

(2014) 05 P&H CK 0526
In the Punjab And Haryana At Chandigarh
Case No : FAO No. 1504 of 2011

Nitesh

APPELLANT

Vs

Smt. Nuri and Others

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163

Citation : (2014) 05 P&H CK 0526

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : N.R. Dahiya, Advocate for the Appellant; A.K. Kansal, Advocate for Respondent Nos. 1 to 3, Mr. Ashik Malik, Advocate for Respondent No. 4, Mr. Eklavya Darshi, Advocate for Respondent No. 5, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—The appeal in FAO No. 1504 of 2011 is with regard to a claim for injuries and the appeal is FAO No. 2238 of 2011 is with regard to claim for death that had taken place in an accident on 13.10.2006. The deceased was a pillion rider and the injured was said to be driving a motor cycle. In a collision alleged to have taken place involving the truck driven by the 1st respondent in a rash and negligent manner, the death had ensued and the driver of the motor cycle had been seriously injured. In the FIR lodged immediately after the accident at the instance of brother of the deceased who admittedly was not an eye witness, it had been stated that there was an unknown vehicle which had caused accident that resulted in death and injuries. At the trial, the evidence was given to the effect that one Tarsem and Sushil had been actually standing near the dead body when the brother of the deceased had arrived and they gave information about the registration number of the vehicle that was involved in the accident and the name of the driver who was said to have driven the vehicle. The Tribunal reasoned that if the information had been passed on by eye witnesses, they would have themselves given the statement to the police giving details of the

accident with particulars of the registration number of the vehicle as far as the name of the driver.

2. Else, the brother of the deceased who was said to have secured that information from two persons claiming to be eye witnesses would have definitely reference about the information that he had secured from two persons Tarsem and Sushil and would have also given the particulars of the registration number of the vehicle and the name of the driver. The fact that the First Information Report merely stated that the accident had been caused by unknown vehicle, the Tribunal reasoned that it merely showed that the so-called eye witnesses Tarsem and Sushil were got up witnesses and they could not have been present at the place of occurrence.

3. I have seen the entire text of evidence given by the witnesses. PW1, who had lodged the FIR was admittedly not an eye witness and in his evidence, he has not stated any where as to why he did not give the information in the FIR about the alleged particulars collected from Tarsem and Sushil. PW2 was the wife of the deceased pillion rider and she was not an eye witness. PW3 was Tarsem, who was said to be an eye witness stated that he along with Sushil was coming from Delhi to Ratia hiring a private car. When they reached the area of village Madina near Mokhra turn about, they saw a Tata vehicle driven by Rajinder going in rash and negligent manner and hit a motor cycle due to which impact the motor cyclist and pillion rider fell down and sustained serious injuries. The driver of the vehicle who was supposed to have stopped the vehicle for a while when Tarsem had tried to note down the registration number of the vehicle and when he asked the name and particulars of the driver, he gave the name but however, ran away from the spot. Thereafter, he was supposed to have come near the injured persons and asked their names. He would also state that he informed PW1 about the accident and the name of the driver and the particulars of the vehicle. In the cross-examination it was elicited that motor cycle was coming from the opposite direction and they witnessed a head on collision. It was also stated that they noticed the tata vehicle from about 150 to 200 feet. He would state that he was examined for the first time two months after the accident by the police. In this case, the driver who had filed the written statement denying the accident died during the pendency of proceedings and therefore, his evidence also could not be placed. If the police had materials on the basis of which a challan had been laid, it would have been only appropriate that the investigating officer was himself examined before the Tribunal to gather information about how they had materials to show the involvement of the insured's vehicle. It is not unusual that the FIR does not contain the details of the vehicle and FIR is lodged by a person who was not an eye witness. But if the complainant gives evidence that he obtained information from eye witnesses immediately at the spot and he reports to the police without any material of the information secured by him then the whole narration of the complainant could only be seen false and exaggerated. Of the two persons Tarsem and Sushil, only one of them was examined and this witness was also not very convincing that he asked the name of the driver,

collected information but would not share that information with the police immediately. He admits that he was examined by the police only two months after the alleged accident. If the Tribunal has on assessment of the evidence found that the vehicle had not been involved, I do not think this a case which would allow for an intervention for the quality of evidence place before the Tribunal was too artificial and skeletal to assess that the insured's vehicle had been involved in the accident. I will not, therefore, make any modification with regard to the finding regarding the non-involvement of the vehicle.

4. The case must only be taken as hit and run incident and the only remedy which the claimants will have, will be to secure the compensation from the fund constituted for the purpose by the State u/s 163 of the Motor Vehicles Act for death and for injury. If such applications are filed, any delay in filing the application shall not be used against them and it shall be taken that the delay has been occasioned on account of prosecution of the case before the Tribunal and this Court. It shall also not be necessary to secure any further proof of the death or injury as resulting from a motor accident. It shall be taken as such.

5. The appeals are dismissed but with the above observations.