

**FAO No. 5473 of 2015**

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

**FAO No. 5473 of 2015**

**Date of Decision: October 15, 2019**

Balwinder Kaur and another

..... Appellants(s)

**Versus**

Davinder Singh

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mrs. Himani Kapila, Advocate  
for the appellants.

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**LISA GILL, J.(oral)**

This appeal has been filed being aggrieved of the award dated 15.04.2015, passed by learned Motor Accident Claims Tribunal, Ferozepur (hereinafter referred to as 'the Tribunal), vide which the claim petition under Section 166 of the Motor Vehicles Act, 1988, filed by the appellants-claimants has been dismissed.

Brief facts necessary for adjudication of the case are that the claimants i.e. widow and son of the deceased Gurdev Singh filed a petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation on account of death of Gurdev Singh due to the injuries sustained by him in a motor vehicle accident, which took place on 19.04.2013. Claimants pleaded that on 19.04.2013 at about 1.30 P.M., Gurdev Singh (deceased) aged about 57 years, along with his grand son namely Abhijot was returning

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to his house on his moped bearing registration No. CH-01-R-8840 from Akal Academy School, Nawan Killa. When they reached near bus stand of village Hamad, the offending car bearing registration No. PB-41-C-9559 came from the side of Ferozepur, being driven in a rash and negligent manner, without blowing its horn and struck against the moped of the deceased from behind. As a result thereof, Gurdev Singh received serious injuries on his head and both the legs. Abhijot, the grand son of the deceased also sustained minor injuries. It is pleaded that Gurdev Singh was admitted in Anil Baghi Memorial Hospital, Ferozepur City, where he remained under treatment from 19.04.2013 to 01.06.2013, but he ultimately died on account of the injuries sustained by him. The matter was reported to the police, but no action was taken by the police. The deceased was claimed to be 57 years old, an ex-serviceman and accordingly compensation of Rs.25 lakhs was claimed.

The respondent-driver/owner resisted the claim petition while taking a preliminary objection that the present was a case of hit and run. No FIR or even a DDR was registered with the police authority. Moreover, postmortem examination of the dead body was not conducted and a false claim petition, it is stated, had been filed only to extort money from the respondent. Averments on merits were also denied. Dismissal of the claim petition was sought.

Rejoinder to the written statement was filed. Following issues were framed by the learned Tribunal on the basis of the pleadings:-

1. Whether Gurdev Singh son of Kundan Singh had died on account of injuries sustained by him in a motor vehicular accident which took place on 19.04.2013 at about 1.30 PM in the area of bus stand village Hamad, Tehsil Guru Har Sahai, District Ferozepur, due to rash and negligent driving of bus bearing registration No. PB 41 C 9559 by respondent no.1? OPA
2. Whether the claimants are entitled to the compensation, if so to what extent and from whom? OPA
3. Relief.

Learned Tribunal on considering the evidence on record concluded that the claimants failed to prove that the deceased received injuries in a motor vehicle accident on 19.04.2013 due to the rash and negligent driving of the offending vehicle by its driver. It is further observed that the evidence on record did not even point out to the cause of death of Gurdev Singh or connect the same with the alleged accident. Accordingly, the claim petition filed by the present appellants was dismissed. Aggrieved therefrom this appeal has been filed.

Learned counsel for the appellants vehemently argues that the learned Tribunal has grossly erred on facts and in law in dismissing the claim petition filed by the appellants-claimants. The claimants, it is submitted, duly proved their case on the touchstone of preponderance of probabilities. Merely because an FIR or a DDR was not registered, cannot be a ground to reject the appellants' claim. Appellant no.1 i.e. the widow of the deceased had moved an application before the police authorities for conducting a proper probe in the matter. The matter was in fact duly brought

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to the notice of the police authorities but they did not take any action thereon. It is further submitted that Gurdev Singh remained admitted in the hospital on various occasions. He suffered grievous injuries, which ultimately led to his death. It is contended that admission of Gurdev Singh in Anil Baghi Memorial Hospital, Ferozepur is duly proved by PW2 Dr. Gagandip Singh. It is thus, submitted that the present appeal be allowed. Impugned award dated 15.04.2015 be set aside and just and reasonable compensation be afforded to the appellants.

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

The appellants-claimants have pleaded that Gurdev Singh met with a motor vehicle accident on 19.04.2013 at about 1:30 PM. The accident is stated to have occurred due to the rash and negligent act on the part of the driver of the offending Alto car bearing registration No. PB-41-C-9559. It is a matter of record that an FIR or even a police report has not been lodged in the present case. Though it is settled position that mere non-registration of FIR or reporting the matter to the police authorities by itself cannot *per se* led to the rejection of a claim set up by any claimant but at the same time, there has to be sufficient evidence on record to prove the claimants' case. In the present case, appellant no.1 for the first time submitted an application Ex.PX on 18.06.2013 before the SHO Police Station Lakho Ke Behram. It is stated in the said application that Gurdev Singh alongwith his grand son met with an accident on 19.04.2013. The accident is stated to be caused by a car, the details or description of which

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are conspicuous by its absence. It is further mentioned in the application that when they got information about the accident, they rushed to the spot where Gurdev Singh was lying unconscious. Admittedly, there is no mention about the details of either the offending vehicle or the driver and neither is there even a whisper about the presence of Gurcharan Singh PW3, who is touted to be an eye-witness of the accident. It is further a matter of record that an inquiry into the matter was conducted on the said application. As per report Ex.R2, submitted by the SSP, Ferozepur, no truth was found in the averments made in the application and the matter was recommended to be filed as no action thereon was called for.

I have also gone through the statement of PW3 Gurcharan Singh, purportedly an eyewitness of the accident. PW3 in his affidavit stated that on 19.04.2013 he along with one Phuman Singh @ Laddu were present at the bus stand village Hamad, Tehsil Guruharsahai, District Ferozeur. At about 1:30 P.M., Gurdev (deceased) along with his grandson aged about 3½ years, came on their moped from Akal Academy School. In the meantime, the offending vehicle i.e. Alto car came from Ferozepur side, which was being driven by its driver in rash and negligent manner at a very high speed, without blowing horn, struck against the moped of Gurdev Singh from behind. It is stated that Gurdev Singh received serious injuries while his grand son received minor injuries. Gurdev Singh was taken to the Anil Baghi Memorial Hospital, Ferozepur, where he was treated from 19.04.2013 to 01.06.2013 but he ultimately succumbed to his injuries. PW3 Gurcharan Singh has admitted that the matter was not reported by him to the police. He

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states that he had no knowledge about any inquiry conducted by the police regarding the accident. He further stated that he did not even remember the registration number of the car or the moped. Perusal of his testimony does not inspire much confidence. It is rightly held by the learned Tribunal that the said evidence is clearly not sufficient to allow the claim set up by the appellants.

Furthermore, the claimants have failed to prove even the cause of death of Gurdev Singh. PW2 Dr. Gagandip Singh from the Anil Baghi Memorial Hospital, Ferozepur has proved that the deceased was initially admitted in their hospital on 19.04.2013 as a case of road side accident and was discharged on 20.04.2013. He deposed that Gurdev Singh was admitted as a road side accident case with a right ear bleed and a fracture of tibia fibula distal end left. He was re-admitted on 07.05.2013 and discharged on the very same day.

PW2 in his cross examination has specifically deposed that CT scan of Gurdev Singh's head was also conducted and it was found to be normal. PW2 further deposed that Gurdev Singh was discharged from the hospital on 20.04.2013 in satisfactory condition. PW2 stated that at the time of admission, the patient was advised to have POP (Plaster) applied on the left leg on account of the fracture but the patient's wife refused to get such treatment. The patient was again admitted on 07.05.2013 and on his request plaster was applied on the left leg. It is further stated that Gurdev Singh was referred to them from the Military Hospital, Ferozepur and the injuries on the person of Gurdev Singh were not dangerous to life. PW2 Dr. Gagandip

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Singh has revealed that Gurdev Singh was HIV positive too. Gurdev Singh ultimately died on 01.06.2013.

Learned counsel for the appellants is unable to point out any evidence on record, which can connect the death of Gurdev Singh on 01.06.2013 to the injuries which may have been received by him in the accident, if any, which occurred on 19.04.2013. It is a settled position that in a claim petition under Section 166 of the Motor Vehicles Act, the claimants have to prove that the accident in question was caused due to the rash and negligent act of the driver of the offending vehicle and that death or injury as the case may be are attributable to the said accident. The appellants have indeed failed to prove their case on the touchstone of preponderance of probabilities. Learned Tribunal in the given factual matrix of the case has rightly decided the issues and dismissed the claim petition.

Learned counsel for the appellants is unable to point out any illegality, perversity or infirmity in the impugned award 15.04.2015, passed by the learned Motor Accidents Claims Tribunal, Ferozepur, which calls for any interference by this Court.

No other argument has been addressed.

Appeal is accordingly dismissed with no order as to costs.

**( LISA GILL )**  
**JUDGE**

**October 15, 2019.**

Sunil

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