

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

FAO-142-2019 (O&M)

Date of Decision: December 16, 2019

Sonam and others

... Appellants

VERSUS

Narender and another

... Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Ms.Mona, Advocate for
Mr. Abhimanyu Singh, Advocate
for the appellants.

JAISHREE THAKUR, J.(Oral)

1. The instant appeal has been filed seeking to challenge the order of the Motor Accident Claims Tribunal, Bhiwani dated 05.11.2018, wherein the claim petition filed under Section 166 of the Motor Vehicles Act, 1988 has been dismissed.

2. In brief, the facts are that on 07.1.2017, Sita Ram along with his son Kuldeep went to the village Kharak Kalan for some ritual of his family members. Kuldeep dropped his father on the gate of Dadi Rani temple and was returning to his village. When Sita Ram reached near the house of his relative, he got a call from the mobile of his son Kuldeep that his son met with an accident and his motor cycle was lying between village Kharak and BITS

college. Then Sita Ram alongwith his brother Bijender reached at Govt. Hospital Bhiwani and found that his son Kuldeep got serious injuries on his head. He took his son to SPES Hospital, Bhiwani and then due to his serious condition, to Safdarjang Hospital, Delhi where his son died during the treatment. Sita Ram registered an FIR bearing No. 13 dated 08.01.2017 under Sections 279, 337, 304-A IPC at Police Station Sadar, Bhiwani and during investigation police took into possession the offending vehicle Bolero bearing registration No. HR-48/8396 and arrested respondent No. 1 being the driver of the offending vehicle. On account of the death of Kuldeep, a claim petition was filed by the family members which was contested by respondent No.1, who denied the case of the claimant or that an accident had taken place with the offending vehicle. The Insurance Company too contested the claim petition wherein it was stated that the FIR was registered upon hearsay statement only and was lodged against the unknown vehicle. Based on the pleadings, the Tribunal framed issues and evidence was led. In order to prove the claim, Sonam stepped into the witness box as PW-1 and she also examined Preetam Singh-PW-2 and Mehar Singh as PW-3. Respondent No.3 urged that the offending vehicle was falsely involved in the case and that too after a delay of one month of the incident. They further alleged that Mehar Singh, the alleged eye-witness is a planted witness of the claimants, who was unable to inform the registration number of the vehicle involved in the accident, at the time of recording of his statement. It was further argued that Sita Ram, who is the author of the FIR was not able to provide any registration number of the vehicle by which the accident was caused as well as the name of the driver of the said 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 Narender-respondent No.1. 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 legal heirs of the deceased- the appellants herein are entitled to the compensation on account of the death of Kuldeep. It is argued that Mehar Singh had witnessed the accident and noted down the registration number of the offending Bolero car, 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 the motor-cycle of the deceased.

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 claimants. Undisputedly Sita Ram, father of the deceased 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, other than Mehar Singh who made a supplementary statement. On the other side, during the cross-examination of Preetam Singh, the Tribunal came to know that the police was unaware about the registration number of vehicle as there is no mention in the FIR, it was only on the supplementary statement made by Mehar Singh and that too after a gap of one month that police challaned the

Bolero and its driver. 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 statement of Mehar Singh, 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 to the father of the deceased at the time when the FIR was registered by him and only came forth with a supplementary statement after the lapse of one month.

5. Consequently, the appeal stands dismissed.

December 16, 2019

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.