

S.No.220

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

**FAO-7142 of 2019 (O&M)
Date of Decision:23.11.2022**

Shriram General Insurance Co. Ltd.	Appellant
Vs.	
Smt. Ashmani and others	Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sanjeev Kodan, Advocate for the appellant.

DEEPAK GUPTA, J.

This is an appeal filed by the Insurance Company against award dated 07.09.2019, whereby Motor Accident Claims Tribunal, Narnaul has allowed compensation of ₹3,60,000/- on account of death of Har Lal, in MACP No.71/2018 titled Smt. Ashmani and another Vs. Anil Kumar and another.

According to claimants (now respondents No.1 and 2), on 29.04.2018, Har Lal was going on foot from Village Thana to Village Gahali. At about 06.30 – 06.40 am, when he reached on way leading to cremation ground of Village Thana, a Scorpio vehicle bearing registration NO.HR-20P-2797 came from the side of village Maksuspur being driven by respondent No.1 Anil Kumar (now respondent No.3) in rash and negligent manner and struck against Har Lal by coming on the wrong side. The said vehicle was insured by Shriram General Insurance Company Limited (petitioner herein). Har Lal was taken to the hospital in injured condition but was declared brought dead. FIR No.113 dated 29.04.2018 under

FAO-7142 of 2019 (O&M)

Sections 279 and 304-A IPC was registered at Police Station Sadar Narnaul against the unknown driver and unidentified vehicle on the basis of statement made by Paramjit, the son of the deceased. On the same day, eye witness Ajit also made a statement to the police disclosing details of the offending vehicle. The claimants being widow and son of the deceased prayed for compensation.

The driver-cum-owner of the vehicle did not contest the petition. As he failed to file written statement despite availing sufficient opportunities, his defence was struck off. The Insurance Company denied the factum of accident. Apart from other pleas, plantation of the offending vehicle was alleged.

Necessary issues were framed. Evidence produced by the parties was taken on record. After hearing both the sides, learned Tribunal returned the finding regarding negligence of the offending vehicle in favour of the claimants. Under Issue No.2, compensation of ₹3,60,000/- was assessed. Insurance Company was held liable to pay the compensation amount, though liability was held to be joint and several.

Assailing the aforesaid award by way of this appeal, it is contended that the learned Tribunal failed to consider that it was a case of hit and run and that the offending vehicle was involved later on. Though the accident took place at about 06:30 am on 29.04.2018 and the FIR was registered on the same day by the son of the deceased at 04:36 p.m. but the offending vehicle was involved after a gap of 32 days on 01.06.2018 as per the report under Section 173 Cr.P.C. It is further contended that offending

FAO-7142 of 2019 (O&M)

vehicle was involved on the basis of statement of Ajit Singh recorded under Section 161 Cr.P.C, as per which he had chased the offending vehicle and had noticed the registered number. However, during cross-examination, this witness disclosed that he did not inform anyone about the involvement of the offending vehicle on the same day and rather, disclosed about the same to be son of the deceased after 2/3 days. It is contended that statement of PW2 is not trustworthy and has been wrongly believed. It is also contended that in a petition under Section 166 Cr.P.C of the Motor Vehicle Act, entire responsibility of proving the rash and negligent driving by the driver of the offending vehicle is on the claimants. Reliance is placed upon **Surender Kumar Arora and another Vs. Dr. Manoj Bisla and others, 2012(3) PLR 244.**

Having considered the submissions of learned counsel for the appellants and having perused the paper book including the final report under Section 173 Cr.P.C and the statements of the witnesses placed on record by counsel for the appellants, I do not find any merit in this appeal.

As per the version given in the FIR Ex.P1 by Paramjit, the son of the deceased, he was jogging on the road at about 6:30/ 6:40 a.m., when he heard a sound and noticed that an unknown vehicle had sped away after hitting his father Har Lal. He shifted his father to the hospital, where he was declared brought dead. Thus, FIR Ex.P1 recorded on the date of accident itself on 04:36 PM, does not reveal the registration number of the offending vehicle or the name of its driver.

However, on the same day, Ajit Singh son of Harnam Singh

FAO-7142 of 2019 (O&M)

made a statement under Section 161 Cr.P.C before the Police, as per which he was on way to his home on his motor-cycle at about 6:00/6:30 a.m. and as he reached on the way to cremation ground, a white colored Scorpio vehicle came from the side of Village Maksuspur and sped from his side. He had a narrow escape. Then, within his sight, said Scorpio by going on the wrong side, hit a person going on foot. He (Ajit Singh) chased the Scorpio till Village Hasanpur and noticed its registration number as HR-20P-2797 but could not succeed in halting the vehicle. When he came to the village, he came to know that the person, who had been hit by the Scorpio was the co-villager Har Lal. He also stated that though he had noted the registration number of the offending vehicle but could not see the driver thereof. On 02.05.2018, said Ajit also made a supplementary statement to the Police, as per which the offending vehicle at the relevant time was being driven by Anil Kumar son of Babu Lal. A similar statement was made by one Dalip Singh under Section 161 Cr.P.C to the effect that Ajit Singh had chased the offending vehicle, which had hit Har Lal and later on Ajit had disclosed the registration number of the vehicle as HR-20P-2797 as noted by him. Said Dalip Singh had witnessed the accident from a distance.

During evidence before the Tribunal, Paramjit PW3, as author of the FIR disclosed that at the time, he got the FIR registered, he was not aware of the registration Number but he came to know of the same after 2/3 days. Ajit disclosed the same to him. Ajit as PW2 supported the case of the claimants and disclosed that though he did not shift the injured to the

FAO-7142 of 2019 (O&M)

hospital, as he had chased the vehicle nor informed anybody about the involvement of the Scorpio vehicle but disclosed about the same to Paramjit son of the deceased after 2/3 days.

It is, thus, found that there is no material contradiction in the statement of PW2 Ajit and PW3 Paramjit. Apart from this, the Investigating Officer of the criminal case was examined by the claimants as PW4, who not only proved the FIR but also the report under Section 173 Cr.P.C prepared by him. He also disclosed that on the date of accident, itself, Ajit had disclosed the vehicle though the name of the registered owner of the vehicle was revealed on 15.05.2018.

Proceedings under the provisions of Motor Vehicle Act are to be decided on the basis of pre-ponderance of evidence and not on the standard of proof beyond reasonable doubt. The statements of eye witness Ajit Singh to be read with the statement of PW3 Paramjit were enough for the learned Tribunal to conclude that accident was caused by rash and negligent driving of Scorpio Vehicle Number HR-20P-2797 being driven by respondent No.3 Anil Kumar at the relevant time, resulting into the death of Har Lal.

Apart from this, despite being duly served and availing sufficient opportunities, the driver-cum-owner of the offending vehicle Anil Kumar did not file the written statement, due to which his defence was struck off. The said circumstance in itself suggest that he did not have any defence. Adverse inference can be drawn against him to the effect that had he entered the witness box, he could not withstand the cross-examination.

FAO-7142 of 2019 (O&M)

Thus, evidence produced before the learned Tribunal on the issue of rash and negligent driving remained unrebutted.

As such, no fault can be found with the finding returned by the learned Tribunal on Issue No.1. There is no merit in the appeal.

Dismissed.

November 23, 2022

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(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No