

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

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**FAO-6412-2017 (O&M)
Date of decision: 25.08.2022**

Naintara and others

.....Appellants

Versus

Ritik and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Suman Jain, Advocate for the appellants.

MANJARI NEHRU KAUL, J. (ORAL)

The claimants are in appeal against the award dated 12.04.2017 passed by learned Motor Accidents Claims Tribunal, Rohtak (for short, 'the Tribunal') vide which the claim petition filed by them under Section 166 of the Motor Vehicles Act, 1988 was dismissed.

Brief facts of the case as pleaded in the claim petition may be noticed as thus. Subhash Chander (hereinafter referred to as 'the deceased') was returning to his house on 28.03.2016 on his Activa Scooter bearing registration No.HR-12N/6503. At about 09:00 P.M., motorcycle bearing registration No.HR-12Y/0228 (hereinafter referred to as the offending vehicle) came rashly and negligently driven by respondent No.1-Ritik from the opposite side and collided with the vehicle of the deceased. As a result of the collision, the deceased sustained multiple injuries and was shifted to PGIMS Rohtak where he succumbed to his injuries on 02.04.2016. The deceased was said to be 65 years of age on the date of accident and it was claimed by the claimants (i.e. widow, major son and daughter of the deceased) that he was earning Rs.60,000/- per month.

The Tribunal, on the basis of the material and other evidence led before it, returned findings to the effect that it was in fact a case of hit and run by some unknown vehicle and the offending vehicle had been introduced later on by the claimants in collusion with the police.

Learned counsel for the appellants has vehemently argued that the Tribunal while passing the impugned award misread the evidence produced before it and also ignored the fact that the driver of the offending vehicle was facing trial before the Criminal Court at Rohtak which thus left no manner of doubt about the involvement of the offending vehicle in the accident in question. It was further submitted that had it been a case of false implication, the driver of the offending vehicle would have objected to the registration of a criminal case against him under Sections 279, 337 and 304-A IPC, by at least sending some representation to the authorities concerned, which admittedly had not been done by him. He further argued that the learned Tribunal gravely erred in discarding the testimony of PW1 Naintara (widow of the deceased) as well as eye witness PW2 Bal Kishan, only on the ground that PW2 Bal Kishan had got recorded his statement under Section 161 of the Cr.P.C. after two months of the accident in question without offering any plausible explanation qua the delay. It was submitted that in fact a document Mark-X revealed that on 17.05.2016, the son of the deceased had got recorded his statement under Section 161 of the Cr.P.C. wherein he had stated that he too had made enquiries at his own level and he was sure that the accident had been caused due to the rash and negligent driving of respondent No.1

on the fateful day. It was also further argued that the Tribunal failed to appreciate that the mobile location of PW2 Bal Kishan, at 09:45 P.M., on the date of accident, was in the same vicinity of the accident and hence his presence at the spot could not be doubted. A prayer was, therefore, made for accepting the instant appeal and awarding compensation to the appellants/claimants as per the settled law.

I have heard learned counsel and perused the relevant material on record.

Soon after the accident on 28.03.2016 at 09:00 P.M., FIR (Ex.P3) under Sections 279, 337 and 304-A IPC was got registered at the instance of PW1 Naintara (widow of the deceased). In her statement neither the registration number of the offending vehicle, make of the vehicle or even other details of the offending vehicle were given. Rather she had categorically stated that she had been told by passersby that some unidentified motorcyclist had caused the accident in question. It would be pertinent to point out that the involvement of the offending vehicle in the accident in question came to the fore only in the statement of the alleged eye witness (PW2 Bal Kishan), when his statement was recorded under Section 161 of the Cr.P.C. on 18.05.2016 i.e. two months after the accident. However, strangely during his cross-examination this witness was candid enough to state that he was not sure whether his statement under Section 161 of the Cr.P.C. (Ex.R1) was even recorded by the police or not. Still further, it is indeed very strange that though the eye witness PW2 Bal Kishan deposed qua being on very close visiting terms with the family of the deceased and also admitted to having attended the tehrvi ceremony of the deceased,

however, it was only two months after the accident that his alone statement under Section 161 of the Cr.P.C. was made to the police. Assuming for the sake of arguments that this witness was indeed present when the accident in question took place, this Court fails to comprehend as to what stopped him from revealing the identity of the driver of the offending vehicle as well as the number of the offending vehicle to the family of the deceased or the police, more so, when he was closely acquainted with the claimants and as already observed earlier had also attended some of the last rites of the deceased. This Court does not find any force in the contentions of the learned counsel that the involvement of the driver of the offending vehicle i.e. respondent No.1 stood proved as he had been challaned and was facing trial before a criminal Court and the same is bereft of any merit. The Tribunal has rightly observed that in the absence of any cogent and trustworthy evidence having been brought on record, mere filing of the report under Section 173 of the Cr.P.C. could not be made a basis for awarding compensation to the claimants and holding that the accident in question had occurred on account of rash and negligent driving of the offending vehicle.

As a sequel to the above, the instant appeal being devoid of any merit is dismissed.

25.08.2022

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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