

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

-.-

FAO 5700 of 2014 (O&M)

Date of decision: 22.05.2019

Jyoti and others

.....*Appellants*

Versus

Tejbir and others

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. D S Sandhu, Advocate
for the appellants

Mr. Sanjeev Goyal, Advocate
for the insurance company

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Rekha Mittal, J. (Oral)

Challenge in the present appeal has been directed against award dated 02.05.2014 passed by the Motor Accidents Claims Tribunal, Palwal (in short, 'the Tribunal') whereby application for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (in brevity, 'the Act') was dismissed, in view of findings on issue No. 1.

Briefly stated, case of the appellant is that on 22.03.2012 at about 9.00 a.m., Deepak (since deceased) was returning to his village Hassanpur on his motor cycle bearing No. HR 30E 0272 at a moderate speed. When he reached at village Bhduki, offending vehicle i.e. three wheeler No. HR 73-2799 driven by respondent No. 1 in a rash and negligent manner hit the motor cycle. He sustained multiple injuries and was shifted to M/s Kishan Singh Hospital, Hodal from where he was referred to B K

Hospital, Faridabad but died on the way. FIR No. 34 dated 22.03.2012 for offences punishable under sections 279, 304-A, 427 of the Indian Penal Code was registered in Police Station Hodal qua the accident.

The driver and owner of the offending vehicle filed joint written statement and, in turn, they denied the allegations with regard to involvement of the alleged offending vehicle in the occurrence with the averments that a false FIR was got registered by the claimants in order to extract compensation.

The insurance company also filed reply and denied its liability to pay compensation.

The Tribunal framed issues. Issue No. 1, reads thus:-

“1) Whether Deepak son of Shri Ombir had died in a motor vehicular accident caused by respondent No. 1 while driving vehicle three wheeler No. HR 73 2799 in a rash and negligent manner on 21.03.2012? OPP”

To discharge onus of issue No. 1, the appellants examined Satish, author of FIR (PW2) and Rattan Singh (PW3).

The Tribunal, in view of discussions in para 11 of the award, arrived at a conclusion that the claimants miserably failed to prove that accident is the result of rash and negligent driving of three wheeler in question. It was further held that it was a hit and run case and later three wheeler in question was falsely involved with an ulterior motive to extract compensation.

Counsel for the appellants would argue that on due investigation of FIR lodged at the behest of Satish, challan was presented in

the Court and driver of the offending vehicle was put to trial. The appellants produced copies of *superdaginama* Ex. P2, charge sheet against respondent Tejbir Ex.P3, final report under Section 173 of the Code of Criminal Procedure Ex.P4, release order Ex.P5 and documents mark A to E. It is argued with vehemence that in proceedings before the Tribunal, the claimants are not obligated to prove their case beyond shadow of reasonable doubt and the same is to be decided on the basis of preponderance of probabilities. It is further argued that in view of testimonies of Satish and Rattan Singh coupled with documentary evidence on record, findings of the Tribunal on issue No. 1 cannot be allowed to sustain and liable to be set aside. It is further submitted that after setting aside findings on issue No. 1, compensation may either be assessed by this Court or the matter be remitted to the Tribunal for undertaking that exercise.

Counsel representing the insurance company, on the contrary, has supported findings of the Tribunal, recorded on the basis of detailed discussion in para 11 of the award. It is argued that had it been true that Satish witnessed the occurrence having been caused by driver of three wheeler in question, there was no reason for him to get the criminal case registered against an unknown vehicle and driver. It is further argued that both Satish and Rattan Singh, in their cross examination, have candidly admitted that they had not seen the accident nor involvement of three wheeler in question in the occurrence.

I have heard Counsel for the parties, perused the paper book and records.

Be that as it may, indisputably, Satish PW2 and Rattan Singh

PW3 are the star witnesses examined by the claimants to substantiate their plea that accident was caused due to rash and negligent driving of offending vehicle i.e. three wheeler bearing No. HR-73-2799. To dismay of the claimants, both Satish PW2 and Rattan Singh PW3 did not support plea of the claimants in view of facts elicited in their cross examination. Satish, in his cross examination has admitted that he had not seen any three wheeler causing the accident. He had only witnessed the body and motor cycle No. HR 30-E-0272 lying on the road. He further admitted that regarding rash and negligent driving of offending vehicle, it has been mentioned on hearsay basis. He also admitted that he had not seen driver of the alleged vehicle. However, he denied that a false FIR was got lodged in connivance with the police in order to help the claimants for getting compensation. Rattan Singh PW3 had also admitted that he had not seen any three wheeler causing the accident. He had only seen a person lying on the road. He would further depose that one Ombir of Hassanpur who is his brother-in-law had telephoned him on 22.03.2012 at about 8.00 a.m. and told that accident had taken place and a person had expired. He was knowing name of the driver as he picks up passenger from their village. He has denied the suggestion that the alleged three wheeler as well as respondent No. 1 has been wrongly named by him to help the claimants.

No doubt, the appellants produced documents from the criminal case, lodged against Tejbir Singh-respondent No. 1. However, perusal of cross examination of Satish and Rattan Singh leaves no manner of doubt that they are not eye witnesses to the occurrence either to indict the alleged offending vehicle or its driver for causing accident much less to prove that

accident is the result of rash and negligent driving of the offending vehicle. As has been rightly argued by counsel for the insurance Company that had Satish been present at the spot at the time of occurrence, there was no reason for him to lodge an FIR against an unknown vehicle and driver. There is nothing on record suggestive of the fact as to the basis on which the offending vehicle and driver thereof were indicted in the criminal proceedings. Keeping in view the above, I find it difficult to differ with findings of the Tribunal holding that the claimants have failed to discharge onus of issue No. 1, therefore, they are not entitle to compensation.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed.

(Rekha Mittal)
Judge

22.05.2019
Mohan Bimbura

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