valid and effective, even then insurance company is not liable to pay any compensation as there is violation of terms and conditions of the insurance policy.

No rejoinder was filed.

Following issues were framed by the learned Tribunal:-

- 1) Whether Kulwinder Singh son of Daler Singh, died in the accident occurred by use of Alto car No. PB-46-R-8559 which was owned by respondent No. 1 on 24.09.2014 at about 9.30 a.m. in the area of village Bohru?OPP
- 2) Whether the petition is not maintainable?OPR.
- 3) Whether the petitioner/claimant is entitled to recover any compensation, if so, the amount and from whom?OPP
- 4) Relief.

Learned trial Court on considering the evidence on record concluded that the claimant had failed to prove her case on the basis of the evidence on record. It is observed that there is no evidence to indicate even the occurrence of the accident involving the offending car on 24.09.2014. The DDR, in this case, is stated to be recorded on 02.12.2014 on the statement of Manjinder Singh, the driver of the Alto car. Moreover, no medical record was produced by the claimant to indicate the cause of death. Post Mortem Report was also not produced. Claim petition was, accordingly, dismissed. Aggrieved therefrom, this appeal has been filed.

Learned counsel for the appellant vehemently argues that the appellant has successfully proved her case on the touchstone of preponderance of probabilities. Claimant in the present proceedings is not to prove her case beyond reasonable doubt. The eyewitness of the accident i.e. Manjinder Singh, who is none other but the brother of the deceased as well as Mahavir Singh, who also received injuries in the accident, duly proved the occurrence. The involvement of the vehicle has also been proved by the claimant. Learned Tribunal, it is stated, has grossly erred in dismissing the claim petition. It is thus, prayed, that this petition be allowed.

I have heard learned counsel for the petitioner and have gone through the record which was requisitioned.

The claim set up by the appellant is that her son namely Kulwinder Singh aged about 21 years lost his life in the motor vehicle accident, which took place on 24.09.2014 due to the use of Alto car bearing registration No. PB-46-R-8559. The said car was being driven by Manjinder Singh i.e. the real brother of the deceased. Gurchet Singh, who was allegedly travelling in the said car as well, was not examined for reasons

best known to the claimants. Manjinder Singh is stated to have received injuries in the said accident. It is a matter of record that the occurrence of the accident was not reported to the police authorities on 24.09.2014. DDR was recorded on 02.12.2014 on the statement of Manjinder Singh and that too at Police Station Chatiwind and not at the Police post, Village Bohru. It is relevant to note that the accident in question took place near village Bohru. Though mere delay in reporting the matter to the police, by itself is per se, not sufficient to reject the claim set up by the claimant in the proceedings under this Act, however, the same is indeed one of the circumstances in the entire factual matrix, which create a dent on the credibility of the claimant's case.

It is pertinent to note at this stage that apart from the fact that there is no Post Mortem Report, there is no other evidence on record to indicate that Kulwinder Singh died due to the injuries received by him in a motor vehicle accident. Reference by learned counsel for the appellant to the statement of Manjinder Singh (PW2) and Mahabir Singh (wrongly numbered as PW2 again) is of no avail. Medical treatment of Mahabir Singh by itself does not indicate Kulwinder Singh to have received any injuries in the said accident as well. In fact the said documents do not even point out to involvement of Kulwinder Singh in the said accident.

Learned counsel for the appellant is unable to deny that there is no evidence even in regard to the damage which may have been caused to the Alto car in the accident alleged to have taken place on 24.09.2014.

In this view of the matter, the claimant has indeed failed to connect the death of Kulwinder Singh due to injuries received by him in the motor vehicle accident alleged to have taken place on 29.04.2014, due to the

use of Alto car bearing registration No. PB-46-R-8559. The claimant has indeed failed to prove her case even on the touchstone of preponderance of probabilities.

No other argument has been raised.

Learned counsel for the appellant is unable to point out any illegality, infirmity and perversity in the impugned award dated 07.08.2015 passed by the learned Motor Accident Claims Tribunal, Amritsar.

There is a delay of 08 days in filing of FAO No. 271 of 2016. Keeping in view the fact that the appeal is decided on merits, the question of delay in filing of this appeal is rendered academic. Application is, accordingly, disposed of.

Appeal is, accordingly, dismissed with no order as to costs.

October 16, 2019
rts

(Lisa Gill)
Judge

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