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

**FAO No.4504 of 2015
Date of Decision: 18.01.2019**

Kapil

Appellant

Versus

Jagpal Singh and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Vikram Bali, Advocate
for the appellant.

None for respondent No.1.

Mr. Rajbir Singh, Advocate
for respondent No.2.

AVNEESH JHINGAN, J (Oral):

The award dated 27.02.2015 passed by the Motor Accident Claims Tribunal, Chandigarh [for brevity 'the Tribunal'] dismissing the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 [for brevity 'the Act'] has been assailed by the claimant.

The facts emanating from the record are that it is alleged that on 21.01.2012, the claimant was a pillion rider on a motor cycle bearing registration No. HR-04C-2146 [hereinafter referred to as 'offending vehicle']. The motorcycle was driven and owned by Jagpal Singh i.e. respondent No.1. When they reached near village Bator,

they were knocked down by an unknown vehicle, as a result, Kapil sustained injuries and was shifted to the Post Graduate Institute of Medical Education & Research, Chandigarh. FIR was registered on 30.05.2012 i.e. almost after four months of the accident.

A claim petition under Section 163-A of the Act was filed claiming compensation for injuries suffered in the accident. The said claim petition was dismissed as the claimant failed to prove the involvement of the offending vehicle. Hence, the present appeal.

Learned counsel for the appellant contends that delay in registering the FIR occurred as the claimant went into coma after sustaining injuries and remained in coma for almost five months. He further relies upon the written statement filed by respondent No.1, that there is an admission that the claimant sustained injuries in an accident involving the motorcycle owned by respondent No.1.

Learned counsel for the insurer while defending the award argues that respondent No.1 never stepped into witness box to support the claim petition, the Tribunal rightly dismissed the claim petition.

Heard learned counsel for the parties, perused the paper book and the record.

The contention raised by learned counsel for the appellant lacks merit. There was a delay of almost four months in registering the FIR, albeit it has not been disputed that the claimant remained in coma for almost five months but the fact remains that respondent No.1 was well known to the father of the claimant, he

never bothered to register the FIR regarding the accident. Even if the delay in registering the FIR is ignored, there is another aspect i.e. respondent No.1, owner of the offending vehicle was well known to the claimant and his father, he filed written statement admitting the accident and involvement of the offending vehicle, but in order to avoid cross-examination, he chose not to step into the witness box to support the claim petition.

The onus under Section 163-A of the Act on the claimant is as under:-

- (i) *that there is involvement of the offending vehicle; and*
- (ii) *that the income of the deceased is below ₹40,000/- per month.*

The onus with regard to requirement regarding involvement of the offending vehicle has not been discharged by the claimant. Only two Doctors and father of the claimant deposed before the Tribunal. The father of the claimant was not present at the time of accident, there was no evidence proving involvement of the offending vehicle. In such circumstances, no shadow can be cast upon the findings recorded by the Tribunal.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

January 18th, 2019
pankaj baweja

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|------------------------------|---|----------------|
| 1. Whether speaking/reasoned | : | Yes/ No |
| 2. Whether reportable | : | Yes/ No |