

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

101

FAO No.5888 of 2016 (O&M)

Date of decision: 26.02.2019

KAMLA DEVI AND ANR

... Appellants

Versus

LALIT AND ORS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Gurbir S. Sidhu, Advocate for the appellants.

REKHA MITTAL, J. (Oral)

CM-20083-CII-2016

Heard.

Allowed as prayed for. Delay of 30 days in filing the appeal stands condoned.

Main Case

Challenge in the present appeal has been directed against award dated 15.03.2016 passed by the Motor Accidents Claims Tribunal, Rohtak whereby claimants have been awarded compensation to the limited extent of Rs.50,000/- under 'No Fault Liability'.

The widow and major son of Raghbir Singh aged 65 (since deceased) filed application for grant of compensation under Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act') on the allegations that on 29.09.2014, deceased was travelling in three wheeler bearing No.HR46C/9870 for going to Post Graduate Institute of Medical Sciences (PGIMS), Rohtak. When he reached near Baba Hari Dass Academy, Rohtak, offending vehicle turned turtle on account of reckless driving of Lalit, driver of the vehicle. Raghbir Singh sustained fatal injuries and died. They claim compensation to the tune of Rs.20,00,000/-, to be paid by the respondents before the Tribunal.

The Tribunal framed issues reproduced in para 5 of the award. Issue No.1 was determined against the claimants and as a result, plea of the claimants for grant of compensation by assessing loss of dependency etc. was rejected. However, the claimants were held entitle to Rs.50,000/-,

noticed hereinbefore.

Counsel for the appellants would argue that with regard to the occurrence in question FIR No.218 dated 29.09.2014 under Sections 279 and 304-A IPC was registered on the statement of Krishan Kumar son of the deceased. On due investigation of FIR, challan was presented in the Court against Lalit, driver of the offending vehicle. It is argued that the documents placed on record with regard to initiation of criminal proceedings against Lalit are more than sufficient to establish plea of the claimants that accident is the result of rash and negligent driving of offending vehicle by Lalit respondent No.1, therefore, findings of the Tribunal on issue No.1 cannot be allowed to sustain.

I have heard counsel for the appellants, perused the paper book particularly the award impugned.

The legislature in its wisdom has provided two independent remedies for claiming compensation either under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 (in short 'the Act'). Under Section 163-A of the Act, the claimants are not obligated to plead or prove the accident being the result of rashness or negligence. On the contrary, in order to maintain claim under Section 166 of the Act, rashness and negligence on the part of offending vehicle is a sine qua non for sustaining plea for grant of compensation by assessing loss of dependency etc. In the case at hand, claimants failed to examine a witness to establish their plea that accident was caused due to rash and negligent driving of offending vehicle by its driver. The mere fact that driver was put to trial on presentation of report under Section 173 Cr.P.C. is not sufficient to record a finding that rashness or/and negligence in causing the accident can be attributed to driver of the offending vehicle. In this view of the matter, I do not find an error much less illegality in findings of the Tribunal recorded on the basis of factual and legal aspects involved by relying upon judgment of Hon'ble the Supreme Court **Surender Kumar Arora and another Vs. Dr. Manoj Bisla and others, 2012(3) PLR 244** and judgment of this Court **National Insurance Company Ltd. Vs. Babloo and another, 2015(2) PLR-850**. That being so, findings of the Tribunal on issue No.1 are liable to be affirmed and ordered accordingly.

No other point has been raised.

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

26.02.2019
ashok

(REKHA MITTAL)
JUDGE

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