

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 771/2020

Date of decision:30/01/2023

Lilam Kumari Devi and another

.....Appellants

Vs.

Rohtash and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Lajpat Sharma, Advocate for the claimants/appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants against Award dated 4.10.2019 passed by Ld. Motor Accident Claims Tribunal, Panipat (hereinafter referred to as 'the Ld. Tribunal') whereby the claim petition bearing MACT Case NO.56/2018 filed by the appellants u/s 166 and 140 of the Motor Vehicles Act,1988, has been dismissed.

Appellants/claimants before the Tribunal were the widow, minor son and father of deceased-Raj Kishore Yadav who died in a motor vehicular accident that took place on 9.1.2018 allegedly involving bus bearing registration No. HR-55-P-1039 (hereinafter referred to as 'the vehicle in question') which was allegedly being driven by respondent no.1-Rohtash.

It is inter alia submitted by the learned counsel for the appellants that the Ld. Tribunal was in error in dismissing the claim petition as it stands established on record that the vehicle in question was involved in

the accident and that the accident had occurred due to rash and negligent driving of respondent no.1 herein. It is further submitted that the accident had occurred on the busy GT Road when the deceased was crossing the road in front of the vehicle in question. It is submitted that though the vehicle in question was stationary near the Bus Stand, GT Road, Samalakha, however, when the deceased was crossing the road in front of the vehicle in question, then respondent no.1 started driving the vehicle in question without caring for the movement of the people on the road and without blowing any horn, and in a rash and negligent manner as a result of which the said bus hit the deceased who sustained serious and grievous injuries and succumbed to the injuries on the spot. It is submitted that the accident was witnessed by one Sushil Kumar son of Ram Kishan, on whose statement FIR No.26 dated 10.1.2018 u/s 279 and 304-A IPC was registered at PS Samalakha, Panipat against respondent no.1.

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

Heard Ld. Counsel for the appellants.

It is the admitted case of the appellants that the accident in question had taken place on busy GT Road near the Bus Stand, Samalkha. Yet, a perusal of the record shows that the appellants did not produce any evidence/ eyewitness in support of their contentions that the accident in question had occurred due to rash and negligent driving of the vehicle in question by respondent no.1. Only claimant/appellant no.1, who was admittedly not an eye witness to the accident had appeared as PW1 and deposed regarding the accident. However, admittedly she was not an eye witness and therefore, her testimony does not lend much support to the

appellants' case. The accident had taken place on busy GT Road near the Bus Stand; therefore, it is not comprehensible as to why appellants produced no evidence/ eyewitnesses in support to buttress their version of events.

No doubt, an FIR was registered against the respondent no.1 in which he is facing trial; as also it has come on record that as per Post Mortem Report, Ex. P3, the deceased had died due to injuries sustained by him in a motor vehicular accident which had taken place on 9.1.2018, but as no evidence whatsoever was led by the appellants therefore, I find no error in the impugned Award. Even the eye witness Sushil Kumar has not been examined by the appellants nor even the Investigating Officer has been summoned as a witness to prove the involvement of the vehicle in question.

Further, it is a well settled proposition of law that registration of an FIR or even judgment of acquittal or conviction are of no relevance in a motor vehicular accident case and the Tribunal is required to decide such cases on the basis of material placed before it. In this regard, reference may be made to the judgment passed by this Court in '**MAGMA HDI General Insurance Co. Ltd. v. Nirmala Devi, (Punjab And Haryana) : Law Finder Doc Id # 1179732**', wherein it has been held as follows:

“8. In the considered view of this Court, the Tribunal while passing the impugned award has rightfully held that the judgment of a criminal Court determining the guilt or innocence of a driver is neither conclusive nor binding on the Tribunal dealing with a claim petition. It is by now well settled that while adjudicating claim petitions regarding motor accident claims, the principle that is to be followed is preponderance of evidence. The standards of proof of a criminal case are different from claims set up for accident victims and the Tribunal while considering the issue of negligence adduced before it as to proceed un-

influenced by the fact of pendency of a criminal case or judgment of acquittal given by the criminal Court.”

Again in case of ‘**Smt. Dharma Devi v. Jitender, (Punjab And Haryana) : Law Finder Doc Id # 817067**’, this Court has held that:

“11. Having considered the aforesaid arguments, as also the Award of the learned Tribunal, though undoubtedly, negligence of a driver of a vehicle stated to be involved in a motor vehicle accident, is not to be proved in a claim petition filed under Section 166 of the Motor Vehicles Act, in the same manner as the guilt of the driver has to be proved in a criminal trial, however, I find myself unable to agree with learned counsel for the appellant, inasmuch as, simply because a report under Section 173 Cr.P.C. was presented by the police to the competent court and respondent no. 1 was facing a trial with a charge sheet drawn up against him, it would not establish his negligence even for the purpose of summary proceedings before a Motor Accidents Claims Tribunal.”

In the present case too the Claimants’ case is solely based on the FIR, however, in my view, that alone does not prove negligence on part of the driver. Claimants have failed to lead any evidence to prove negligence of the driver. Accordingly, I find no merit in this appeal, and the same is hereby, dismissed.

30/01/2023	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No