

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****211****FAO-1064-2014(O&M)****Date of decision: 21.11.2025****Pinky & Others****...Appellant(s)****Vs.****Raman Kumar @ Koushal & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Ms. Jaswinder Kaur, Advocate for
Ms. Manjari Joshi, Advocate
for the appellants.

Mr. Suvir Dewan, Advocate
for respondent No.3.

*********NIDHI GUPTA, J.****IOIN-FAO-1064-2014**

Registry has put up the present matter under the category of IOIN. The main matter i.e. FAO-1064-2014 is taken up for arguments today itself. IOIN stands disposed of accordingly.

FAO-1064-2014

Present appeal has been filed by claimants against the Award dated 16.10.2013 passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter 'the learned Tribunal') whereby MACT No.2 of 10.01.2012 filed by the claimants/appellants under Section 166 of the Motor Vehicles Act



(hereinafter “the Act”), has been dismissed; while awarding Rs.50,000/- under ‘No Fault Liability’. The 3 claimants are the widow and 2 minor children of deceased Chotte Lal, who was stated to be about 30 years old at the time of accident.

2. The pleaded case of the appellants in the Claim Petition before the Tribunal as recorded in Para 1 of the Award is that: -

“1. The claimants have filed this claim petition for compensation under section 166 of the Motor Vehicles Act, 1988 (here-in-after to be referred as the 'Act') with regard to accidental death of Chotte Lal, being his legal representatives against respondents. The brief facts of the case of the claimants are that on 18.09.2009 at about 3:00 P.M., Chotte Lal alongwith his brother Raj Kumar and his associate Vajinder Singh came to Jalandhar to purchase bangles from Northern Transport, Patel Chowk, Jalandhar. That they hired one three-wheeler vehicle bearing No. PB-08-BJ-7125, driven by a clean shaved young man aged about 28-29 years for proceeding to Begowal on charges of Rs. 300/-. That they put their goods in said three-wheeler and set out for village Begowal. That the driver of three-wheeler was driving it in rash and negligent manner despite their advise to the contrary. That when they reached near Gobind Dham at about 3:25 P.M, three-wheeler went out of control of its driver and twisted towards right side of the road, resulting into injury to Chotte Lal. That Chotte Lal died on the way to the hospital. That FIR No. 313 dated 19.09.2009 under Sections 279 IPC and 304-A IPC was registered against respondent Raman Kumar @ Kaushal, who



was driver of Auto Rickshaw bearing No. PB-08-BJ-7125. That claimant No.1 Pinky is the wife of Chotte Lal and claimant No.2 and claimant No.3 are the minor son and daughter of late Chotte Lal and they have brought this claim petition being his legal representatives. That deceased Chotte Lal was 30 years of age at the time of his accidental death and was earning Rs. 15000/- per month. That accident took place at Gobind Dham, P.S. Magsudan, Jalandhar on 18.09.2009 at about 3:00 P.M. That accident took place due to rash and negligent driving of respondent No.1, who was driving three-wheeler bearing No. PB-08-BJ-7125 rashly and negligently. That respondent No.2 Nikka Ram was the owner of offending three-wheeler and respondent No.3 Oriental Insurance Company Limited, Jalandhar was its authorized insurer at the time of accident. That claimants have, thus, claimed for compensation regarding accidental death of Chotte Lal due to rash and negligent driving of respondent No.1 and this claim petition has been directed by them against respondents.”

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Tribunal had concluded that the appellants had failed to prove that the accident in question was caused due to the negligence of respondent No.1 in driving the auto rickshaw.

4. It is inter alia submitted by learned counsel for the appellants that the only ground on which the Claim Petition has been dismissed by the Tribunal, is that the eyewitness Umesh PW4 had not joined the Police investigation; and therefore, negligence was not proved. It is however



contended that the facts as noted above speak for themselves inasmuch as accident had taken place only on account of driver/respondent No.1. No other vehicle was involved in the accident. Therefore, Claim Petition could not have been dismissed.

5. It is further submitted that the Ld. M.A.C.T. has completely ignored that after the discharge of the initial onus upon the claimants to prove the fact of accident as well as the fact that no other vehicle was involved in the accident and the death has taken place due to the overturning of the 3 Wheeler, the onus had shifted upon the respondents to prove as to how, the driver of the said vehicle was not negligent in driving the same which has caused the accident and the death of Chhote Lal.

6. It is contended that the Ld. Tribunal has debarred the claimants under the technical provisions of section 166 of the Act which require the proving of negligence on account of the claimants; while ignoring that the Act and the provisions of compensation incorporated therein are a welfare legislation and the same have to be interpreted liberally. It is accordingly prayed that the present appeal be allowed.

7. Ld. counsel for respondent No.3 vehemently opposes the submissions made on behalf of the appellants and submits that the impugned Award suffers from no error; and prays for dismissal of the appeal.

8. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail.



9. In proving negligence on part of respondent No.1, the claimants/appellants are relying upon evidence of eyewitness Umesh PW4. During the course of arguments, on a Court query as to how is PW4 known to the Claimants, learned counsel for the appellants has informed that the said eyewitness belongs to the same village as the claimants. However, perusal of the file reveals that Umesh is the real brother of the deceased. Thus, PW4 is not an independent witness.

10. The evidence of PW4 has also been rejected as being unreliable, on the ground that he has not been cited in the Police Record as a witness; neither is his name mentioned in the FIR (Ex.PW2/A). It is most interesting to note that FIR has been registered by Raj Kumar, another brother of the deceased, who, as per the claim petition was accompanying the deceased at the time of accident. However, he has not been produced as a witness by the Claimants. Claimants have only produced PW4, who is also not proved as being resident of the village Begowal, where the claimants and deceased were residing. In fact, he was shown to be resident of State of UP. PW4 was also unable to inform as to who took the deceased to the Hospital from the place of accident. These facts have been admitted by PW4 himself in his cross-examination. Clearly therefore, PW4 was not present at the spot; and was therefore, not competent to be a witness to the alleged negligence of respondent No.1. He was not a reliable witness to establish that the accident had taken place. No other witness was produced by the claimants; except for



the claimant No.1 herself, who appeared as PW3 and had admitted that she had not seen the accident.

11. Moreover, PW3 herself was also unable to prove on record that the deceased had purchased any bangles. Even further, RW4 Nikka Ram who is owner of the alleged offending vehicle/Auto Rickshaw in question has also denied the accident in totality. Even as per Post-Mortem Report (Ex.P1), the name of Umesh Kumar is not mentioned as the person who had brought the dead body of the deceased from the spot of accident.

12. It can also not be lost sight of that respondent No.1/driver has been acquitted by the learned Judicial Magistrate, 1st Class, Jalandhar in the present FIR No.313 dated 19.09.2009 registered under Sections 279, 304-A IPC at Police Station Maqsudan, Jalandhar vide judgment dated 18.10.2011 (Ex.RA) (available at page 239 of the LCR). A perusal of the said judgment shows that the FIR in question was registered on the statement of Raj Kumar/brother of the deceased, who had appeared before the Magistrate as PW4; and who had turned hostile. Relevant Para 11 of the said judgment of acquittal is as under:-

“11. PW4 is complainant Raj Kumar, who has not supported the prosecution version and has specifically stated that he does not know the name of the driver of the three wheeler involved in the accident nor he knows the number of the said vehicle. This witness has further stated that accused present in the court never drove the vehicle in rash and negligent manner nor he



made any statement before the police. The police has obtained his signatures on the blank papers. Similarly, Pw5 Vajinder has stated that accused present in the court never drove the vehicle in rash and negligent manner. He has further stated that he never made any statement before the police. Both these witnesses were declared hostile and were allowed to be cross-examined by the learned APP for the State after seeking the permission from the Court but even after lengthy cross-examination, nothing favorable to the prosecution came out.”

13. As noted above, Raj Kumar complainant has not been produced by the claimants before this Court. As per the above said judgment, there was another eyewitness namely Vajinder, who had also turned hostile as noted in Para 11 above; and who was also not produced before the Tribunal. The Claimants have only produced PW4 Umesh before the Tribunal, who was not present at the spot. Needless to say, judgment of acquittal would not in itself be sufficient for dismissal of the Claim Petition, however, on a total assessment of the above-said facts, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands **dismissed**.

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

21.11.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No