

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

**FAO No.5056 of 2018 (O&M)
Date of decision: 11.07.2019**

Beena Devi alias Beena and others

....Appellants

Versus

Yoginder and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Ms. Priya Deep, Advocate,
for Mr. Sanjeev Kodan, Advocate,
for the appellants.

RITU BAHRI J. (Oral)

CM No.16722-CII of 2018

In view of the averments mentioned in the application, same is allowed and delay of 46 days in filing of the appeal is condoned.

FAO No.5056 of 2018

This appeal has been filed against the Award dated 15.01.2018 passed by the Motor Accident Claims Tribunal, Jhajjar (hereinafter referred to as 'the Tribunal') dismissing the claim petition filed by the claimant-appellants seeking compensation on account of death of Ishwar alias Ishwar Singh alias Puna in a motor vehicular accident which took place on 25.11.2013.

Brief facts of the case are that on 25.11.2013, at about 8/8.30 P.M., Ishwar Singh (since deceased), after meeting his brother-in-law Suresh at village Dubaldhan, was on his way back towards village Gochhi on a motorcycle bearing registration No. HR-77-0733. When he reached

near Barsar Johar, situated on Beri-Dubaldhan Road, a truck bearing registration No. HR-46-C-0250 being driven by respondent No.1-Yoginder in a rash and negligent manner, came from behind and hit the motorcycle, as a result of which, Ishwar Singh fell down and received multiple grievous injuries on his person. Kalu @ Tejbir son of Siri Chand, who was returning from Beri towards village Dubaldhan on his tractor, witnessed the accident and informed Suresh about the same. Thereafter, Suresh and other villagers reached at the spot and shifted Ishwar Singh to Civil Hospital, Jhajjar, but he expired on the way to hospital. With regard to the accident, FIR No.331 dated 26.11.2013, under Sections 279/304-A IPC was registered at Police Station, Beri against respondent No.1. Consequently, claimant-appellant filed a claim petition before the Tribunal.

On the basis of evidence led by the parties, the Tribunal has returned finding that as per case of the claimants, the accident was witnessed by Kalu @ Tejbir and he had informed about the same to complainant Suresh (PW-5). It was stated that Kalu @ Tejbir had stopped his tractor at the spot and came to know that the injured (Ishwar Singh) was brother-in-law of Suresh and thereafter, he reached at his village and informed about the accident to Suresh (PW-5), who immediately rushed the spot. On the next day, he came to know that Ishwar Singh @ Poona had expired. It was highly unnatural that this witness had seen the accident, found Ishwar Singh in an injured condition and thereafter, informed about the accident to Suresh (PW-5). But, he did not help the injured, rather, he reached his village and informed about the accident to Suresh (PW-5). It was held that if, this witness would have been present at the spot, he would have immediately taken the injured to the hospital and he could have

revealed the registration number of the offending Truck. Further, Dharamender (PW-7), who allegedly witnessed the accident in question, deposed that he had seen the accident, but he was in a hurry as he had to go to Gurgaon. This witness also did not help the injured. Moreover, while presenting challan before the Court, name of this witness was not mentioned in the list of witnesses, by the police. With these observations, the Tribunal held that the claimants have miserably failed to prove that the accident in question had been caused by respondent No.1-Yogender by driving the offending vehicle in a rash and negligent manner.

After hearing learned counsel for the appellant and going through the impugned award, it is apparent that claimants have failed to lead any substantial evidence to prove that the accident in question had been caused by driver (respondent No.1) while driving the offending vehicle in a rash and negligent manner. Witnesses examined by the claimants could not prove the negligence of driver of offending vehicle. Presence of eye witnesses at the place of occurrence, is also doubtful. After going through the impugned Award, this Court is of the view that in the absence of any cogent and convincing evidence, the Tribunal has rightly dismissed the claim petition. No ground is made out to interfere therein.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

11.07.2019
ajp

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