

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

251

FAO-2709-2022 (O&M)

Date of decision: 05.12.2022

BENGALI RAM AND OTHERS

..Appellant(s)

Versus

SURINDER KUMAR AND OTHERS

..Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: Mr. Davneet Sangwan, Advocate for the appellants.

NIDHI GUPTA, J (Oral)

It is submitted by learned counsel for the appellants that the Tribunal is in patent error in dismissing their claim petition on the ground that it was not proved that the deceased died in road accident out of use of motorcycle bearing No.HR-54B-4498. Learned counsel refers to statement of Surinder Kumar (respondent No.1), driver of the offending vehicle, on the basis of which DDR Ex.P1 was recorded, wherein said Surinder Kumar stated that he was driver by profession and at the time of accident, he along with his sister-in-law (deceased-Suman Devi) was returning to their village on the abovesaid offending motorcycle and when they reached ahead of Jaroda Gate, some dogs came in front of the motorcycle and in order to save them, he applied brakes due to which his sister-in-law fell from the motorcycle and sustained injuries which resulted in her death. However, it is further noted in the impugned order that in the written statement filed by said Surinder Kumar, he has totally denied the accident and has also submitted that a false FIR has been registered against him. Learned counsel is unable to controvert above fact, and further submits that under Section 163-A of Motor Vehicles Act, 1988, all that is required to be shown is that the deceased died in a road

accident which took place while using the vehicle and negligence on the part of the driver is not required to be established. However, in view of the above contradictory statements/facts on record, it has not been established that the deceased had died in the road accident out of use of the motorcycle in question. Moreover, no FIR has been placed on record by the Appellants regarding this 'accident'; and even no doctor was examined by the Appellants or treatment record of the deceased was placed on record.

Accordingly, I find no merit in this Appeal.

Dismissed.

05.12.2022

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

**(NIDHI GUPTA)
JUDGE**