

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****209****FAO-958-2001 (O&M)****Date of decision: 07.02.2025****Sudarshan Kumari and others****...Appellant(s)****Vs.****Surinder Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vinod K. Kataria, Advocate for the appellant.

Mr. Anil Spehia, Advocate for respondents No. 1 and 2.

Mr. Pradeep Goyal, Advocate for respondent No.3.

*********NIDHI GUPTA, J.**

The claimants are in appeal before this Court against the Award dated 07.11.2000 passed by the learned Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as "the learned Tribunal") whereby the claim petition filed by the appellants under Section 166 and 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"), has been dismissed. The 5 claimants are the widow, 2 daughters, 1 son, and mother of the deceased Tarsem Grover.

2. Briefly stated the facts as averred by the appellants in their claim petition was that on 21.10.1998 at about 6.30 A.M. deceased Tarsem Grover was returning home after a morning walk. He reached near clock tower, Faridkot. A scooter bearing registration No. PB-04F-2077 (hereinafter referred to as 'the alleged offending vehicle'), came



from behind and struck him with the result that he fell down and sustained multiple injuries on his body and head. The offending vehicle was being driven by Surinder Kumar respondent No.1 son of Bali Ram rashly and negligently at a very high speed and the driver could not control the same resulting in the accident. Tarsem Grover was removed to Guru Gobind Singh Medical College and Hospital, Faridkot where he was treated. As the condition of Tarsem Grover became serious he was referred to Ludhiana. However, when he was coming from Ludhiana to Faridkot, he died near Canals at Talwandi Raod, Faridkot.

3. Learned counsel for the appellants submits that the claimants had led sufficient evidence on record to establish that the deceased Tarsem Grover had died due to the injuries suffered by him in the above said motor vehicular accident that took place on 21.10.1998 due to the rash and negligent driving of the alleged offending scooter. Despite that the claim petition of the appellants has been dismissed by the learned Tribunal only on the ground that in the D.D.R, it has been mentioned that deceased died near Talwandi Road, while going to Ludhiana. Whereas, in the statement, it has been mentioned that deceased died while coming from Ludhiana. It is submitted that it has been denied by the AW-3 that he stated before the police that deceased died while going to Ludhiana and it has been mentioned in the report of the police as under: *"Jiss nun lijande samen Talwandi Road Nehar kol Tarsem Grover dee mott hogahi"*



4. It is further submitted that the respondent No.1 has nowhere denied about the accident and he himself admitted that all of a sudden a dog came in front of the scooter and deceased struck against his scooter and fell down on the ground. In the cross-examination he has stated that he was going at the speed of 40-50 K.M. and deceased was going on his left hand side of the road. Thus, the evidence clearly shows that the accident took place with the scooter driven by respondent No.1 and the Id. Tribunal has wrongly interpreted the DDR and dismissed the petition when as per the evidence the findings of the learned Tribunal is totally illegal and erroneous and is liable to be set aside.

5. Learned counsel for the appellant has relied upon the judgment passed by a Coordinate Bench of this Court in ***'Union India Insurance Co. Ltd. Through its Regional Manager, Chandigarh and another vs. Shri Swaran Singh and another'*** The Punjab Law Reporter 159 to submit that registration of an FIR is not an essential prerequisite for claiming the compensation.

6. No other argument is raised on behalf of the appellants.

7. I have heard learned counsel for the appellants.

8. I find no merit in the submissions made on behalf of the appellants as a perusal of the record reveals that the case put up by the claimants and their witnesses, abounds in contradictions and discrepancies.

9. To support their afore-noted case, the Claimants have produced AW3 Tarsem Kataria who is stated to be the pillion rider on the



alleged offending vehicle being driven by respondent No.1. Tarsem Kataria has deposed that on 21.10.1998, he was pillion rider of respondent No.1. AW3 has stated that when they reached near the clock tower street suddenly a dog came and struck with the scooter which was being driven at a high speed. AW3 further deposed that respondent No.1 could not control the same and his scooter hit on the backside of Tarsem Grover; as a result of which the deceased fell on the ground and sustained serious injuries on his head and other parts of the body. As such, the accident had taken place due to the rash and negligent driving of the alleged offending vehicle by respondent No.1.

10. AW3 had further deposed that he alongwith Madan Lal took the deceased to Guru Gobind Singh Medical College and Hospital, Faridkot where the deceased was administered the first aid. However, as the condition of the deceased was serious, he was referred to the hospital in Ludhiana. However, even in Ludhiana, the Doctors opined that there was no chance of survival of the deceased. As such AW3 along with others were bringing the deceased back from Ludhiana to Faridkot; and when they reached near canals near Talwandi road, Faridkot, the deceased succumbed to his injuries.

11. The learned Tribunal had disbelieved the above evidence given by AW3 Tarsem Kataria as, as per the DDR dated 22.10.1998/Ex.A3, Tarsem Kataria had stated that when the deceased was being taken from Faridkot to Ludhiana, he had succumbed to his injuries. This statement was made by AW3 on 22.10.1998 before the



police soon after the accident, which was recorded in the Roznamcha at No.4. Thus, no reliance could be placed upon the contradictory statement of AW3 Tarsem Kataria.

12. Further, the accident is stated to have taken place on 21.10.1998 at about 06:30 a.m., whereas the DDR No. 4 has been registered on 22.10.1998 about 08:30 a.m. It would bear to reason that the above story has been concocted by the claimants and the claimants' witnesses in order to explain the delay in registration of the DDR. In any event, presumption of truth is to be attached in the statement initially made by AW3 where he had stated that the deceased had succumbed to his injuries when he was being taken from Faridkot to Ludhiana on 21.10.1998 as the said statement, was made soon after the accident. Whereas his deposition as AW3 before the learned Tribunal was almost two years after the accident wherein he has now stated that the deceased succumbed to his injuries while he was being brought back from Ludhiana to Faridkot.

13. It is also pertinent to note that even in the DDR Ex.A3, AW3 has not mentioned that respondent No.1 was driving the alleged offending vehicle in a rash and negligent manner. In fact in the DDR, AW3 has stated that nobody is at fault and no action be taken against anyone. In contrast, in his testimony as AW3 Tarsem Kataria, had categorically stated that the accident took place due to the rash and negligent driving of respondent No.1. It is also pertinent to note that AW3 had stated on solemn affirmation before the learned Tribunal that



he was not related to the deceased in any manner. However, in the DDR Ex.A3 in the statement made by Tarsem Kataria to the police, he had specifically mentioned that the deceased was the son of his Bua. As such, the evidence of the sole eyewitness AW3 Tarsem Kataria is dubious and doubtful being interested witness. It is also relevant that as per AW3 accident was witnessed by many people. However, these witnesses were not examined by the claimants for the reasons best known to them.

14. Respondent No.1 as RW1 has also stated that the accident took place in a thickly populated area of the city. However, RW1 had further deposed that the deceased himself had struck against the offending scooter and fallen on ground and that respondent No.1 was not at fault. It is interesting to note that RW1 has nowhere mentioned that AW3 Tarsem Kataria was a pillion rider. Even no question to this effect was put to the respondent No.1 by the claimants during cross-examination. It was in this background, the learned Tribunal doubted the story put forth by the claimants and dismissed the claim petition.

15. Nothing has been shown to this Court to discard the findings of the learned Tribunal.

16. The appellant can derive no benefit from the above referred judgment as the said judgment is distinguishable on facts and law.

17. No doubt in proceedings under the Act, the claimants are required to merely establish the case on the touch stone of preponderance of probability; and are not required to prove it beyond



reasonable doubt as mandated in a criminal trial. However, the case put forth by the claimants cannot be entirely fantastical and has to bear bare semblance of belief.

18. Keeping in view the facts as noted above, the present appeal is **dismissed**.

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

07.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No