



FAO-3701-2006 (O&M)

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

FAO-3701-2007 (O&M)

Date of Decision: 04.03.2025

Smt. Sharmila Devi and others

.....Appellants

Vs.

Ravinder and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Madan Pal, Advocate,
for the appellants.

Mr. Rahul Pathania, Advocate,
for respondent No.2-Insurance Company.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred by the appellants for setting aside the award dated 23.05.2007 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Rohtak (for short, 'the Tribunal'), whereby, claim petition filed by the appellants for grant of compensation on account of death of Subhash, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 06.06.2003, Subhash (since deceased) was on his way to his fields on a Mahendra tractor bearing Chassis No.3374628 and Engine No.3273/09807-C, which unfortunately turned turtle. As a result thereof, Subhash died on the spot. Initially, it is averred that deceased Subhash was about 25 years old and was earning Rs.2,50,000/- per annum from dairy and agricultural work, but lateron, claim



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petition was amended and in the amended claim petition, it was averred that deceased was earning a sum of Rs.40,000/- per annum.

3. Upon notice of the claim petition, respondent No.2-Insurance Company appeared and filed its reply denying the factum of accident/compensation, whereas, respondent No.1 did not appear despite service and was proceeded against *ex parte*.

4. From the pleadings of the parties, the learned Tribunal framed the following issues:-

“i) Whether the accident in question took place by the use of motor Vehicle bearing Chassis No.3374628, Engine No.3273/09807C? OPP

ii) Whether Subhash son of Shri Harigian died as a result of injuries suffered in the accident, if so, to what amount of compensation, the applicants are entitled to? OPP

iii) Whether Subhash deceased was holding a valid driving licence at the time of accident, if so, its effect? OPR.

iv) Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

6. Learned counsel for the appellants/claimants contends that the claim petition filed by the appellants/claimants was dismissed by the learned



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Tribunal only on the ground that the involvement of the offending vehicle was not proved by the appellants/claimants.

7. Per contra, learned counsel for respondent No.2-Insurance Company, however, vehemently argues on the lines of the award dated 23.05.2007 passed by the learned Tribunal and submits that the claim petition has rightly been dismissed by the learned Tribunal, since the appellants/claimants were not able to prove the involvement of the offending vehicle. Therefore, he prays for dismissal of the present appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award reads as under:-

“13. In this case, it was the duty of the claimants to produce sufficient and cogent evidence on record to show that death of Shri Subhash had occurred due to accident arisen out of use of tractor in question. However, on perusal of the evidence placed on record by the petitioners, I am of the opinion that they had not succeeded in proving this fact. The petitioner Sharmila while appearing as PW1 stated that her husband had died in a road side accident. She did not state as to how and in what manner her husband died or that death had occurred out of the use of tractor. She simply stated that accident had occurred while her husband being on steering wheel of the tractor, whereas, as per averments of the petition, he was crushed under the tractor. She also admitted that post mortem examination of her husband was not conducted. Therefore, the testimony of petitioner can not be stated to be sufficient to prove that Subhash died due to use of the said tractor. Even PW2 also



admitted that matter was not reported to the police by him, though he stated that he had seen the tractor being over turned, but his testimony has not been corroborated by any oral or documentary evidence. This witness had denied the suggestion that he deposed falsely with a view to help the legal heirs of Subhash in getting the compensation. The presence of this witness at the spot is even otherwise not proved because PW4 Charan Dass HC has stated about recording statement of one witness while visiting the village on 4.11.2003 for verifying the factum of death of Subhash and PW4 rather took the name of that person as Ram Niwas, but said Ram Niwas has not been examined. There is no document on the record to prove that any FIR was registered in which name of this witness was mentioned. There is no medical evidence on record to prove that death of Subhash had occurred out of use of any motor vehicle. There is also no documentary evidence on record even to prove that Subhash had died due to some accident. The accident is alleged to have taken place on 6.6.2003 but PW4 has stated that he went to verify about the factum of death of Subhash in the month of November 2003. It was duty of the petitioner to bring some cogent evidence on record to prove that vehicle bearing engine No3273/09807-C and chasis no.3374628 was used by Subash and his death had taken place out of use of that vehicle, but the single ocular statement of PW2 can not be stated to be sufficient to prove this fact. The fact that no medical evidence has been produced on record to prove the cause of death also belies the version of the claimants that death had occurred out of use of tractor and therefore, I am inclined to held that petitioners have failed to prove that Subhash died due to use of said tractor. Hence this issue is hereby decided against the petitioners and in favour of the respondents.”



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10. A perusal of the impugned award reveals that the learned Tribunal has correctly analyzed the entire record and concluded that the appellants/claimants failed to establish the involvement of the tractor in question in the accident, which is a fundamental requirement under Section 163-A of the Motor Vehicles Act, 1988.

11. Firstly, the testimony of appellant/claimant No.1-Sharmila (PW1), who is the wife of the deceased, does not provide sufficient information to establish a direct link between the death and the use of the tractor in question. She merely stated that her husband died in a roadside accident while seated at the steering wheel of the tractor, but did not elaborate on the circumstances of the accident or confirm that it occurred due to the use of the tractor. Furthermore, PW1-Sharmila admitted that no post-mortem examination was conducted on her husband's body, which raises significant doubts about the cause of death. The absence of medical evidence to corroborate the cause of death further weakens the appellants/claimants' case. Therefore, the testimony of PW1-Sharmila cannot be relied upon to prove that the death of Subhash was caused by the use of the tractor in question.

12. Secondly, PW2-Naseeb Singh, who purportedly witnessed the accident, fails to provide reliable or corroborative evidence to support the appellants/claimants' claim. Although, PW2-Naseeb Singh claimed to have seen the tractor overturned, but his testimony is not supported by any documentary or corroborative oral evidence. Significantly, PW2-Naseeb



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Singh did not report the accident to the police or lodge FIR, which is a critical lapse that calls into question the veracity of his testimony. The failure to report the accident casts doubt on the reliability of his testimony. Moreover, there are contradictions in the statement of PW2-Naseeb Singh, who failed to establish that the tractor in question was involved in the accident that allegedly led to demise of Subhash.

13. The testimony of PW4-HC Charan Dass also does not inspire confidence. He testified that he visited the village of the deceased on 04.11.2003, approximately five months after the accident, to verify the facts surrounding Subhash's death. This significant delay in investigating the matter remains unexplained and raises concerns regarding the adequacy of the investigation. He also stated that the police did not receive any information regarding the accident at the time of Subhash's death, further casting doubt on the appellants/claimants' claim that the offending tractor was involved in the accident.

14. The absence of FIR and the post-mortem examination of the deceased are both pivotal gaps in the evidence. In particular, the failure to conduct the post-mortem examination precludes ascertaining the cause of death, thereby weakening the appellants/claimants' assertion that Subhash's death was the result of the accident in question.

15. In view of the above, it is evident that the appellants/claimants failed to establish that Subhash's death was caused by use of the offending tractor. Consequently, the learned Tribunal was correct in its conclusion that



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the appellants/claimants had not led sufficient evidence to prove their claim under Section 163-A of the Motor Vehicles Act, 1988.

16. As a result, I find no legal infirmity in the award rendered by the learned Tribunal. The award dated 23.05.2007 is well-reasoned and supported by the evidence on record and it is accordingly upheld. Consequently, the present appeal is dismissed, being devoid of any merit.

17. Respondent No.2-Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Rahul Pathania, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment, in view of the order dated 18.07.2024 passed in FAO No.1682 of 2007, by this Court.

18. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

04.03.2025

Virrendra

Whether speaking/non-speaking : Yes

Whether reportable : Yes/No