

2023:PHHC:125526

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO-8374-2014 (O&M)  
Date of Decision: September 25, 2023

Dinesh Kumar and another

...Appellants

VERSUS

Ramesh Kumar and another

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Ms.Ekta Thakur, Advocate  
for the appellants.

None for respondent No.1.

Mr.Rajesh K. Sharma, Advocate  
for respondent No.2-insurance company.

\*\*\*\*

**ARCHANA PURI, J.**

The captioned appeal assails the decision of learned Tribunal dated 09.05.2014, whereby, the claim petition filed by the appellants-claimants, to seek compensation, on account of death of Jaswanti Devi, in a motor vehicular accident, was dismissed.

The essential facts, as noticed are as follows:-

That, on 03.04.2013, Jaswanti was pillion rider of motorcycle bearing registration No.HR-03N-5040, driven by Ramesh Kumar-respondent No.1. When, at about 9.00 p.m., they reached near village Barsami, a tanker came at a very high speed from the side of Ladwa and struck against the

FAO-8374-2014

motorcycle, as a result whereof, both the occupants of the motorcycle fell down. Jaswanti Devi sustained head injury and was immediately taken to Civil Hospital, Kurukshetra, where she was declared brought dead.

It should be noticed that the claim petition was filed under Section 163-A of the Motor Vehicles Act, but however, at the tail end of the petition, it is stated that the accident took place, due to rash and negligent driving of respondent No.1 and driver of the tanker. To so establish, the sole witness examined is Veer Bhan-appellant No.2, who is husband of the deceased.

On the other hand, respondent No.1-Ramesh Kumar, who is son of the deceased, admitted the accident. However, the insurance company-respondent No.2, disputed the maintainability of the petition and further also disputed the taking place of the accident and the manner thereof, as pleaded. Besides the same, the insurance company also disputed the jurisdiction of the Courts at Chandigarh, as claimants or respondent No.1, were never the residents of Chandigarh nor they carried out any business, at this place.

Even though, petition was filed under Section 163-A of the *ibid* Act and at the tail end of the petition, it is mentioned about the rashness and negligence on the part of respondent No.1 and the driver of the tanker, but however, such assertions, are to be taken in the light of the other contents of the petition, which does not specifically state about the earnings of the deceased. Thus, it can be deciphered that in fact, petition was only under Section 163-A and learned Tribunal had erroneously made observations, qua rashness and negligence.

Being a claim petition under Section 163-A of the Motor

FAO-8374-2014

Vehicles Act, the appellants-claimants were never required to plead or establish any wrongful act or negligence or default of the owner of the vehicle. Section 163-A states about the owner of the motor vehicle to be liable to pay for the loss or death, by the third party, arising out of the use of motor vehicle.

However, before proceeding further, to make assessment of compensation as under Section 163-A or Section 166 of the *ibid* Act, foundational facts, with regard to taking place of the accident, ought to be established by the appellants-claimants. Only thereupon, compensation can be worked upon, while taking the accident to have taken place, out of the use of motor vehicle or while making assessment of rashness and negligence of the driver of the vehicle involved.

Reverting to the case in hand, it should be noticed that the sole witness examined by the appellants-claimants is Veer Bhan-PW-1, who is husband of the deceased Jaswanti Devi. Undisputedly, neither he has pleaded to have witnessed the accident nor in his affidavit Ex.PW1/A, he has so deposed. Rather, while facing cross-examination, he has admitted that he was not present at the spot of accident, meaning thereby, he never witnessed the accident. Besides the said witness, no other witness has been examined, who could depose about the fact of accident, having so taken place.

Being so, much emphasis is laid on respondent No.1-Rakesh Kumar, having admitted the accident. May it be so, as spelt out from the written statement, so filed, but however, the said Ramesh Kumar, who was in fact the best person, who could depose about the fact of accident, having taken place and involvement of the vehicle therein, had never chosen to step

into the witness box, more particularly, being son of deceased Jaswanti Devi. Even though, Ramesh Kumar is the author of the FIR Ex.P1, he had not bothered to appear in the witness box, lest, he was to face cross-examination, which could spill many beans. Simply, on account of FIR having got registered, does not *ipso facto*, establish about the fact of accident. FIR has to be taken into consideration, in the backdrop of other evidence, so adduced. As already observed aforesaid, no other evidence has been led to establish the fact of accident.

Thus, on account of scanty evidence, even the fact of accident, does not stand established. Such being the position, the appellants-claimants are not entitled to any compensation.

Resultantly, the appeal sans merit and the same is hereby dismissed.

September 25, 2023  
Vgulati

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned  
Whether reportable

Yes  
Yes/No