



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2586-2011 (O&M)

Date of Decision: August 22, 2024

Satwanti Devi and others

...Appellants

VERSUS

Surender and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sushil Bhardwaj, Advocate
for the appellants.

Mr.H.S.Ghajoo, Advocate for
Mr.Amit Kumar Goyal, Advocate
for respondents No.1 and 2.

Mr.Rajneesh Malhotra and Ms.Maanvi Verma, Advocates
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants,
thereby, assailing the judgment of dismissal of the claim petition by learned
Motor Accident Claims Tribunal.

The facts germane, to be noticed, are as follows:-

That, on 29.09.2009, at about 9.00/10.00 p.m., Surender (since
deceased) along with his brother Mukesh, were going on motorcycle. The
motorcycle was driven by Surender. When they reached near the fields of
Ram Avtar, an Alto Car bearing registration No.HR-19C-9288, came from
Badhra side, at a high speed and in negligent manner, and struck the



motorcycle. Surender died instantaneously and Mukesh had sustained injuries. The accident had taken place, on account of rash and negligent driving of the driver of the Alto Car.

Also, it was asserted that Surender was 30 years old and was working at Raj Gas Agency and was earning Rs.7000/- per month. Hence, the claimants sought compensation to the extent of Rs.20 lakh, on account of death of Surender, in a motor vehicular accident.

In reply, respondents No.1 and 2-driver and owner had raised preliminary objections, thereby, disputing the locus standi of the claimants, to have filed the claim petition and also asserted that deceased had received injuries, somewhere else and in some other manner. False case has been fastened upon the answering respondents. Also, respondents No.1 and 2 disputed the cause of action to file claim petition against the answering respondent. Respondent No.1 is holding effective and valid driving licence and vehicle is duly insured with National Insurance Company and therefore, respondent No.3 is responsible for the compensation, if any liability arises. Respondents No.1 and 2 also disputed the maintainability of the claim petition, in the present form.

On merits, taking place of the accident, as such, has been denied. All other averments, have also been denied.

Respondent No.3-insurance company, in its reply, also raised various preliminary objections, thereby, disputing maintainability of the claim petition in the preset form and that the claimants are estopped from filing the claim petition, by their own act and conduct. They neither have any locus standi to file the petition, nor any cause of action accrued to them,



for filing the claim petition. Even, plea of mis-joinder and non-joinder of necessary parties has been taken. Besides the same, the insurance company took the plea that insured had violated the terms and conditions of the insurance policy and that the claim petition is collusive between the claimants and respondents No.1 and 2, only to gain unlawful profits by the claimants. It was pleaded that no injury was received by Surender, in the manner as asserted. The driver was not holding the valid licence. It was further pleaded that the accident had taken place, on account of negligence, on the part of the deceased himself.

After framing of issues, the evidence was adduced.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the claimants, having failed to prove the version of rashness and negligence and ultimately, issue No.1 was decided against the claimants. Consequently, the claim petition was dismissed, vide impugned judgment.

Feeling aggrieved, the appellants-claimants have filed the present appeal.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellants has assiduously submitted that brother of the deceased, who was occupant of the ill-fated motorcycle, had stepped into witness box as PW-2. He had categorically deposed about the manner of taking place of the accident and his testimony has not been considered in proper perspective. PW-2 Mukesh had also got recorded FIR, on the next day. Even, driver of the offending vehicle is facing trial and this is sufficient to hold about rashness and



negligence, on the part of driver of the offending vehicle.

Thus, the documents, which are coming on record, with regard to initiation of criminal proceedings against respondent No.1-Surender, driver of the offending vehicle, are more than sufficient to establish the plea of the appellants that accident is the result of rash and negligent driving of Alto car bearing registration No.HR-19C-9288 by respondent No.1-Surender. Therefore, it is prayed that finding of learned Tribunal, on issue No.1, as such, cannot be allowed to sustain.

On the other hand, learned counsel for the insurance company has resisted the claim of the appellants. It is in fact, vehemently submitted that since the claim petition was filed under Section 166 of the Motor Vehicles Act, it was required on the part of the appellants, to establish rashness and negligence, on the part of the driver of the alleged offending vehicle, but however, no sufficient evidence, to so substantiate, has been led. In fact, it is submitted that the filing of the report under Section 173 Cr.P.C., is not sufficient to record the finding that rashness or/and negligence in causing the accident, can be attributed to the driver of the alleged offending vehicle. In fact, it is submitted that respondent No.1-Surender, in his reply, had denied the accident.

In pursuance of the accident having taken place, the persons affected, have the remedy to file claim petition to seek compensation under Section 163-A or under Section 166 of the Motor Vehicles Act. In the eventuality of the persons, knocking the door of the Court, by way of filing of the petition under Section 166 of the ibid Act, then, it is incumbent upon the claimants to establish, rashness and negligence, on the part of driver of



the offending vehicle. The proof of imputation of rashness and negligence, on the part of driver of offending vehicle, is a sine qua non, for sustaining the plea for grant of compensation, while assessing the loss of dependency etc.

In this regard, it is pertinent to mention that Mukesh, brother of the deceased, had stepped into witness box as PW-2. It has been projected that he was accompanying the deceased being pillion rider on the ill-fated motorcycle. In his affidavit Ex.PW2/A, he had stated about accompanying his brother on 29.09.2009, on the motorcycle and when they reached near the fields of Pandit Ramotar, a white coloured Alto car bearing registration No.HR-19C-5288, came at a high speed, in a rash and negligent manner and struck the motorcycle and both of them fell down and Surrender died at the spot. The said witness also got recorded FIR no.227 dated 30.09.2009.

It is pertinent to make reference to the cross-examination of Mukesh. He had stated that from village Mandhi Piranu, they had started for their village Hansawas Khurd at about 8.30 p.m. He also deposed that the place of accident is 5-6 kms., away from Mandi Piranu. He further stated that the front portion of the car struck against the motorcycle. He also deposed that the car driver had ran away from the spot. Furthermore, it is pertinent to mention that Mukesh Kumar stated that he of his own, went to village Hansawas Khurd, leaving Surrender at the spot unattended. He went to village on foot, which is at a distance of 2-2½ kms. He further came back to the spot. He had also stated that he had sustained injuries on his head and foot.

Not only this, further he also stated that no blood had oozed from his



injuries. He further stated that he does not know the driver of Alto car. The name of the driver and number of Alto car was told at Bus Stand Badhra. He also stated in cross-examination that he lodged the report with the police on next morning. Mukesh further stated that the name of the driver of the offending car was disclosed to him by Ajay and Pardeep of their village, but he stated that they did not witness the accident. He also stated that he had gone to enquire about the driver of the car and the car which caused the accident, at about 4.00 p.m.

While considering the affidavit Ex.PW2/A as well as the cross-examination of the aforesaid witness, seemingly, the said witness has been introduced later on. His conduct is not above board. No person would leave his brother, lying on the spot and go on foot to his village to inform the family. It has been correctly observed by learned Tribunal that if Mukesh was accompanying Surrender, he would not leave the dead body on the road and walk home 2-2½ kms. at night, to inform the family.

Furthermore, even, Mukesh had suffered injuries on his foot and head and in the FIR, he had stated that he had fallen unconscious. Moreover, his testimony, raises doubt his being present at the spot and having witnessed the accident in question. He had stated about having come to know about the name of driver from Ajay and Pardeep of their village, but he categorically stated that they had not witnessed the accident. Furthermore, a doubt is also raised about his being an eye witness to the accident, when he stated that he came to know about the vehicle, which had hit them from bus stand. From whom, he came to know, it is not so mentioned. Thus, rightly it has been concluded by learned Tribunal, that source of information was



someone else. Even, the time of accident, as pleaded, is contrary to his version, coming forth, when he stated that he had gone to enquire about the driver of the car, which caused the accident, at about 4.00 p.m.

Thus, from the aforesaid, there is definitely a link missing to establish about the accident to have caused by Alto car bearing registration No.HR-19C-5288, driven by respondent No.1-Surender. The testimony of PW-2 Mukesh, as such, is not above board. He has been introduced later on and has attempted to improve upon his statement.

In this regard, it is also important to make reference to the report under Section 173 Cr.P.C., which is Ex.PD, wherein, it states about the evidence adduced, with regard to Surender s/o Ram Chander, whereupon, he was arrested. However, no investigating officer, as such, has been examined by the claimants in the present case, who could have established the linkage of respondent No.1-Surender, with the accident in question.

Such being the factual position, it is pertinent to mention that rule of evidence to prove the charges in a criminal trial, as such, cannot be used, while deciding the petition under Section 166 of the Motor Vehicles Act, which is summary in nature. It is required on the part of the appellants-claimants, in the petition under Section 166, to lead evidence of its own, with regard to the factum of accident and to establish the rashness and negligence, on the part of the offending vehicle. However, in the present case, as observed aforesaid, the testimony of sole eye witness, is not above board.

In the light of the same, no sustenance, as such, can be drawn



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from the sole factum of report under Section 173 Cr.P.C having filed against Surender, driver of the offending vehicle. This alone is not sufficient to record a finding of rashness or/and negligence in causing the accident, on the part of respondent No.1-Surender.

In view of the aforesaid observations, learned Tribunal had correctly appraised the evidence, brought on record. Thus, the appeal sans merit and the same is hereby dismissed.

August 22, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No