

215

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

**FAO No.4785 of 2016 (O&M)
Date of Decision: 05.03.2019.**

Suman Devi and others

Appellants

Versus

Sunil and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amandeep Saini, Advocate for
Mr. Sanjay Verma, Advocate
for the appellants.

AVNEESH JHINGAN, J (Oral):

The award dated 05.03.2016 passed by the Motor Accident Claims Tribunal, Gurgaon [for brevity 'the Tribunal'] under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act'] has been assailed in appeal by the legal heirs of Ajit Singh.

The facts in brief are that a motor vehicular accident took place in the intervening night of 15/16.03.2015 in which Ajit Singh lost his life. FIR was registered on the statement of uncle of deceased namely Dharampal. As per contents of the FIR, Dharampal was not an eye-witness to the accident. He had received a telephonic message about the accident, thereafter, he reached the spot and registered the FIR against an unknown

vehicle. After 27 days, on 11.04.2015, one Ashok Kumar appeared before the Police and stated he was eye-witness to the accident and he had noted the registration number of the vehicle i.e. HR-55R-7021 [hereinafter referred to as 'offending vehicle']. He deposed before the Tribunal as PW-5. His statement was not found worth reliance, as the Tribunal opined that Ashok Kumar was an implanted witness and with the connivance of respondent No.1 (before the Tribunal) i.e. the owner and driver of the offending vehicle, the entire story had been concocted to get the claim from the insurer of the offending vehicle. The claim petition was dismissed, hence the present appeal.

Heard learned counsel for the appellants and perused the relevant documents produced by him.

Learned counsel for the appellants contends that the Tribunal has ignored the fact that respondent No.1 in his written statement admitted the accident.

The contention raised by learned counsel for the appellants is not well founded. Law is settled that in cases under the Act, onus of proof is not as strict as in criminal cases. The claimants have to establish their case mere on a touchstone of preponderance of probabilities. The Supreme Court in **Parmeshwari Vs. Amir Chand and others, 2011 AIR (SC) 1504** held as under:

“The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles

*of proof in a criminal case are not attracted. The following observations of this Court in **Bimla Devi and others Vs. Himachal Road Transport Corporation and others [(2009) 13 SCC 530]** are very pertinent.*

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

In the present case, claimants are not able to discharge the onus to establish the involvement as well as rash & negligent driving of the offending vehicle. FIR was registered by Dharampal (PW-4). There is no dispute that he was not present at the time of accident. Ashok Kumar (PW-5) deposed before the Tribunal stating that he was coming behind the vehicle of the deceased and noted the number of offending vehicle. But the fact is that there is nothing on record to show he was present at the spot of accident. He never bothered to take the injured to the hospital. Not only this, in his cross-examination he has stated that deceased was not known to him, in such circumstances, there is a missing link as to why Ashok Kumar remained silent for 27 days and how he had found details of the deceased so as to connect with the case registered in the Police Station. As per his statement, number of persons also gathered at the spot, no other

person came forward for giving any statement. The Tribunal rightly opined that a story has been made afterwards as per connivance, Ashok Kumar has been implanted as an eye-witness. The gaps in his statement are writ large. Ajit Singh died on the same very night of the accident but Ashok Kumar took 27 days to appear before the Police, his statement not worth reliance.

The Tribunal has also opined that there appears to be a collusion between the claimants and respondent no.1, in such circumstances, the reliance on the written statement filed by respondent No.1 will not enhance the case of the appellants.

No interference is called for in the findings recorded by the Tribunal.

The appeal is dismissed.

[AVNEESH JHINGAN]
JUDGE

March 05, 2019

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |