

2024:PHHC:162209



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

295

FAO-7895-2017 (O&M)

Date of Decision : 04.12.2024

GEETA DEVI AND ORS

.... Appellants

VERSUS

MEENA GARG AND ANR

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Ms. Apoorva Arya, Advocate for
Mr. Jagmohan Ghumman, Advocate for the appellants.

Mr. Sudhir Aggarwal, Advocate for respondent No.1.

Mr. Rajneesh Malhotra, Advocate for respondent No.2.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellants challenging the award dated 10.08.2017 passed by the Motor Accident Claims Tribunal, Gurugram (hereinafter referred to as 'the Tribunal').

2. Brief facts relevant to the present *lis* are that the claimant-appellants herein filed a claim petition averring therein that deceased - Sudesh Kumar - was hired by respondent No.1 - Meena Garg - as a driver and he was earning ₹17,000 per month as salary from driving Toyota Innova bearing registration No.HR-55-J-6130, who while coming from Jharsa Chowk towards Medanta Chowk on 28.04.2016 at about 2:00 pm received injuries on his forehead and there was bleeding from his nose due to which there was a cardiorespiratory arrest. It was further averred that in his

endeavour to save the life of a running cow which suddenly came on the road, the deceased had to apply brakes and his head hit the steering wheel of the car. The claim petition was contested by respondent No.1 - Meena Garg - who filed her written statement denying the allegations and stated that the deceased was hired as a driver for a week @ ₹300 per day because her permanent driver had gone to Bihar. It was further averred that the deceased had taken the car for getting fuel filled and did not return thereafter. On the Police being informed, the car was found parked on the by-lane near Jharsa Chowk and the driver was found dead on the driving seat of the vehicle. The husband of respondent No.1 visited the spot and found the driver dead on the driving seat with no apparent injuries on his person. It was further the case that there was no witness and Surinder Singh was a put-up witness. Respondent No.3 also filed a written statement raising various preliminary objections. On merits it was stated that the deceased had died due to a cardiorespiratory arrest. On the basis of the pleadings of the parties the following issues were framed :

- 1) Whether the deceased Sudesh Kumar died in a motor vehicle accident due to rash and negligent driving of vehicle No.HR-55-J-6130 driven and owned by respondent No.1 ? OPP
- 2) Whether the petitioners being legal heirs of deceased are entitled to compensation from the respondents, from whom and to what extent ? OPP

- 3) Whether respondent No.1 was not having valid and effective driving licence at the time of the accident ? OPR
- 4) Relief.

3. The Tribunal vide award dated 10.08.2017 dismissed the claim petition. Aggrieved by the same the present appeal has been preferred by the claimant-appellants.

4. Learned counsel for the claimant-appellants would contend that the deceased died due to the fact that he hit his head against the steering wheel when he had applied sudden brakes as a cow came in front of the car. It is further the contention that the claim petition has wrongly been dismissed by the Tribunal concerned.

5. *Per contra*, learned counsel for respondent No.2 would contend that the claim petition has rightly been dismissed as under Section 166 of the Motor Vehicles Act, 1988 it was imperative for the claimant-appellants to have averred and proved that the accident occurred due to rash and negligent driving. In the present case it was the case set up by the claimant-appellants that because of the cow coming in front of the vehicle the deceased had to suddenly apply the brakes and his head hit the steering wheel of the car. Even as per the postmortem report, the cause of death has been mentioned as cardiac arrest and not due to any injury. Learned counsel has relied upon the judgment of the Supreme Court in the case of **Oriental Insurance Co. Ltd. V/s Premlata Shukla & Ors. [2007 (3) RCR (Civil) 301]** to contend that without averring and proving that there was any rash and negligent driving, a

petition under Section 166 of the Motor Vehicles Act, 1988 was not maintainable.

6. Heard.

7. In the present case the argument of the learned counsel appearing on behalf of the claimant-appellants is that since a cow came in front of the vehicle and the deceased had to suddenly apply the brakes, hence the claim petition ought to have been accepted. However, this contention is liable to be rejected. The Hon'ble Supreme Court in the case of **Premlata Shukla** (supra) has held as under :

10. The insurer, however, would be liable to re-imburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle, is therefore, sine qua non for maintaining an application under Section 166 of the Act.

8. In view of the fact that neither any rash and negligent driving was averred nor proved, the petition itself under Section 166 of the Motor Vehicles Act, 1988 was not maintainable. Further still, the postmortem report (Ex.P-3) shows the cause of death as cardiorespiratory arrest. A perusal of the postmortem report, which has been handed over by the learned counsel for respondent No.1, reveals that there were no injuries which were mentioned in the postmortem report. There is no head injury or injury to the nose as was alleged by the claimant-appellants in the claim petition.

9. In view of the above, no fault can be found with the award passed by the Tribunal concerned. The present appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.12.2024

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No