



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
229 **FAO-1635-2015 (O&M)**
Date of decision: 21.01.2025

Sheela @ Sheela Devi

...Appellant(s)

Vs.

Som Nath

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sunil Kumar Sharma, Advocate
for the appellant.

Mr. Anil Saini, Advocate
Mr. Munish Gupta, Advocate
for the respondent.

NIDHI GUPTA, J.

The claimant is in appeal before this Court against the Award dated 16.09.2014 passed by Motor Accident Claims Tribunal, Hoshiarpur (hereinafter referred to as "the learned Tribunal") whereby the claim petition bearing No.RBT MAC Petition No.55 of 24.01.2014/28.03.2014 filed by the claimant/appellant herein under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") has been dismissed on the ground that the ingredients required under Section 166 of the Act were not proved by the appellant. The appellant is the mother of the deceased-Happy @ Anil Kumar.

2. Learned counsel for the appellant submits that the present claim petition was filed by the claimant/appellant with the allegation that the deceased had died due to the injuries suffered by him in a motor vehicular accident that took place on 06.11.2013 at about 4



pm due to the rash and negligent driving of Mini Truck bearing registration No.PB-07AE-5810 (hereinafter referred to as “the vehicle”) by the respondent who is also the owner of the offending vehicle.

3. Ld. Counsel submits that the accident was witnessed by one Gulshan Kumar and another person namely Sham Lal son of Kishan Lal. Even FIR No.160 dated 06.11.2013 under Sections 279, 304-A and 427 IPC was registered at Police Station Sadar, Hoshiarpur against the respondent on the statement of Gulshan Kumar. It is further submitted that the deceased was 32 years old and was working as Steel Fixer and earning Rs.20,000/- per month. Compensation is accordingly prayed for.

4. The learned Tribunal on the basis of pleadings of the parties, framed the following issues:-

“1. Whether death of Happy alias Anil Kumar took place in road accident on 06.11.2013 caused due to rash and negligent driving of truck No.PB-07-AE-5810 by respondent No.1. If so, its effect? OPP

2. If issue No.1 proved, to what amount of compensation claimant entitled? OPP

3. Relief.”

5. It has been submitted by the appellant that the accident in question was witnessed by Gulshan Kumar. However, admittedly, the said Gulshan Kumar has not been examined by the appellant before the learned Tribunal. Merely because FIR has been registered on the statement of Gulshan Kumar would not establish negligence against the respondent.



6. As regards the second eyewitness Sham Lal/AW2, his testimony does not inspire confidence, being contradictory. Sham Lal had stated in his examination-in-chief that he was present at the spot of accident; however, in his cross-examination, he stated that he did not know whether the accident in question took place due to the negligence of the deceased or due to the negligence of the respondent.

7. As per the evidence on record, it was established that the accident had taken place as the deceased himself had brought the motorcycle on the wrong side of the road. In fact, it was proven on record that the accident took place as the deceased who was riding his motorcycle was in the process of overtaking a truck in front of him in the course of which he brought the motorcycle on the wrong side of the road without bothering about the on-coming Mini Truck/the vehicle. The fact that the deceased was on the wrong side of the road was admitted by AW2 in his cross-examination; and is also evident from the Photographs (Ex.R1). As such, the learned Tribunal has correctly held that the offending vehicle was on the right/correct side of the road and it was the motorcycle which was being driven by the deceased on the wrong side; and therefore, mere registration of the FIR was of no consequence. Further, it has nowhere been stated either in the FIR or in the claim petition or in the statement of AW2/Sham Lal that the offending vehicle was brought on the wrong side by the respondent. Hence the negligence of the respondent was not proven.



8. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. Therefore, the claim petition of the appellant was correctly dismissed by the learned Tribunal.

9. In view of the above, present appeal is **dismissed**.

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

21.01.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No