



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5348-2010 (O&M)
Date of Decision: September 27, 2024

Ram Kishan and another

...Appellants

VERSUS

Deepak and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.R.N.Lohan and Ms.Manisha, Advocates
for the appellants.

Mr.Manvi Verma, Advocate for
Mr.Rajneesh Malhotra, Advocate
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 01.02.2009, at about 9.30 p.m., Rajesh was proceeding from
Panipat to village Chhajpur Khurd, District Panipat, on his Hero Honda
motorcycle bearing registration No.HR-06C-987. When he reached near
power house of village Chhajpur Khurd, in the meantime, a Mahindra tractor
bearing registration No.HR-06S-0561, driven by respondent No.1-Deepak,
rashly and negligently and at a high speed, came and struck against the

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motorcycle of Rajesh, as a result whereof he sustained injuries and died instantaneously.

After the accident, respondent No.1-Deepak had fled away along with his tractor. FIR No.27 dated 02.02.2009 under Sections 279 and 304-A IPC, Police Station Sadar Panipat, was got registered against respondent No.1.

The claimants, who are the parents of the deceased Rajesh, had filed the claim petition for seeking compensation, on account of death of Rajesh. In the petition, it was asserted about the deceased to be generator mechanic and that he was running his own shop in Panipat and earning Rs.20,000/- per month.

In reply, respondents No.1 and 2-driver and owner, though admitted about the ownership of the tractor in question, to be of respondent No.2, but however, it was asserted that no such accident had taken place on 01.02.2009 and that the police has falsely implicated respondent No.1.

Respondent No.3-insurance company, in its reply, denied about taking place of the accident and further also asserted about the same to be hit and run case and also that respondent No.1 was not holding valid and effective driving licence and there was violation of terms and conditions of the insurance policy. The petition was also asserted to be bad for mis-joinder and non-joinder of the necessary parties. As such, a prayer was made for dismissal of the claim petition.

After framing of issues, to substantiate their claim, the claimant Ram Kishan had stepped into witness box as PW-1 and further examined PW-2 SI Moji Ram and PW-3 Dr.Indira Bajoria. The copy of FIR is Ex.P1, copy of post-mortem report is Ex.P2 and report under Section 173 Cr.P.C. is



Ex.P3.

On the other hand, driver as well as owner of the offending tractor, namely Deepak and Bhoolan-respondents No.1 and 2, had stepped into witness box as RW-1 and RW-2 and denied about taking place of the accident and involvement of tractor bearing registration No.HR-06S-0561. Furthermore, they also examined RW-3 Daya Nand. Copy of the insurance policy is Ex.R1, registration certificate is Ex.R2 and driving licence of respondent No.1 is Ex.R3. However, no evidence was led by respondent No.3.

On appraisal of the evidence, brought on record, it was concluded by learned Tribunal that claimants had failed to prove their version of rashness and negligence and involvement of the tractor bearing registration No.HR-06S-0561 and resultantly, issue No.1 was decided against the claimants, as a result whereof, even, 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 even though, no eye witness, as such, has been examined by the appellants-claimants, but however, taking place of the accident in question, stands amply established from the contents of the FIR Ex.P1, which was got registered at the instance of Ram Kumar. It was also submitted that it was only, in pursuance of the due investigation, having conducted qua the accident, that challan was presented against driver



Deepak-respondent No.1, copy whereof is Ex.P3. It is argued by learned counsel for the appellants that the documents, which have come on record, with regard to the initiation of criminal proceedings, against Deepak, are more than sufficient to establish the plea of the appellants, that the accident is the result of the rash and negligent driving of tractor bearing registration No.HR-06S-0561, driven by respondent No.1-Deepak. Therefore, it is prayed that the findings 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 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. Further, it is submitted that 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-Deepak as well as respondent No.2-Bhoolan, had categorically denied about taking place of the accident and involvement in the same. Even, while in the witness box, they had deposed to this effect. In the light of the same, it is submitted that the documents, so relied upon, singularly, are not sufficient to conclude about the rashness and negligence, on the part of respondent No.1-Deepak.

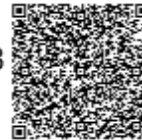
In pursuance of the accident having taken place, the persons affected, have the remedy to file claim petition to seek compensation under



Section 163-A or under Section 166 of the ibid 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 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.

Undisputedly, in the case in hand, Ram Kishan, father of the deceased, who has stepped into witness box as PW-1, is not an eye witness to the accident in question. This fact has been categorically admitted by him, in the cross-examination. Furthermore, he had also stated that what is written in his affidavit regarding registration number of the vehicle, time and manner of taking place of the accident, was written by him, on hearsay. He also stated that he had received Rs.1 lakh as compensation under the Rajiv Gandhi Yojna, on account of death of his son Rajesh, in the accident in question. Also, he stated that he had never seen the driver of the alleged offending vehicle in the police station.

PW-2 SI Moji Ram, who is SHO of the police station Sadar Panipat, has been examined, who proved copy of FIR Ex.P1. This witness has solely stated in examination in chief about challan having presented against Deepak, after completion of the investigation. It is significant to make reference to the cross-examination of the said witness, where, he admitted that FIR Ex.P1 was neither containing the make of the tractor nor registration number of the same. He also admitted to be correct that in Ex.P1, there is no mention made of driver's name of the offending vehicle.



In further cross-examination, he also deposed that ASI Ashok Kumar was the Investigating Officer of the criminal case and he cannot say, on the basis of which evidence, ASI Ashok Kumar challaned Deepak for causing the accident. He cannot tell which vehicle was involved in the accident. He further deposed that he cannot tell, on which date and on the basis of which evidence, the vehicle was involved in the alleged accident. Besides the aforesaid witness, the other witness examined is only Dr.Indira Bajoria, who proved the post-mortem report Ex.P2.

Considering the aforesaid evidence, it is pertinent to mention that FIR Ex.P1 was got registered by Ram Kumar, who is related to the deceased. In this regard, it is essential to take note of the cross-examination of PW-1 Ram Kishan, who categorically stated that Ram Kumar s/o Baru Ram is husband of sister of his wife. FIR was got registered, on the next day of the accident i.e. on 02.02.2009. In the FIR, there is only mention made about the accident to have caused by unknown vehicle. Even, no make, colour of the offending vehicle, is coming forth in the FIR as well as the name of the driver, as such, is also not coming forth.

Said Ram Kumar, who was closely related to the family of the deceased, has not been examined by the claimants. In what manner Deepak was nominated as accused, qua the accident in question, there is no satisfactory evidence, coming on record. In fact, the claimants, ought to have examined the Investigating Officer, who could have made things clear about the manner in which Deepak was nominated as accused in the criminal case. However, no such steps have been taken.

Report under Section 173 Cr.P.C. has come on record. Perusal



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of the same reveals that it was on the basis of the statements got recorded by one Ram Kumar, Ashok Kumar and other persons. However, things would have been made clear, if the Investigating Officer had been examined in the case, but no such step has been taken.

Besides the aforesaid circumstances, also it is important to make reference to the cross-examination of PW-1 Ram Kishan. He though deposed about his relationship with Ram Kumar, author of the FIR, but he further stated that it was after ‘tehervin’ of his son Rajesh, he had gone to village Chhajpur Khurd and at that time, Ram Kumar told him regarding the involvement of tractor and respondent No.1, in the alleged accident. Even if, it is assumed that there is some element of truth in the statement, so made by PW-1, then also, the conduct of Ram Kumar is highly contrary to the expected normal human behaviour and as such, is not above board, more particularly, when Ram Kumar has not been examined as a witness.

In the light of the aforesaid observations, learned Tribunal has rightly concluded about the claimants to have miserably failed to prove about blameworthiness, on the part of respondent No.1-Deepak, while driving the tractor in question. Learned Tribunal has correctly appraised the evidence, brought on record and the judgment of dismissal of the claim petition, calls for no interference.

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

September 27, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No