

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 2194/2022

Date of decision:20/02/2023

Saroj Bala and others

.....Appellants

Vs.

Manoj Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vinod Bhardwaj, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants against dismissal of their claim petition by the Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal') vide Award dated 14.10.2021 passed in MACP Case NO.59/2019 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act').

It was pleaded case of the appellants before the Tribunal that on 29.6.2019 when the deceased Anil Kumar along with one Aman were going on their Activa scooter bearing registration No. HR-83-3125 from Kalayat to their Village Kamalpur, an Alto Car bearing registration NO. HR-

13-C-4446 (hereinafter referred to as 'the offending vehicle') being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein, came from the opposite side in a rash and negligent manner and struck against the back portion of the Aactiva on which the deceased was pillion riding. As a result of the impact the deceased fell on the *kacha* path and suffered serious and grievous injuries on his head and other body parts. On the basis of the statement of eye witness Aman, FIR No.178 dated 29.6.2019 was registered u/s 279,304-A IPC at PS Kalayat. It was further pleaded by the appellants that deceased was working as labourer and was the sole bread winner of the family, and was earning Rs.20,000/- per month. Claimants/appellants are mother, major sister, and minor brother of the deceased.

Ld. Tribunal has dismissed their claim petition primarily on the ground that negligence of respondent No.1 has not been established on record.

It is submitted by the Ld. Counsel for the appellants that the impugned Award deserves to be set aside as the Ld. Tribunal has failed to correctly appreciate the evidence on record. It is submitted that negligence of respondent no.1 driver is very much proved on record, who is even facing trial.

No other argument has been raised on behalf of the appellants.

Heard learned counsel for the appellants.

Perusal of the record shows that the accident in question had happened on 29.6.2019 at about 9.30 a.m., while the deceased was pillion riding behind PW3 Aman on an Aactiva scooter. However, a perusal of the Ex.R2, which is the signed statement of PW3 Aman on the basis of which FIR as registered, shows

that in the said statement Ex. R-2, he has not mentioned registration number of the offending vehicle or even the name of the driver of the vehicle. Further, in his cross examination PW3 Aman has admitted that after recording his statement Ex. R2, he was never called by the police during investigation and not even for the 'Test Identification Parade' of the accused. He has stated in his cross-examination that the registration number of the offending vehicle was revealed to the Police by his uncle Shish Pal PW4, to whom he had revealed the registration number of the offending vehicle. In his cross-examination PW3 Eye witness Aman, has even admitted that respondents No. 1 and 2 respectively being the driver and owner of the offending vehicle, belong to his village, and that with a mala fide intention he along with his uncle had got them involved in the present accident with a view to get the compensation money. Name of respondent no.1 was subsequently revealed by said Shish Pal PW4 to SP Kaithal by way of application dated 15.7.2019 moved by PW4 Shish Pal.

Said Shish Pal in his testimony as PW4 as also in his affidavit Ex.PW4/A has testified that the name of the driver of the offending vehicle was revealed to him by Aman, however, he did not reveal the same to police as respondent no.1 was pressurizing him to compromise the matter with him. Since compromise could not be effected between the parties, therefore, he revealed the name of respondent no.1 to police by way of above-mentioned application dated 15.7.2019.

Perusal of the FIR Ex.P3 shows that it has been clearly stated therein by Aman-complainant/PW3 that the "*erring unknown driver fled away from spot along with vehicle*". Even the statement Ex.R2 of Aman is to the same effect. Moreover, a perusal of the application dated 15.7.2019 Mark-A moved by PW4

Shish Pal shows that reason for delay in reporting or revealing the name of the driver of offending vehicle is as follows:-

“We (Shishpal etc.) had gone to Police Station several times and were told that HC-Surender who was dealing with our case has been transferred, and investigation would be conducted later on. We have been coming to the Police Station since many days. You are requested to immediately arrest Manoj, who had caused the accident.”

From the above facts, it is clear that different versions of the events have been given by complainant/eyewitness/PW3/Aman at different points in time. Moreover, contradictory statements have been made by PW3 Aman and PW4 Shish Pal. Accordingly, in my view, reliance cannot be placed upon the evidence produced by the appellants before the Learned Tribunal.

I am therefore, in concurrence with the findings of the Ld. Tribunal that the claimants have failed to establish involvement of the offending vehicle, or even the negligence of respondent no.1.

Dismissed.

Pending applications, if any, stand disposed of.

20/02/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No