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

FAO No.944 of 2017

Date of decision : 14.01.2025

SUNITA AND OTHERS

....Appellants

Versus

TARUN KUMAR AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Narender Kaajla, Advocate
for the appellants.

Mr. Rahul Pathania, Advocate
for respondent No.3.

PANKAJ JAIN, J. (ORAL)

Instant appeal is directed against order passed by MACT, Hisar whereby the claim petition preferred by the appellants/claimants on account of death of Sudesh Kumar, has been dismissed.

2. Appellants filed claim petition seeking compensation on account of death of Sudesh Kumar in a motor-vehicular accident claiming that on 28.01.2015, Sudesh Kumar, who was riding motor-cycle, was hit by offending car bearing registration No.HR-21B-1122 being driven by respondent No.1 in a rash and negligent manner.

3. Claim petition was resisted by the driver and owner denying the factum of accident. It was further claimed that the offending vehicle was neither involved in the accident in question nor respondent No.1 ever drove



the same rashly and negligently.

4. On the basis of the pleadings of the parties, Tribunal framed the following issues :

- i) Whether accident in question occurred due to rash and negligent driving of vehicle car bearing No.HR-21B-1122 by respondent no.1? OPP
- ii) Whether the petitioners are entitled to recover the compensation from the respondents, if so, to what extent? OPP.
- iii) Whether the present petition of the petitioners is not maintainable in law? OPR.
- iv) Relief.

5. In order to prove issue No.1, claimants tendered in evidence FIR, Exhibit P-2, and examined author, thereof namely Ranbir Singh, who appeared as PW-4. Tribunal has disbelieved PW-4 Ranbir Singh and the accident itself holding that the accident is of dt. 28.01.2015. FIR was lodged on the statement made by Ranbir Singh on 11.02.2015. Ranbir Singh claims to have accompanied the deceased to the hospital on the fateful day and admits that the police post is stationed in the General Hospital, Hansi, yet he never disclosed the factum of there being an accident to any person including the family members of the deceased. It was only after deceased Sudesh Kumar died on 06.02.2015 that the FIR Exhibit P-2, came into being. Tribunal further found that the tale put-forth by Randhir Singh (PW-4) regarding him accompanying the deceased to the hospital, also stands falsified from the documentary evidence in form of hospital records. As per



the same, Sudesh Kumar was accompanied by Gurvinder Singh. The other factor that weighed in with the Tribunal while dismissing the claim petition is that the vital link in form of post-mortem report to establish the cause of death of deceased, and its relation to the alleged injury suffered in the accident, is missing.

6. Counsel for the appellants while assailing the impugned award submits that the Tribunal erred in misreading the evidence on record. He submits that so far as the injury suffered by the deceased in the accident, in question, is concerned, the same is evident from CT Scan Report, which is part of record. It has been contended that as per the same, radio diagnose of the skull of the deceased revealed the following injuries :

“Contiguous axial section of skull taken extending from the base to vertex. CT reveals following:

- **Small haemorrhagic contusion is seen right posterior parietal lobe**
- **Fracture of lateral wall of left orbit, left zygomatic arch and left maxillary sinus.**
- **Bleed seen in left maxillary sinus antrum.**
- Rest of the cerebral hemispheres show normal parenchymal attenuation & gray white differentiation. Sulci & gyri are normal.
- Bilateral basal ganglia and thalami are normal.
- Bilateral lateral ventricles, 3rd and 4th ventricles are normal.
- Basal cistern are normal.
- Interhemispheric fissure is midline.
- Bilateral cerebellar hemisphere shows normal attenuation & folia.”



7. He thus submits that the cause of death of the deceased is evident from radio diagnose report of his skull. In order to hammer-forth his contention he relies upon judgment of this Court in the case of **‘United India Insurance Co. Ltd. vs. Sumitra’, 2014(7) R.C.R.(Civil) 197**. He further submits that merely for the reason that the name of the author of the FIR does not find mentioned in the hospital records, his statement cannot be doubted. He submits that once FIR was fully proved on record, the factum of there being accident stands fully proved, and thus the Tribunal ought not have dismissed the claim petition. Reliance is being placed upon ratio of law laid down by Supreme Court in the case of **Anita Sharma and others vs. The New India Assurance Co. Ltd. and another, (2021) 1 SCC 171**.

8. Per contra, counsel for respondent No.3 submits that the Tribunal has rightly analyzed the evidence on record. Pure findings of fact have been recorded analyzing the evidence threadbare. Testimony of PW-4 has been found to be untrustworthy. Evidence to establish causal relationship between the accident as well as death of the deceased, is missing and thus, no fault can be found with the findings recorded by the Tribunal.

9. I have heard counsel for the parties and have gone through records of the case.

10. Counsel for the appellants is not in position to dispute that apart from PW-4 Ranbir Singh, no eye-witness was examined. The conduct of PW-4 Ranbir Singh has been proved to be unnatural. As per his claim, he is



eye-witness to the accident dated 28.01.2015. He claims to have accompanied Sudesh Kumar deceased to the hospital. Surprisingly, he did not confide any person be it the family member or a police personnel till 11.02.2015 when the instant FIR was got registered on the basis of his statement. More surprising is the conduct of the deceased Sudesh Kumar himself. It has come on record that after he was discharged from hospital in a stable condition on 29.01.2015, he himself did not even bother to report to the police about the accident in which he sustained injuries. On 01.02.2015, he was again hospitalized and unfortunately died on 06.02.2015. During this whole period, no effort was made by him to report the accident either to his family members or to the medical authorities or to the police officials.

11. There is no dispute w.r.t. ratio of law laid down in *Anita Sharma's* case (supra). The standard of proof in motor accident matters is one of preponderance of probabilities rather than beyond reasonable doubt. But evidence adduced by the claimants must be cogent and need to aspire some confidence. This Court finds that no other opinion, apart from the one formulated by the Tribunal is possible even on re-appreciating the evidence.

12. In view of above, finding no merit in the instant appeal, the same is ordered to be dismissed.

January 14, 2025

Dpr

(Pankaj Jain)

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No