

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

**FAO-4214-2013 (O&M)
Pronounced on : 29.01.2024**

Gohla Rani and others

... Appellants

Versus

Mithu Singh and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present : Mr. J.K. Singla, Advocate
for the appellants.

Mr. Randeep S. Gill, Advocate for
Mr. G.S. Nahel, Advocate
for respondent No.1.

Respondent No.2 ex-parte.

RITU TAGORE, J.

1. This appeal is directed against the Judgment/award dated 04.02.2013 passed by Motor Accident Claims Tribunal, Sangrur (for short 'MACT'), in which petition filed by claimants under Section 166 of the Motor Vehicles Act, 1988 (for short 'MV Act'), for grant of compensation, has been dismissed.

2. Relevant facts for adjudication of petition are as under:-

On 23.03.2012, Mohni Singh (deceased) along with Raju Ram son of Sohan Ram, came to Sangrur to offer condolences for the death of his relative. Both were going from Barnala crossing to Sunder Basti, Sangrur, after purchasing goods. Mohni Singh was going ahead of Raju Ram, and when he reached opposite side of the petrol pump on Barnala Road, Sangrur, a scooter, make Bajaj Chetak bearing registration No.PB-11-S-7119

(referred to as the offending vehicle), driven in a rash and negligent manner by respondent No.2 (Kuldeep Singh), came from the front/opposite side and hit Mohni Singh, resulted in causing multiple injuries on his person. The driver fled from the place of occurrence after abandoning the offending vehicle at the spot. Thereafter, Raju Ram was informed by people gathered at the spot that offending vehicle was driven by respondent No.2 (Kuldeep Singh). Mohni Singh was rushed to Civil Hospital, Sangrur, from where he was referred to Rajindra Hospital, Patiala. Unfortunately, on 02.04.2012 Mohni Singh succumbed to his injuries.

3. FIR No.65 dated 02.04.2012 under Sections 279, 304-A IPC at Police Station City Sangrur, was registered against Kuldeep Singh (respondent No. 2) in respect of the accident in question.

4. Upon appearance, respondents No.1 and 2 filed their separate replies. Respondent No.1, in his written statement, raised legal objections regarding non-maintainability of the petition and mis-joinder of necessary parties. He also pleaded his no concern with the offending vehicle, having sold it to respondent No.2 in the year 2009, who has been owner in possession of the offending vehicle since then. Additionally, he denied any involvement in the alleged accident, and by refuting remaining averments, prayed for dismissal of the petition.

5. Respondent No.2, in his separate written statement, denied his involvement in the accident and also asserted his false implication in the criminal case and, in this petition. By negating all the averments made in the petition against him, prayed for its dismissal, being denude of merits.

6. No replication was filed by claimants. On the basis of pleadings, learned Tribunal framed the following issues:-

- i) Was Mohni Singh killed in a motor vehicle accident caused on account of rash and negligent driving

of second respondent Kuldeep Singh of a scooter bearing registration No.PB-11-S-7119 owned by first respondent Mithu Singh at about 07:30 p.m. on 23.03.2012 opposite petrol pump, Barnala Road, Sangrur? OPA

ii) If issue No.1 is proved, are the applicants entitled to any compensation, if yes, to what amount and from whom? OPA

iii) Relief.

7. On appraisal of evidence led by parties, learned Tribunal ruled against the claimants, concluding that they failed to prove that respondent No. 2, caused the accident and resultant death of Mohni Singh, involving the offending vehicle. Consequently, dismissed the petition filed by the claimants.

8. In pursuance of the notice issued in this appeal, respondent No.2 failed to appear despite service and was proceeded *ex-parte*.

9. Learned counsel for appellants contended that learned Tribunal completely misdirected itself in appreciating the evidence presented. It is stated that in cases related to motor accident claim cases, claimants are not required to prove the case as it is required in criminal cases. Ergo, claim proceedings are summary in nature, and averments in the petition are to be established on the touch-stone of preponderance of probabilities. Therefore, strict rules of evidence, as applicable in a criminal trial, do not apply in motor accident compensation cases. Learned counsel submitted that learned Tribunal, however, adopted parameters required in criminal cases to analyze the evidence and committed serious jurisdictional error while dismissing the claim petition.

10. Addressing this further, learned counsel stated that the statement of Raju Ram (AW-2), an eye-witness, has been wrongly discarded by learned Tribunal by observing that the witness could not have seen the

offending vehicle and its driver, who was on high speed, as the offending vehicle must have gone out of his sight after leaving the spot, by the time he reached there, walking behind at distance of 2/3 feet from the deceased. Learned counsel submitted that witness Raju Ram (AW-2), specifically deposed that offending vehicle was being driven by respondent No.2 in a rash and negligent manner. He also testified that people gathered at the spot, disclosed him the particulars of the driver. The learned counsel stated that respondent No. 2, driver has not denied his particulars regarding his name, parentage and address as detailed by the witness in his deposition and in the FIR (Ex.A1). However, the learned Tribunal completely overlooked these material facts and wrongly concluded that he (AW-2) was not an eye-witness to the occurrence.

11. Learned counsel contended that learned Tribunal, also failed to notice that FIR (Ex.A1) was registered on the statement of Raju Ram (AW-2), which received support from PMR (Ex.A2), wherein cause of death has been recorded to be road side accident.

12. Learned counsel further submitted that learned Tribunal failed to appreciate that the driver of the offending vehicle, Kuldeep Singh (RW-1) during his testimony admitted that he had been arrested by the police and criminal case related to causing the accident and resultant death of the deceased had been registered against him. This admission, learned counsel contended, serves sufficient corroboration to the version of claimants. Also, the other observation of learned Tribunal that the claimants, failed to present the evidence of criminal case record, is also erroneous. It is stated that learned Tribunal's duty is to assess the evidence presented before it; and claimants led ample evidence to support their case, which indeed, respondents failed to rebut.

13. Submitting in this regard, learned counsel contended that conclusion and inferences drawn by the learned Tribunal are against facts and evidence. A prayer is made to allow the appeal and set aside the impugned judgment, with further prayer for grant of Rs.20 lacs to claimants, by allowing their petition. To support his arguments, learned counsel for the appellants has placed reliance on Ramphal vs. Baljit Singh, 2013(1) PLR 790; Sudama Devi and Other vs. Kewal Ram and Others, 2008(2) RCR (Civil) 72; National Insurance Company Ltd. vs. Sanjay Kumar and Others, 2011(2) RCR (Civil) 242; Kusum Lata and Others vs. Satbir and Others, 2011(3) SCC 646 and Bimla Devi and Others vs. Himachal Road Transport Corporation and Others, 2009(13) SCC 530.

14. On the contrary, learned counsel for respondent No.1 supported the findings of the learned Tribunal. It is submitted that learned Tribunal has rightly appreciated the evidence. The claimants failed to establish their case, even on preponderance of probabilities. It is stated that the claimants failed to explain the delay in lodging the FIR. In this regard, it is submitted that had Raju Ram (AW-2) witnessed the accident and taken the deceased to hospital as alleged, his name would have been entered in the medical record, prepared in respect of the deceased. By referring to PMR (Ex.A-2), learned counsel contended that non mentioning of name of Raju Ram (AW-2) goes a long way to discredit his version, having accompanied the deceased at relevant time and had seen the accident. It is stated that Raju Ram (AW-2) is relative of deceased. He is brother-in-law of deceased, therefore, has been introduced as an eye-witness to the accident. His testimonial account has been discarded by the Tribunal by taking into consideration the infirmities in his version and other attending circumstances.

15. Learned counsel further argues that mere registration of FIR or filing of charge-sheet against the driver of the vehicle does not, by

themselves, constitute substantive evidence of accident and driver's involvement and the offending vehicle. The claimants must substantiate their case on the strength of their evidence. The statement of driver-Kuldeep Singh (RW-1), admitting the registration of FIR against him, does not establish his involvement in the accident. Further, driver-respondent No.2 has alleged his false involvement in both, the criminal case and this petition. The learned counsel argued that since claimants failed to establish the foundational facts implicating respondent No.2-driver, with the offending vehicle in causing accident, dismissal of the petition cannot be faulted with. It is stated that there is no merit in this appeal and it should be dismissed.

16. I have heard learned counsel for the appellants as well as respondent No.1 and have gone through the record and the paper book.

17. The Tribunal based its' decision on several factors. Firstly, it doubted the presence of Raju Ram (AW-2) at spot, since he did not lodge the FIR immediately, after the accident. Secondly, there was no medical record confirming AW-2's presence at the hospital with the injured-deceased, undermining his claim of taking deceased to hospital. Thirdly, despite claims made by claimants and Raju Ram (AW-2), crowd being present at the spot providing details to Raju Ram (AW-2) about respondent No.2, no such person was examined to support this. Additionally, Raju Ram (AW-2) admitted to not providing a statement to the police about the accident, and there was lack of other evidence, such as site-plan or recovery memo, to corroborate the testimonial account of Raju Ram (AW-2) regarding involvement of offending vehicle.

18. After reviewing the evidence on record, no illegality or perversity is found in the conclusions drawn by the learned Tribunal. Firstly, claimants have not provided any explanation, much less cogent explanation, for, lodging the FIR against respondent No.2 belatedly, alleging his

involvement in causing the accident with the offending vehicle. The statements of AWs are bereft in this regard. Prompt lodging of FIR by an eye witness, stamps his presence at the spot, whereas undue and unexplained delay undermines its credibility and suggests embellishment in the facts.

19. The FIR was lodged nine days after the accident without any explanation for the delay from the witnesses. If Raju Ram (AW-2), truly witnessed the accident as alleged, there seems to be no reason why he would not have immediately reported it to police especially since he had the details about the driver and the vehicle involved, furnished by the crowd gathered at the place of accident. He could have informed the police available at the hospital, where he statedly took the injured (deceased) after the accident. The hospital authorities also inform the police about the arrival of road side accidental cases. However, there is no medical record to establish that Raju Ram (AW-2) brought the injured (deceased) to hospital from the accident site, as claimed by him. Learned Tribunal has rightly pointed out these deficiencies in the evidence of the claimants casting doubt on presence of Raju Ram (AW-2) at the spot.

20. Further, Raju Ram (AW-2) did not give the names of the persons, who allegedly gave him the particulars of respondent No.2. At least, he could have noted their names. His vague statement has failed to crystallize his version of being an eye-witness to the accident. Further, no person has been examined, who saw the accident to corroborate the statement of AW-2. Gohla Rani-AW-1 is not an eye witness to the accident, so her testimonial account is of no use on the cause of accident in question.

21. It is surprising that neither any one from the crowd informed the police nor police got to know about the accident, especially, considering that accident occurred opposite to a petrol pump at about 7:30 p.m. when area is usually busy. These facts and circumstances raise doubt about the claimant's

narrative. Still further, as per own case of the claimants, driver-respondent No. 2 left the offending scooter at the spot. If Raju Ram (AW-2) had witnessed the accident and informed the police, they could have collected the offending vehicle, connecting the respondent No.2- driver with the accident in question. The Tribunal has rightly observed the aforesaid infirmities in the case of prosecution.

22. In claim cases, it is well established principle that evidence must be tested on preponderance of probabilities. In present case, the claimants failed to lead any reliable and cogent evidence to establish the foundational facts of causing the accident by the driver-respondent No. 2 involving offending vehicle. Merely, registration of an FIR against respondent No.2- driver does not prove the accident. The claimants must present convincing evidence independently to probablize their version as claimed. Respondent No.2-Kuldeep Singh, during his testimony as RW-1 explicitly denied his involvement in the accident, alleging his false implication. Additionally, delayed lodging of FIR, nine days after the accident without cogent explanation, weakens the claimant's case. It is settled that evidence collected by the police in criminal case is corroborative in nature. Nonetheless, supporting evidence like site-plan, recovery memo of the offending vehicle have not been placed on record to corroborate their version. There is no dispute on the principles culled out in the referred case laws, cited by the claimants; however, same has failed to advance the cause of the claimants in given factual matrix. It is held that the Tribunal has rightly appreciated the evidence.

23. For reasons aforementioned, I do not find any legality or perversity in the findings under challenge. Accordingly, present appeal is, hereby, dismissed.

24. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(RITU TAGORE)
JUDGE

Pronounced on : January 29, 2024
Gaurav Sorot

Whether reasoned/speaking	Yes /No
Whether reportable	Yes /No

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9. Learned counsel for appellants contended that learned Tribunal completely misdirected itself in appreciating the evidence presented. It is stated that in cases related to motor accident claim cases, claimants are not required to prove the case as it is required in criminal cases. Ergo, claim proceedings are summary in nature, and averments in the petition are to be established on the touch-stone of preponderance of probabilities. Therefore, strict rules of evidence, as applicable in a criminal trial, do not apply in motor accident compensation cases. Learned counsel submitted that learned Tribunal, however, adopted parameters required in criminal cases to analyze the evidence and committed serious jurisdictional error while dismissing the claim petition.

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offending vehicle and its driver, who was on high speed, as the offending vehicle must have gone out of his sight after leaving the spot, by the time he reached there, walking behind at distance of 2/3 feet from the deceased. Learned counsel submitted that witness Raju Ram (AW-2), specifically deposed that offending vehicle was being driven by respondent No.2 in a rash and negligent manner. He also testified that people gathered at the spot, disclosed him the particulars of the driver. The learned counsel stated that respondent No. 2, driver has not denied his particulars regarding his name, parentage and address as detailed by the witness in his deposition and in the FIR (Ex.A1). However, the learned Tribunal completely overlooked these material facts and wrongly concluded that he (AW-2) was not an eye-witness to the occurrence.

11. Learned counsel contended that learned Tribunal, also failed to notice that FIR (Ex.A1) was registered on the statement of Raju Ram (AW-2), which received support from PMR (Ex.A2), wherein cause of death has been recorded to be road side accident.

12. Learned counsel further submitted that learned Tribunal failed to appreciate that the driver of the offending vehicle, Kuldeep Singh (RW-1) during his testimony admitted that he had been arrested by the police and criminal case related to causing the accident and resultant death of the deceased had been registered against him. This admission, learned counsel contended, serves sufficient corroboration to the version of claimants. Also, the other observation of learned Tribunal that the claimants, failed to present the evidence of criminal case record, is also erroneous. It is stated that learned Tribunal's duty is to assess the evidence presented before it; and claimants led ample evidence to support their case, which indeed, respondents failed to rebut.

13. Submitting in this regard, learned counsel contended that conclusion and inferences drawn by the learned Tribunal are against facts and evidence. A prayer is made to allow the appeal and set aside the impugned judgment, with further prayer for grant of Rs.20 lacs to claimants, by allowing their petition. To support his arguments, learned counsel for the appellants has placed reliance on Ramphal vs. Baljit Singh, 2013(1) PLR 790; Sudama Devi and Other vs. Kewal Ram and Others, 2008(2) RCR (Civil) 72; National Insurance Company Ltd. vs. Sanjay Kumar and Others, 2011(2) RCR (Civil) 242; Kusum Lata and Others vs. Satbir and Others, 2011(3) SCC 646 and Bimla Devi and Others vs. Himachal Road Transport Corporation and Others, 2009(13) SCC 530.

14. On the contrary, learned counsel for respondent No.1 supported the findings of the learned Tribunal. It is submitted that learned Tribunal has rightly appreciated the evidence. The claimants failed to establish their case, even on preponderance of probabilities. It is stated that the claimants failed to explain the delay in lodging the FIR. In this regard, it is submitted that had Raju Ram (AW-2) witnessed the accident and taken the deceased to hospital as alleged, his name would have been entered in the medical record, prepared in respect of the deceased. By referring to PMR (Ex.A-2), learned counsel contended that non mentioning of name of Raju Ram (AW-2) goes a long way to discredit his version, having accompanied the deceased at relevant time and had seen the accident. It is stated that Raju Ram (AW-2) is relative of deceased. He is brother-in-law of deceased, therefore, has been introduced as an eye-witness to the accident. His testimonial account has been discarded by the Tribunal by taking into consideration the infirmities in his version and other attending circumstances.

15. Learned counsel further argues that mere registration of FIR or filing of charge-sheet against the driver of the vehicle does not, by

themselves, constitute substantive evidence of accident and driver's involvement and the offending vehicle. The claimants must substantiate their case on the strength of their evidence. The statement of driver-Kuldeep Singh (RW-1), admitting the registration of FIR against him, does not establish his involvement in the accident. Further, driver-respondent No.2 has alleged his false involvement in both, the criminal case and this petition. The learned counsel argued that since claimants failed to establish the foundational facts implicating respondent No.2-driver, with the offending vehicle in causing accident, dismissal of the petition cannot be faulted with. It is stated that there is no merit in this appeal and it should be dismissed.

16. I have heard learned counsel for the appellants as well as respondent No.1 and have gone through the record and the paper book.

17. The Tribunal based its' decision on several factors. Firstly, it doubted the presence of Raju Ram (AW-2) at spot, since he did not lodge the FIR immediately, after the accident. Secondly, there was no medical record confirming AW-2's presence at the hospital with the injured-deceased, undermining his claim of taking deceased to hospital. Thirdly, despite claims made by claimants and Raju Ram (AW-2), crowd being present at the spot providing details to Raju Ram (AW-2) about respondent No.2, no such person was examined to support this. Additionally, Raju Ram (AW-2) admitted to not providing a statement to the police about the accident, and there was lack of other evidence, such as site-plan or recovery memo, to corroborate the testimonial account of Raju Ram (AW-2) regarding involvement of offending vehicle.

18. After reviewing the evidence on record, no illegality or perversity is found in the conclusions drawn by the learned Tribunal. Firstly, claimants have not provided any explanation, much less cogent explanation, for, lodging the FIR against respondent No.2 belatedly, alleging his

involvement in causing the accident with the offending vehicle. The statements of AWs are bereft in this regard. Prompt lodging of FIR by an eye witness, stamps his presence at the spot, whereas undue and unexplained delay undermines its credibility and suggests embellishment in the facts.

19. The FIR was lodged nine days after the accident without any explanation for the delay from the witnesses. If Raju Ram (AW-2), truly witnessed the accident as alleged, there seems to be no reason why he would not have immediately reported it to police especially since he had the details about the driver and the vehicle involved, furnished by the crowd gathered at the place of accident. He could have informed the police available at the hospital, where he statedly took the injured (deceased) after the accident. The hospital authorities also inform the police about the arrival of road side accidental cases. However, there is no medical record to establish that Raju Ram (AW-2) brought the injured (deceased) to hospital from the accident site, as claimed by him. Learned Tribunal has rightly pointed out these deficiencies in the evidence of the claimants casting doubt on presence of Raju Ram (AW-2) at the spot.

20. Further, Raju Ram (AW-2) did not give the names of the persons, who allegedly gave him the particulars of respondent No.2. At least, he could have noted their names. His vague statement has failed to crystallize his version of being an eye-witness to the accident. Further, no person has been examined, who saw the accident to corroborate the statement of AW-2. Gohla Rani-AW-1 is not an eye witness to the accident, so her testimonial account is of no use on the cause of accident in question.

21. It is surprising that neither any one from the crowd informed the police nor police got to know about the accident, especially, considering that accident occurred opposite to a petrol pump at about 7:30 p.m. when area is usually busy. These facts and circumstances raise doubt about the claimant's

narrative. Still further, as per own case of the claimants, driver-respondent No. 2 left the offending scooter at the spot. If Raju Ram (AW-2) had witnessed the accident and informed the police, they could have collected the offending vehicle, connecting the respondent No.2- driver with the accident in question. The Tribunal has rightly observed the aforesaid infirmities in the case of prosecution.

22. In claim cases, it is well established principle that evidence must be tested on preponderance of probabilities. In present case, the claimants failed to lead any reliable and cogent evidence to establish the foundational facts of causing the accident by the driver-respondent No. 2 involving offending vehicle. Merely, registration of an FIR against respondent No.2- driver does not prove the accident. The claimants must present convincing evidence independently to probablize their version as claimed. Respondent No.2-Kuldeep Singh, during his testimony as RW-1 explicitly denied his involvement in the accident, alleging his false implication. Additionally, delayed lodging of FIR, nine days after the accident without cogent explanation, weakens the claimant's case. It is settled that evidence collected by the police in criminal case is corroborative in nature. Nonetheless, supporting evidence like site-plan, recovery memo of the offending vehicle have not been placed on record to corroborate their version. There is no dispute on the principles culled out in the referred case laws, cited by the claimants; however, same has failed to advance the cause of the claimants in given factual matrix. It is held that the Tribunal has rightly appreciated the evidence.

23. For reasons aforementioned, I do not find any legality or perversity in the findings under challenge. Accordingly, present appeal is, hereby, dismissed.

24. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(RITU TAGORE)
JUDGE

Pronounced on : January 29, 2024
Gaurav Sorot

Whether reasoned/speaking	Yes /No
Whether reportable	Yes /No