

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO No. 2436 of 2015  
DECIDED ON: MARCH 25, 2019

SMT. SUSHILA AND OTHERS

.....APPELLANTS

VERSUS

BIJENDER AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Ramender Chauhan, Advocate  
for the appellants.

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**AVNEESH JHINGAN J. (ORAL)**

Aggrieved of the dismissal of the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') vide award dated 07.01.2015 passed by the Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as the 'Tribunal'), the present appeal has been filed.

The widow and three minor children of Manbag (deceased) are the appellants. The driver of Pick-Up Dalla bearing registration No. HR-61-8955 (hereinafter referred to as the 'offending vehicle'), owner and insurer (i.e. United Insurance Company Ltd.) of the offending vehicle have been arrayed as respondents No.1 to 3 respectively in the appeal.

The facts in brief are that on 21.11.2013, Manbag (deceased) was coming back to his home after completing his duty. He was being followed by

Manjit. On the way, Manbag was hit by the offending vehicle, as a result of the impact, he fell down and received multiple injuries. The driver of the offending vehicle fled away from the spot. FIR No. 440, dated 22.11.2013 was registered on the statement of Manjit. In the FIR neither the registration number of the offending vehicle nor the name of the driver was mentioned.

In the claim proceedings, Manjit deposed as PW-2 to prove the involvement of the offending vehicle and that the accident took place due to rash and negligent driving of the offending vehicle. The deposition was not found worth reliance. The Tribunal dismissed the claim petition, hence, the present appeal.

Heard learned counsel for the appellants and perused the record.

Learned counsel for the appellants contends that the Tribunal erred in dismissing the claim petition as the onus cast upon the claimants under Section 166 of the Act was discharged by the deposition of PW-2-Manjit.

The contention raised by the learned counsel for the appellants is not well founded and deserves rejection.

It was alleged that Manjit was an eye witness to the accident, as he was following the deceased. The accident took place on 21.11.2013, the FIR was registered on 22.11.2013 at the instance of Manjit. In the FIR it was stated that the deceased was hit by a pick-up dalla and the driver of the offending vehicle fled away from the spot. Manjit had neither seen the face of the driver nor disclosed the registration number of the offending vehicle. In his affidavit filed in the claim proceedings, he narrated the accident as if he was an eye witness to the accident. The registration number and the name of the driver of the offending vehicle were duly mentioned in the said affidavit. There was no

explanation as to how and when he came to know about the registration number and the name of the driver of the offending vehicle.

A feeble reliance was placed on the fact that the challan was produced against the driver of the offending vehicle. This also lends no support to the case of the claimants, as the Investigating Officer was not examined.

At this stage, it would be pertinent to note the relevant portion of the cross-examination of Manjit, PW-2:-

*“I was coming from Thilod village on my Bike (motorcycle). I had reached at the site of accident after 15 minutes and by that time accident had already been occurred. The driver of the vehicle, who caused the accident had fled away with the vehicle and as such registration number of the vehicle was not known to me. On 21.11.2013 Joginder my uncle had told me about the registration number of the vehicle, which caused the accident. Police had not recorded my statement after 22.11.2013 after lodging the FIR.”*

From the cross-examination, it is crystal clear that Manjit has not witnessed the accident. Rather, he states that he reached the spot after 15 minutes. He stated that registration number of the offending vehicle was told to him by his uncle Joginder. Joginder never stepped into witness box. It has not come on record as to how Joginder came to know about the registration number of the offending vehicle. It has not even been alleged that Joginder was present at the spot when the accident took place.

The law is well settled that the onus in proceedings under the Act is not as heavy as in criminal proceedings. The claimants have to establish their case mere on the touchstone of preponderance of probabilities. Reliance in this regard is placed upon the decision of the Supreme Court in **Parmeshwari Vs.**

**Amir Chand and others, AIR 2011 SC 1504** wherein, it was 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 there is not even an iota of evidence on record to show that the claimants were able to prove the involvement of the offending vehicle and the fact that the accident was caused due to rash and negligent driving of the said vehicle.

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

The appeal is dismissed.

**(AVNEESH JHINGAN)**  
**JUDGE**

**MARCH 25, 2019**  
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**Whether speaking/reasoned:**  
**Whether reportable :**

**Yes/No**  
**Yes/No**