
(2013) 07 P&H CK 0170
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 572 of 2012 O and M

The Oriental Insurance Co. Limited

APPELLANT

Vs

Smt. Sudesh and Others

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2013) 07 P&H CK 0170

Hon'ble Judges : Vijender Singh Malik, J

Bench : Single Bench

Advocate : R.K. Bashamboo, for the Appellant; B.S. Bagri, Advocate for Respondents Nos. 1 to 3 and Mr. N.S. Panwar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Singh Malik, J.—This is an appeal brought by the Oriental Insurance Co. Limited, the insurer, against the award dated 15.11.2011 passed by learned Motor Accidents Claims Tribunal, Sonapat (for short, "the Tribunal"). Smt. Sudesh and two others, the claimants brought a petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation in a sum of Rs. 10,00,000/- for the death of Krishan in a roadside accident that took place on 9.5.2009. Vide the impugned award, learned Tribunal has awarded a sum of Rs. 5,50,000/- as compensation to the claimants with interest. The appellant has challenged the award on the finding recorded by learned Tribunal on issue No. 1 where it is held that the accident is an outcome of rash and negligent driving of motorcycle bearing registration No. HR-10M-3775 by respondent No. 1. The facts necessary to decide this appeal can be reproduced as under:

On 9.5.2009, Krishan [since deceased] was going from Sonapat to Village Chitana for bringing spare parts of tractor. When he was near Hulla Heri, respondent No. 1 driving motorcycle bearing registration No. HR-10M-3775 in a rash and negligent manner came there and had hit the motorcycle of the deceased. As a result of the same, Krishan suffered fatal injuries. The claimants

are widow and minor children of the deceased. The deceased was running a tractor workshop and his monthly income was Rs. 8,000/-. In this way, a sum of Rs. 10.00 lacs is sought as compensation.

The aforesaid averments of the claimants have been controverted by the respondents. They have denied the very accident to have occurred in the aforesaid manner. They have also denied the claimants to be entitled to the amount sought as compensation.

2. Framing issues and taking evidence of the parties, learned Tribunal came to the conclusion that the accident is an outcome of rash and negligent driving of motorcycle bearing registration No. HR-10M-3775 by respondent No. 1.

3. Learned counsel for the appellant has submitted that this is an accident between two motorcycles. According to him, the FIR is against the deceased himself. According to him, the only alleged eye-witness of the occurrence examined in this case cannot be believed to be an eyewitness of the occurrence. According to him, neither he was a summoned witness nor he came forward in the first instance. According to him, he cannot be believed. In this regard, he has cited before me a decision of a co-ordinate Bench of this court in *Murti Devi Vs. Suresh Kumar*, where the statement of the witness was never recorded by the police and he did not come to the police station though, the same was situated 150 yards away from the place of occurrence. He even did not accompany the injured to the hospital. He was an educated person and had worked with an Advocate for 10 years and he did not make any effort to contact anyone. His statement was, consequently, disbelieved.

4. Learned counsel for the respondents-claimants has submitted, on the other hand, that the eye-witness, named, Chand Singh had no reason to accompany anyone to the hospital. According to him, the death occurred at the spot and there was no one who was to be accompanied to the hospital in this case. According to him, he informed the wife of the deceased and the wife of the deceased has stated so in her statement. He has submitted that for these reasons, learned Tribunal was justified in placing reliance on the said statement. According to him, for these reasons, the ratio of *Murti Devi's* case [supra] would not be attracted to facts of this case.

5. Though, the FIR is against the deceased, yet it is to be seen as to who had lodged the FIR. The FIR is lodged by the person who is claimed to be responsible for this accident. He has tried to shift the blame for the accident to the driver of the other vehicle and, therefore, much importance cannot be attached to the contents of the FIR.

6. The eye-witness, named, Chand Singh has informed the wife of the deceased in this regard. If he did not go to the police station, that would hardly make any difference. Moreover, he is not a person with the background of the person involved in *Murti Devi's* case [supra]. So, learned Tribunal has not been unjustified in placing reliance on the statement of Chand Singh to return a

finding on the issue. Learned Tribunal was fortified in his view by the fact that the driver of the offending vehicle did not step into the witness box to rebut the testimony of Chand Singh. Therefore, learned Tribunal was fully justified in holding that the accident is an outcome of rash and negligent driving of the motorcycle bearing registration No. HR-10M-3775 by respondent No. 1. Consequently, the appeal is found to have no merit and is dismissed.