

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

FAO No.3107 of 2006

Date of Decision.24.10.2017

Smt. Roshani and others

.....Appellants

Vs

Dalbir Singh and others

.....Respondents

Present: Mr. K.L. Saini, Advocate for
Mr. Rajesh Sheoran, Advocate
for the appellants.

Mr. R.N. Singal, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The appeal has been preferred by the widow of late Balbir Singh, who unfortunately died in a vehicular accident occurred on 10.11.1993 with the alleged vehicle i.e. jeep bearing registration No.DL-2-CD-4114 driven by Dalbir Singh-respondent No.1 in a rash and negligent manner, against the award passed by the Tribunal, whereby the claim petition filed by the claimants has been dismissed.

Mr. Saini, learned counsel appearing on behalf of the appellants submitted that the Tribunal has committed illegality and perversity in dismissing the claim petition on the ground of failure to prove the identity of the driver of the vehicle. There is misdirection and misreading of oral and documentary evidence, much less, pleadings and therefore, the award is not sustainable. Even if the appellants-claimants have not been able to prove rashness and negligence of the vehicle, the claimants in the alternative were entitled to compensation under 'No Fault Liability'. In this regard, he has drawn of the Court to the written statement

filed by the owner wherein the factum of the accident has not been denied. Even the DDR was also lodged on the same day.

Mr. Singal, learned counsel appearing on behalf of respondent No.3-insurance company submits that in the absence of the identity of the driver and the vehicle, particularly, when the original claim petition was filed by arraying a different driver which was later on amended, it is an apparent case of collusion between the owner and the claimants and therefore, rightly so, the claim petition has been dismissed. Even the appellants-claimants are not entitled to compensation under Section 140 of the Motor Vehicles Act as sought to be claimed, thus, urges this Court for dismissal of the appeal.

I have heard learned counsel for the parties and appraised the paper book. The Tribunal in paragraph 2 extracted the written statement of the owner, which read as under, wherein the factum of the accident has not been denied:-

“2. Respondent No.2 filed written statement taking preliminary objections of maintainability; cause of action and misjoinder and non-joinder of necessary parties. On merits, the contents of the claim petition have been denied. The accident has not been denied, but the same is stated to be an act of providence. It has been denied that the alleged accident was caused due to rash and negligent driving of the jeep by respondent No.1. Since there was no fault on the part of the driver of the jeep, the police after due investigation did not lodge the FIR. The amount claimed is stated to be highly exaggerated and sought the dismissal of the claim petition.”

In view of such fact, the question which arises is whether the identity of the driver and the vehicle would be of any value or not and further claimants are entitled to compensation under Section 140 of the

Motor Vehicles Act. The answer is in positive, for, even the eye-witness PW-2 though did not identify the driver of the vehicle but stated that the vehicle was being driven rashly and negligently. Nothing prevented the insurance company to summon the owner to ascertain the truth with regard to involvement of the vehicle *viz-a-viz* the admission the pleadings. Since the appellants have not been able to prove rash and negligent driving of the driver of the vehicle in question, in my view, they are definitely entitled to compensation under “No Fault Liability” by invoking the provisions of Section 140 of the Motor Vehicles Act. Therefore, the appellants shall be entitled to a compensation of ₹50,000/- along with interest @6% per annum from the date of filing of the claim petition within a period of three months from the date of receipt of certified copy of this order, failing which it shall further entail interest @12% per annum. The liability to pay the compensation shall be on the insurance company. The amount of compensation shall be distributed equally between the claimants.

The award stands modified and the appeal is allowed to the above extent.

(AMIT RAWAL)
JUDGE

October 24, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No