

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

FAO-110-2019 (O&M)

Date of Decision: December 16, 2019

Narender Kumar

... Appellant

VERSUS

Jaiveer and another

... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms. Neha Rana, Advocate for
Mr. Abhimanyu Singh, Advocate
for the appellant.

JAISHREE THAKUR, J.(Oral)

1. The instant appeal has been filed seeking to challenge the order of the Motor Accident Claims Tribunal, Jhajjar dated 10.10.2018, wherein the claim petition filed under Section 166 of the Motor Vehicles Act has been dismissed.

2. In brief, the facts are that Pushpa Devi along with her nephew-Naveen, was coming from Sector 6, Jhajjar to village Dhakla on scooty which was being driven by Naveen and Pushpa Devi was the pillion rider thereon. When they reached near Deep Hotel situated on Jhajjar by-pass, a Trolly bearing registration No. HR-63A-3316 hit into the scooty and in the process, Pushpa Devi fell down and was crushed by the offending Trolly. She was

taken to the General Hospital, Jhajjar by her nephew Naveen, where doctors declared her dead. An FIR bearing No. 1061 dated 25.11.2016 was registered on the statement of said Naveen under Sections 279, 304-A IPC. On account of the death of Pushpa Devi, a claim petition was filed by her son which was contested by respondent No.1, who denied the case of the claimant or that an accident had taken place. The Insurance Company too contested the claim petition wherein it was stated that the FIR was registered by Naveen-driver of the scooty against an unknown driver and an unknown vehicle. Based on the pleadings, the Tribunal framed issues and evidence was led. In order to prove his claim, Narinder Kumar stepped into the witness box as PW-1 and tendered his affidavit and he also examined Naveen-PW-2, the alleged eye-witness. The eye-witness reiterated the incident as occurred, whereas respondent No.3 urged that the offending vehicle was falsely involved in the case and that too after a delay of 14 days of the incident. It was further argued that petitioner had led no evidence to prove how the police came to know that it was the offending vehicle which was being driven in a rash manner which resulted into the accident. The Tribunal, on appreciation of the evidence, came to hold that there was no evidence on the record to establish that the offending vehicle was being driven by Jaiveer-respondent No.1 herein. Aggrieved against the said dismissal, the instant appeal has been filed.

3. Learned counsel appearing for the appellant vehemently contends that an accident took place and the son of the deceased- the appellant herein is entitled to the compensation on account of the death of his mother. It is argued that PW-2 Naveen had witnessed the accident and noted down the registration number of the offending Trola, and being an eye-witness, reliance ought to

have been placed upon the statement made by him. It is further argued that the respondents did not lead any evidence in support of the fact that the respondent-driver was not negligent in driving the offending vehicle which hit into the scooty on which the deceased was a pillion rider.

4. I have heard learned counsel for the appellant and find that there is no merit in the submissions made. The accident is not in dispute but the onus to establish that it was respondent No.1, who had caused the accident in question, is upon the petitioner. Undisputedly PW-2 Naveen, who had allegedly witnessed the accident in question got an FIR registered against an unknown vehicle and there is no other witness available, who can state that the accident was caused by the offending vehicle, being driven in a rash and negligent manner by respondent No. 1. As noticed by the Tribunal, the appellant has not examined the Investigating Officer of the case, who could tell as to how he came to the conclusion that the accident in question had been caused by respondent No.1. The Tribunal while relying upon the judgments as rendered by the High Court in ***Balbir alias Leela vs. Vikas and others, 2014 (1) PLR 459*** rightly dismissed the claim petition. In Balbir vs. Vikas and others (supra), it has been held that in case an FIR has been registered against an unknown vehicle and there is no effort made to examine the officer investigating the particular case, who could throw light as to how he came to know that the accident has been caused by a particular person/vehicle, it could not be held that the driver was guilty of negligence merely on account that he was facing a criminal trial. Judicial notice can be taken of the fact that there is an increase in cases filed purely by implicating a vehicle just to claim compensation. In the instant case too other than the evidence of PW-1, there is

nothing on the record to establish that the offending vehicle was being driven in a rash and negligent manner by respondent No.1, particularly since the alleged eye-witness did not give any such particulars in the FIR that was registered by him and only came forth with a supplementary statement after the lapse of 14 days.

5. Consequently, the appeal stands dismissed.

December 16, 2019

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(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned	Yes.
Whether reportable	No.