

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**205****FAO-952-2001 (O&M)****Date of decision: 19.02.2025****Smt. Savitri Devi and another****...Appellant(s)****Vs.****Vinod Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sanjay Jain, Advocate for the appellants.

Mr. Suman Jain, Advocate and
Mr. Rishabh Jain, Advocate
for the respondent-Insurance Co.

NIDHI GUPTA, J.

The present appeal has been filed by the claimants against the Award dated 29.09.2000 passed by the Id. Motor Accident Claims Tribunal, Ambala (hereinafter referred to as "the learned Tribunal") whereby the claim petition No. 202 dated 18.08.1999 filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") for grant of compensation on account of death of their 21 year old son, namely Mohinder Singh, has been dismissed. The 2 appellants/claimants are the parents of the deceased Mohinder Singh.

Brief facts of the case as pleaded in the claim petition are that on 22.12.1997, Mohinder Singh son of Shri Jagdish Lal aged about 21 years was going towards Railway Station, Ambala sitting pillion behind Vinod Kumar/respondent no.1, on a scooter bearing Registration

No. HR-01-F/0394 (hereinafter referred to as “the offending vehicle”).

The said offending vehicle was being driven by respondent No.1; owned by respondent No.2; and insured by respondent No.3 herein. When they reached G.T. Road, the driver of the scooter immediately turned his scooter without observing the traffic rules and struck against the bus coming from the opposite side. Mohinder Singh fell down and died on spot, while Vinod Kumar also sustained serious injuries. It was pleaded that the accident occurred on account of rash and negligent driving of Vinod Kumar. According to the claimants both respondents No.1 and 2 were responsible jointly with the Insurance co. for payment of compensation. It was pleaded that the deceased was earning Rs.7,000/- as he was fruit and juice seller.

Learned counsel for the appellants submits that learned Tribunal dismissed the claim petition of the appellants on the premise that in the FIR bearing No. 1174 dated 23.12.1997 registered under Sections 279/337/304-A of IPC, the offending vehicle was stated to be the bus which was coming from the opposite side, and the challan was filed against the driver of the offending bus, and not against Vinod Kumar/Driver of the scooter on which the deceased was pillion riding. Learned counsel contends that the said reasoning of the learned Tribunal is liable to be set aside as, the claimants can seek compensation from any of the tortfeasors. It is contended that no doubt, FIR was registered against the bus driver, however, it has been held in the judgment passed by High Court of Madhya Pradesh passed in '*Kirti and*

another vs. Rajendra and others', 2000 ACJ 663, that the claimants are entitled to recovery of damages from driver and owner of both the vehicles or any of them. It is submitted that accordingly, the claim petition of the appellants could not have been rejected by the learned Tribunal on the ground that the same was filed against the driver of the scooter, of which the deceased was pillion riding.

Per contra, learned counsel for respondent No.3-insurance company opposes the prayer made on behalf of the appellants and submits that it has come on record that in fact, there was no negligence on the part of the respondent No.1-driver of the offending scooter. Accordingly, it is prayed that there is no merit in the present appeal and the same deserves to be dismissed.

No other argument is raised on behalf of the parties.

I have heard learned counsel for the parties and perused the case file in great detail.

It is the pleaded and argued case of the claimants that the deceased was pillion riding behind Vinod Kumar on the offending vehicle. It has been stated by the claimants that Vinod was driving the offending scooter at a high speed in a rash and negligent manner; and due to the rash and negligent driving, he had struck the offending scooter into a stationary bus bearing registration No. HR-26/9519. As a result of the impact of collision, the deceased had fallen down from the scooter and died on the spot while Vinod Kumar also sustained serious injuries.

However, the said version of events is belied by the contradictory statements of eye-witness Dilip Kumar PW-3, who was also the author of the FIR. Although before the Tribunal, PW-3 had supported the averments made in the plaint, however in the FIR, a different version of events was given by him. In the FIR, he had stated that he had noticed the scooter when it was at a distance of 10 feet and that the scooter was being driven slowly. He had nowhere stated in the FIR that the scooter struck against the bus. Subsequently, in his cross-examination, PW3 had admitted that when he saw the scooter, the speed of scooter was slow and the scooter was at distance of only 10 feet. PW-3 had not stated anything about the involvement of the bus. It was in view of the said two contradictory versions given by the eye witness PW-3, that the Id. Tribunal had disbelieved the version set forth by the claimants; and dismissed the claim petition of the appellants.

Learned counsel for the appellants is unable to dispute or controvert the above said facts and findings.

The present appeal is hereby **dismissed**.

Pending application(s) if any also stand(s) disposed of.

19.02.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No