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

FAO No.965 of 2016(O&M)
Date of Decision: 10.07.2019

Smt. Suman and others

-Appellants

Vs

Ombir and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. J.P. Sharma, Advocate
for the appellants.

RAJ MOHAN SINGH, J. (ORAL)

1. This appeal has been preferred by the appellants against the award dated 27.11.2015 passed by the Motor Accident Claims Tribunal, Narnaul, vide which the claim petition was dismissed with costs.

2. Perusal of the record would show that the aforesaid claim petition was filed on account of death of Jaswant Singh in an accident between the motorcycle and Loring Machine. Respondent No.1 was alleged to be driver of the Loring Machine. One Puran son of Makh Lal was sitting along with driver of Loring Machine and both were under the state of intoxication. It was further alleged that the driver of Loring Machine was rash and negligent in driving the said vehicle and

he hit the motorcycle of deceased from front side, as a result, the deceased came underneath the Loring Machine and died at the spot. The occurrence was allegedly witnessed by one Satish Kumar. The FIR was registered for the offences under Sections 279/304-A of IPC, at Police Station Ateli.

3. The claimants filed the claim petition for grant of compensation on account of death of Jaswant Singh in the aforesaid Motor Vehicular Accident.

4. Respondent No.1 contested the claim petition, whereas respondent No.2 owner of the vehicle did not appear and was proceeded against exparte.

5. The Tribunal dismissed the claim petition on the premise that Loring Machine in itself is not capable of driving unless and until the same is fitted with other vehicle.

6. In view of above, the story qua rash and negligent driving of respondent No.1 could not be believed. PW1 EASI Satbir Singh could only prove the factum of registration of FIR and PW3 Satish Kumar could only prove the complaint on the basis of which FIR was registered against respondent No.1. The aforesaid witness PW3 Satish Kumar could only plead that when he reached at the spot, his brother was unconscious.

7. A comparison between cross examination of the witness and the recital in FIR made the Court to record that the

occurrence was not witnessed by PW3 at whose instance FIR was filed against respondent No.1. PW3 himself stated that none was present at the spot except him. The Investigating Officer of the case has not been examined. The report under Section 173 Cr.P.C could not point out as to how and in what manner the respondent No.1 was considered to be the driver of Loring Machine, which could not be self driven. Even if the procedure before the Motor Accident Claims Tribunal is summary in nature but on the aforesaid broad features case was to be established by the claimants with reference to some cogent evidence.

8. For the reasons recorded hereinabove, I do not find any material to take different view than the one taken by the Tribunal while dismissing the claim petition in toto.

9. In view of aforesaid, this appeal is dismissed.

10.07.2019

rakesh

(RAJ MOHAN SINGH)

JUDGE

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