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

FAO-6338-2019 (O&M)

Date of Decision: 12.05.2023

Kamlesh Devi and others

....Appellants

Versus

Gourav Pandey and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Divay Sarup, Advocate
for the appellants.

ARUN MONGA, J. (ORAL)

Aggrieved by dismissal of claim petition, claimants/appellants
assailed herein an Award dated 31.05.2019 rendered by Ld. Motor Accidents
Claims Tribunal, Hisar (for brevity, 'Tribunal').

2. Succinct facts, as noted by learned Tribunal, are as below:

"The petitioners have sought the compensation by filing the petition u/s 166 of the Motor Vehicle Act, 1988 being legal heirs and dependents of deceased Dr. Shiv Kant Sharma with the submissions that on 13.3.2016 at about 5.00 p.m. Dr. Shiv Kant Sharma was asked and requested by Dr. Gaurav Pandey (respondent No. 1) to accompany him to Meerut University as he (respondent No.1) has some work there and accordingly on his request both of them had gone to Meerut University, Meerut from their college Muzaffarnagar Medical College, Muzaffarnagar on the motorcycle of respondent No. 1 bearing registration No. UP-15DB/6711. After completing their work they started returning back to their college at Muzaffarnagar. The respondent No. 1 was driving the motorcycle at a high speed and in a rash and negligent manner. When at about 12.30/1.00 a.m. on 14.3.2016, they reached in front of Commissioner's residence, Meerut, the respondent No.1 due to high speed of the motorcycle could not control his

motorcycle and collided with the divider of the road and due to this, both the occupants of the motorcycle fell on the road. Dr. Shiv Kant Sharma fell and struck on the divider of the road and received severe head injuries and died on the spot whereas respondent No. 1 also received injuries on his face, jaw and he was got admitted in Jaswant Rai Hospital, Meerut by Constable Krishan Pal at 1.50 a.m. in the intervening night of 13 and 14 March, 2016. This accident took place due to rash and negligent driving of the respondent No.1. Initially a DDR No.3 dated 14.3.2016 and later on an FIR was registered vide FIR No. 312/2016 dated 10.6.2016, under sections 279, 338 and 304-A IPC in Police Station Civil Lines, Meerut. It is further submitted that the deceased Dr. Shiv Kant Sharma had completed his MBBS from Muzaffarnagar Medical College, Muzaffarnagar in September, 2015 and was doing internship at Muzaffarnagar Medical College, Muzaffarnagar and he was getting Rs.7500/- per month as stipend and would have joined as doctor in Government job and would have got Rs.55,000/- per month plus perks as his earnings. He used to spend all his earnings for the welfare and maintenance of the petitioners. It is further submitted that the petitioner No.2 had spent more than Rs.40,00,000/- on the education of the deceased out of which he had taken loan of Rs.7.5 lakhs from Punjab National Bank, Khanda Kheri Branch, District Hisar and considerable amount was also borrowed from his relatives and friends for the education of Shiv Kant. The petitioners have spent Rs.50,000/- on transportation of the dead body and on performing last rites ceremonies of the deceased. They finally prayed that the respondents jointly and severally be directed to pay the compensation to the tune of Rs. 70,00,000/- alongwith an interest at the rate of 24% per annum from the date of accident till its realization.

xxxx xxxx xxxx xxxx”

3. Upon notice, respondents put in appearance and contested the claim petition by filing joint written statements, wherein most of the averments of the claim petition were admitted. They had taken the additional pleas such as deceased was himself riding the motorcycle bearing No. UP-I5/BB-6711 and respondent No.1 was the pillion rider of the said motorcycle at the time of the accident, so petitioners (appellants herein) were not

entitled to claim compensation for negligence, if any, under the provisions of law.

3.1. Further, it was pleaded that petitioners/appellants were required to prove their case by leading cogent evidence that deceased died at the spot either on 13.3.2016 at 1.30 a.m. in night or on 14.3.2016 at about 1.30 am when the deceased was allegedly hit by motorcycle driven by Dr. Gaurav Pandey (respondent No.1), as alleged in the FIR lodged on the application of petitioner/appellant No.2 himself, submitted under section 156(3) Cr.PC., after 62 days of the alleged accident on 16.5.2016 and in absence thereof, the claim petition was liable to be dismissed.

3.2. They further pleaded that undisputedly deceased Dr. Shiv Kant Sharma and respondent No.1, namely, Dr. Gaurav Pandey were close friends and both were doing internship from Medical College, Muzaffarnagar. Dr. Anas was also colleague/friend of deceased Dr. Shiv Kant Sharma. He (Dr. Anas) handed over the possession of his motorcycle No.UP-15BB/6711 to deceased Dr. Shiv Kant Sharma on his request. On 13.3.2016, Dr. Shiv Kant Sharma alongwith his friend Dr. Gaurav Pandey after doing the work at Meerut was returning to Muzaffarnagar, when they met with an accident. The accident had taken place due to rash and negligent driving of the deceased himself. At the time of the accident, the motorcycle was being driven by the deceased rashly and negligently and Dr. Gaurav Pandey was riding on the pillion. This fact was proved beyond any doubt as per the evidence on record. Therefore, the claim petition was based on false,

fictitious and concocted story of accident and the same deserves to be dismissed.

3.3. Some preliminary objections were also taken regarding maintainability, cause of action, claim petition being vague, incomplete and not tenable in the eyes of law and the same was filed by claimants against actual facts. Finally, a request to dismiss the claim petition of the petitioners (appellants herein) was made.

4. Out of the pleadings of parties, the following issues were framed by the Ld. Tribunal:

1. *Whether the accident in question took place due to rash and negligent driving of offending motorcycle bearing registration No. UP15BB/6711 by respondent No.1? OPP*
2. *If issue No. 1 is answered in affirmative to what amount of compensation the petitioners are entitled to and from whom? OPP*
3. *Whether the petition is not maintainable in the present form? OPR*
4. *Relief*

5. On appraisal of record/evidence, learned Tribunal decided first issue against the claimants (appellants herein) and since issue No.1 was decided against appellants, it was observed that the findings under issues No.2 & 3 had become redundant. Claimants were held not entitled to any compensation and claim petition was dismissed.

6. Learned counsel for appellants/claimants would contend that as there was no eyewitness to the occurrence, therefore Ld. Tribunal was required to form an opinion on the basis of the circumstances and facts of the case. However, Ld. Tribunal has not considered the site plan which

categorically proves that deceased was a pillion rider and respondent No.1 was driving the motorcycle on fateful day. He would further argue that principle of *res ipsa loquitur* has to be applied in the present case as there was no eyewitness account to the accident. He would further argue that Ld. Tribunal has completely misread the evidence of PW1, PW2 & PW3 who deposed regarding the manner of accident and the negligence on the part of respondent No.1 in no uncertain terms.

7. Impugned order dated 31.05.2019 passed by Ld. Tribunal, is premised, *inter alia*, on the following reasoning:

“xxxx xxxx xxxx xxxx

16. Now the question arises whether the evidence led by the petitioners inspire the confidence or not and whether there is any force in the contentions of the Ld. Counsel for the respondents or not?

17. The version of the petitioners is that the accident in issue has been caused by Dr. Gaurav Pandey-respondent No.1 while driving the motor cycle rashly and negligently on which Dr. Shiv Kant was the pillion rider and both received the injuries and Dr. Shiv Kant Sharma died on the spot.

18. Ex.P1 is the copy of the FIR No.312 dt. 10.6.2016 under Sections 279, 338, 304-A IPC, PS Civil Lines, Meerut, got registered by Sh. Surender Kumar Sharma, Ex. P2 is the post mortem examination report on the dead body of Sh. Shiv Kant Sharma dated 14.3.2016. Ex. P3 is the report by S.I. Satpal Singh to the SSP Janpad Meerut to the effect that the post mortem report of the deceased Shiv Kant along with original Panchapatnama be filed. Ex. PW3/C is the transcript of audio recording of mobile No.9897123410 and 9466853951. Ex. P13 is the certified copy of the protest petition filed by Sh. Surender Kumar Sharma, father of the deceased Dr. Shiv Kant Sharma, the petitioner No.2 in which in para No.2 it is mentioned that S.I. Satpal Singh has not done the fair investigation and has given the final report in connivance with Gaurav Pandey to save him from the punishment and the report is liable to be set aside. Ex. P14 is the stay order passed by the Hon'ble Allahabad High Court in the petition filed by Surender Kumar

and Manish Kumar against State of U.P. and Vinod Kumar Pandey in a complaint filed by Vinod Kumar Pandey against Surender Kumar and another u/ss 427, 452, 323, 504, 506 IPC, Police Station Rasra, District Balia pending before the court of Ld. ACJM, 1st Balia. Ex. P15 is the copy of the petition filed by Gaurav Kumar Pandey u/s 166 and 140 M.V. Act against Surender Kumar, Smt. Kamlesh Devi, Manish Kumar, in which in para No.9 it is mentioned that the accident had taken place due to the rash and negligent driving of the motor-cycle bearing registration No.UP15BB/6711 by Shiv Kant Sharma (deceased).

Ex. P16 is the photocopy of the newspaper clipping in which it is mentioned that MBBS Intern student Shiv Kant had given his helmet to his friend MBBS Student Gaurav Pandey sitting with him on the bike before the accident.

19. It is worthwhile to mention here that alongwith the written statement of respondents No.1 and 2, there are certified copies of the statements of other students namely Sahil Dureja, MBBS 2nd Year in which he has stated that the vehicle was being driven by Shiv Kant Sharma. There is also the statement of Dr. Dheeraj, MBBS Intern that Gaurav Pandey and Sh. Shiv Kant Sharma had told him that they are going to Meerut for some work. There is also the statement of Gaurav Kumar Pandey that the vehicle was being driven by Shiv Kant Sharma. There is also the statement of Anas Qurashi that the vehicle had been demanded from him by Shiv Kant Sharma at about 5-00 pm on 13.3.2016. There is also the certified copy of the final report in FIR No.312/2016 that the motor-cycle was being driven by Shiv Kant Sharma son of the complainant which had met with the accident near Commissioner residence as it hit in the divider of the road by which son of the complainant died and the pillion rider Gaurav Pandey was seriously injured and there is no fault of Gaurav Pandey.

20. The authority Vidya Dhar V. Mankikrao Rao and others (supra) says that if a party to suit does not enter into the witness, an adverse inference has to be drawn against him.

21. The authority Karnatka State Road Transport Corporation V. K. Chandrashekhra Raju (supra) says that when the driver of the bus who caused the accident was not produced by the corporation to explain the manner of accident despite the fact that he was in the employment of the corporation and no explanation was furnished for his non-examination, the adverse inference against the corporation is drawable.

22 The legal position of these authorities are not disputed, but with due regards, the facts of the authorities do not completely tally with the facts of the present case, therefore these

authorities are not fully applicable in this case. 23. Since, the evidence led by the petitioners itself is not convincing as it has not been proved on the record that the accident in issue has been caused by Dr. Gaurav Pandey while driving the motor-cycle rashly and negligently in which they both i.e. Dr. Shiv Kant and Dr. Gaurav Pandey received the injuries and Dr. Shiv Kant died on the spot due to the injuries, therefore, it cannot be said that the petitioners are able to prove that the accident in issue has been caused by the respondent No.1. Therefore, this issue is decided against the petitioners.

Issues No. 2 and 3

24. Since the issue No.1 has been decided against the petitioners, therefore, the findings under issues No.2 and 3 have become redundant.

Relief:

25. In view of the findings under Issue No.1, the petition of the petitioners fails and the same is dismissed with no order as to costs. Memo of costs be prepared. Counsel fees is assessed at Rs. 2200/-. File be consigned to the record room after due compliance.”

8. Succinctly, contentions raised before me are that :

- (a) The learned Tribunal has not considered the site plan which categorically proves that the deceased was a pillion rider and respondent No. 1 was driving the motor cycle;
- (b) The learned Tribunal has misread the evidence of PWs 1, 2 and 3, who deposed regarding the manner of the accident and the negligence of respondent No. 1;
- (c) In any case, this court can consider the case of the appellants and grant compensation under section 163A of the Motor Vehicles Act.

9. There is no eye witness account of the occurrence. The site plan the testimony of PWs 1, 2 and 3 are based on hearsay. In view of this, I am unable to accept the contentions that the site plan and testimony of PWs 1,

2 and 3 prove that the deceased was a pillion rider and respondent No. 1 was driving the motor cycle.

10. Section 164 of the Motor Vehicles Act, 1988 as amended by the Motor Vehicles (Amendment) Act, 2019 is as under:

“164. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.”

11. No doubt, in present case death of Dr. Shiv Kant Sharma was caused due to the accident arising out of a motor vehicle i.e. motor cycle. However, in the claim petition filed before learned Tribunal, the claimants did not seek the alternative relief of compensation under section 163A/164 *ibid*. There was no occasion for respondent No. 2 to contest this alternative claim now set up in appeal. This being the position, it seems inappropriate to entertain and adjudicate the claim for compensation under section 163A/164 at this stage in the present appeal.

12. Resultantly, the appeal is dismissed with liberty to claimant-appellants, if so advised, to file fresh claim petition before the learned Tribunal for compensation under section 163A/164 of the Motor Vehicles Act.

(ARUN MONGA)
JUDGE

May 12, 2023
ashish

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