

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO 4203/2018 (O&M)**
Date of decision: 20.04.2023**Bir Singh and others****.....Appellants****Vs.****Mahipal and others****.....Respondents****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Abhinav Goyal, Advocate for the appellants.
Mr. HS Dhondi, Advocate for respondent no.2.
Mr. Vinod Chaudhary, Advocate for respondent no.3.

Nidhi Gupta, J.

Present appeal has been filed by claimants against the dismissal of their claim petition bearing No. MACP 64/2015, filed u/s 166/140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), by the Motor Accident Claims Tribunal, Faridabad (hereinafter referred to as 'the Tribunal') vide Award dated 1.11.2017. Claimants /appellants herein are the husband, 2 major children and 3 minor children of deceased Kamlesh.

Ld. Tribunal on the basis of pleadings and evidence on record held that the claimants had failed to prove that the deceased Kamlesh had died of injuries received by her in a motor a vehicular accident that took place on 17.10.2004 due to rash and negligent driving of Truck bearing registration No. HR-47-A-0594, being driven by respondent no.1, owned by respondent no.2, and insured by respondent no.3.

Ld. Counsel for the appellants submits that the ld. Tribunal was in error in dismissing the claim petition as FIR regarding the accident in question was registered on the same day though against unidentified vehicle, however, make of the offending vehicle was correctly described in the FIR. It is submitted that in pursuance of the FIR, police action was also initiated on the same day. It is further submitted that even in his written statement filed by respondent no.2, it has been admitted that the driver of the offending vehicle was employee of the owner. It is submitted that accordingly, ld. Tribunal was in error in dismissing their claim petition.

In response, ld. counsel for the respondent Insurance Company refers to the impugned Award and submits that the findings of the ld. Tribunal are based on the evidence on record, which shows that negligence on the part of respondent no.1 was not made out, and therefore, claim petition was rightly dismissed.

No other argument has been raised.

Heard ld. Counsel.

Perusal of the impugned Award shows that the ld. Tribunal has recorded its findings in paras 17 to 20 of the impugned Award, which are reproduced below:-

“17. In order to prove the allegations against the respondents, the petitioners had examined three witnesses. It is admitted fact that name of the respondent No.1 is nowhere mentioned in the FIR. The accident had taken place at about 10.45 a.m. and the FIR was registered at 12.45 p.m. on 17.10.2004. As per petitioners, the respondent No.1 was apprehended by the public and handed over to the police. If the respondent No.1 was apprehended by the passer-by and

this fact was also in the knowledge of PW2, then why he had not disclosed the name of the respondent No. 1, as well as registration number of the offending vehicle to the police while recording the FIR. The petitioners have claimed that the respondent No. 1 was joined in the investigation by the Investigating Officer and produced the copy of zimmies as Ex.P2/A. The petitioners had not examined any police official in order to prove the zimmies and the same were tendered in the evidence by Ld. counsel for the petitioners. Copies of these zimmies are not perse admissible. Moreover, these zimmies nowhere prove that the accident had taken place due to rash and negligent driving of respondent No.1. The zimmies only show that the respondent No.1 was joined in the investigation but he had disclosed that the accident had not taken place with his vehicle. Moreover, if the police had cancelled the FIR, then why the petitioners had not filed a private criminal complaint against the respondent No.1 before the Ilaqa Magistrate. After registration of the FIR, the petitioners had not put any effort in order to get arrest the real culprit. The accident had taken place in the year 2004 whereas the present claim petition was filed in the year 2015. The petitioners had failed to explain that why the claim petition or private complaint was not filed earlier. The petitioners have engaged a counsel and that counsel had not filed the claim petition. If the petitioner had engaged some counsel at that time and given all the papers to him, then the petitioners had to enquire about the fate of their case from that counsel.

18. PW2 has himself admitted that after the accident he became unconscious and this fact makes it clear that he had not seen the registration number of the trollea as well as face of the driver. PW1 was also not present at the time of accident and therefore, his testimony nowhere

proves that the accident had taken place due to rash and negligent driving of the respondent No.1. The petitioners had claimed that PW3 namely Jawala Parshad was present at the spot as he was coming behind the trolly. Statement of PW3 Jawala Parshad nowhere inspires confidence regarding his presence at the spot. PW3 Jawala Parshad is the relative of the petitioner Bir Singh. This fact has been admitted by PW3 Jawala Parshad in his cross-examination. If the accident had taken place in his presence, then why he had not disclosed the trolly number to the police on 17.10.2004. He has admitted in his cross-examination that at the time of accident he had not informed the police as he went away from the place of accident. It cannot be believed that if any relative met with an accident, then the other person will go away from the spot. If PW3 was present at the spot, then definitely he had informed the police and taken the injured to the hospital.

19. I have gone through the authority titled as **Kusum Lata and others versus Satbir and others 2011(2) Apex Court Judgments 241 (SC)**, cited by Ld. counsel for the petitioners during the course of arguments but the same is not applicable on the facts of the present case. In Kusum Lata's case (supra), the witness who had later disclosed the registration number of the vehicle was found to be reliable by the Hon'ble Apex Court but in the present case PW3 Jawala Parshad is not a reliable witness. He is the relative of PW2 Vikram and he has deposed in favour of the petitioners due to his relation with them. Act of PW3 was totally unnatural that he had gone away from the spot without intimating the police or taking the injured to the hospital. Statement of PW3 nowhere inspires confidence.

20. Keeping in view the above facts, the petitioners are not able to prove that on 17.10.2004 Kamlesh had expired due to rash and negligent driving of the respondent No.1 by driving the trolla truck bearing registration No. HR-47-A-0594 in a rash and negligent manner. Hence, the issue No.1 is decided against the petitioners.” (emphasis supplied)

Ld. Counsel for the appellants is unable to dispute, or give any explanation whatsoever for the above said findings recorded by the ld. Tribunal. Even nothing has been produced before this Court to controvert the abovesaid findings.

Dismissed.

(Nidhi Gupta)
Judge

20.04.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No