



FAO-2188-2007 (O&M)

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

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**FAO-2188-2007 (O&M)
Reserved on:-28.02.2025
Date of Decision :-04.03.2025**

Smt. Sushila and Others

....Appellants

VERSUS

Sanjay and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ashish Gupta, Advocate for the appellants.

Mr. Aseem Aggarwal, Advocate for respondent No.3 – Insurance Co.

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SUDEEPTI SHARMA, J.

1. The present appeal has been preferred by the appellants-claimants against the award dated 05.04.2007 passed in claim petition filed under Section 166 of the Motor Vehicles Act, 1988, whereby the learned Motor Accident Claims Tribunal, Panipat (for short, 'the Tribunal'), dismissed the claim petition of the appellant-claimants.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 20.06.2005, Hawa Singh (since deceased) and his son Satender Kumar were riding a motor-cycle bearing registration No. HR-60-1266 for going towards village Bapoli from his village Bhrampur. At about 8.30 PM, when they reached near the gate of a warehouse, a motor-cycle bearing registration No.HR-60-4030 (hereinafter referred to as the offending motor-cycle) driven at a very high speed by Sanjay respondent No.1 in a rash and negligent manner from the opposite direction, hit the motor-cycle of Hawa Singh and his son Satender Kumar. They fell down on the road. The



deceased received multiple grievous injuries. He was taken to Jindal Nursing Home, Panipat where he remained admitted as indoor patient for two days. After two days, when he was being taken to PGIMS Rohtak from the said hospital, he succumbed to his injuries on the way near Gohana. The deceased was 42 years old at the time of his death. He was in agriculture and dairy farming business and was earning Rs.15,000/-per month from the said avocation.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1. Whether the accident in question took place due to rash and negligent driving of vehicle No.HR-60-4037 by respondent No.1? OPP

2. If issue No.1 is proved to what amount of compensation the claimants are entitled to and from whom? OPP.

3. Whether the respondent No.3 is not liable to pay any compensation in view of POS taken by it in the written statement? OPR-3

4. Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim petition. Hence the claimants/appellants filed the present appeal for grant of compensation.

SUBMISSIONS OF LEARNED COUNSELS FOR THE PARTIES

6. Learned counsel for the claimants-appellants contends that claim petition is dismissed only on the ground that there is a delay of 24 days in lodging



of the FIR and further on the ground that the appellants were not able to prove the factum of compromise due to which the FIR was delayed. He, therefore, prays that the present appeal be allowed.

7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the award has rightly been passed and the learned Tribunal has rightly dismissed the claim petition filed by the claimants. He therefore, prays for dismissal of the appeal.

8. I have heard the learned counsel for the parties and perused the whole record of this case.

9. The relevant portion of the award is reproduced as under:-

“10. In order to prove this issue, one of the claimants Satender Kumar appeared as PW.1. As per case of the claimants, he was riding the motor cycle with his father when accident took place and was thus, an eye-witness to the accident. He has stated that on 20.6.2005, he and his father were riding a motor cycle for going towards village Bapoli from their village. His father was driving the motor cycle and he was a pillion rider. At about 8.30 pm, when they reached near a warehouse, the offending motor cycle driven at a very high speed and in a rash and negligent manner by Sanjay respondent No.1 came from the opposite direction and hit their motor cycle. They fell down on the road. His father fell on the metal portion of the road and received multiple injuries whereas he fell on the kacha portion of the road. He has further stated that the accident was witnessed by Prem Singh Sarpanch of their village and one Jagdish of Village Bhrampur. They arrived at the spot. All of them took his father in Jindal Nursing



Home, Panipat, where he remained admitted upto 22.6.2005. On 22.6.2005, his father was being taken to PGIMS Rohtak when he succumbed to injuries near Gohana. His dead body was taken to village and cremated. They did not report the matter to the Police. Several panchayats were convened in the village to settle the matter at panchayat level with respondent no.1, but with no result. Ultimately, they reported the matter to the police and got a case registered against respondent no.1 for having caused the accident. In cross-examination, he added that he did not get any treatment as he had received only simple injuries.

Prem Singh alleged eye-witness to the accident is examined as PW.2. He has stated that on the day of accident, he and one Jagdish were riding a motor cycle for going to Village Bapoli from their Village Bhrampur. Hawa Singh deceased and his son Satender were going ahead of them in the same direction on their motor cycle. Hawa Singh was driving the motor cycle and his son was the pillion rider. At about 8.30 pm, when they reached near a warehouse respondent no.1 came from the opposite direction driving a motor cycle in a rash and negligent manner and hit the same against the motor cycle of Hawa Singh deceased. Hawa Singh fell down on the metal portion of the road, whereas his son Satender fell on the kacha portion of the road. After causing the accident respondent no.1 sped away on the motor cycle. They all shifted Hawa Singh to Jindal Nursing Home, Panipat In cross examination, it was suggested to him that no accident had taken place in his presence, which fact he denied. It was also



suggested to him that the offending motor cycle was not involved in the accident in any way which fact he again denied.

11. On the other hand, respondent no.3 examined its investigator Jitender Singh Balee as RW.1. He has stated that the Oriental Insurance Company (respondent no.3) had appointed him as investigator to investigate the present case. He visited village Bhrampur where claimants reside and recorded the statement of PW1 Satender Kumar. He also inspected the file of the criminal case and obtained the photocopy of challan and mechanical report of the offending motor cycle. On completion of investigation, he submitted his report Ex.R1. As per his report, the offending motor cycle was not involved in the accident in any way and that it was a case of collusion between the claimants and respondent no.1 and 2

12. Having gone through the evidence on file, submissions made by the learned counsel for the parties, connected circumstances, I am of the view that the offending motor cycle was not involved in the accident in any way and that it is a case of collusion between the claimants and respondents no.1 and 2. There are two reasons for the same. One is delay of 24 days in lodging the FIR. It is true that delay by itself is no ground to suspect the case of the claimants that it was the respondent no.1 and none else who had caused the accident while driving the offending motor cycle rashly and negligently, if properly explained. In this case the claimants have sought to explain the delay by stating that respondent no.1 and 2 approached them for out of court settlement and that panchayats were also convened for out of



court settlement, but when the matter could not be settled at panchayat level, the matter was reported to the Police, but no member of any such panchayat has been examined to prove as to what was the decision taken by the panchayat which the respondents No.1 and 2 refused to obey, nor PW.1 Satender Kumar claimant has stated a word about the same. It leads to the conclusion that no such panchayat was convened nor any efforts were made for out of court settlement and that the story on this point has been concocted by the claimants to cover up the delay.

The second most important reason to disbelieve the case of the claimants in the mechanical report dated 27.7.2005 Ex.R5. the offending motor cycle was taken into possession by the police and on 27.7.2005, it was examined by the mechanic of the police. On examination, no damage of any kind to the offending motor cycle was found to have been caused. There was even no scratch on the motor cycle. It can be argued that it was possible that no damage to the offending motor cycle was caused in the accident, but if the claimants are to be believed, it was a head on collision and the impact of collision between both the motor cycles was so forceful that it totally destroyed the motor cycle riding by the deceased causing loss of more than Rs.30,000/- to the claimants as pleaded in para no.22 and 24 of the petition. It cannot be believed that the motor cycle ridden by the deceased was totally damaged and not even a single scratch was caused to the offending motor cycle.



13. *The presence of PW.1 and PW.2 at the time of accident is also doubtful. Again it cannot be believed that the motor cycle, the deceased and PW.1 Satender were riding, was totally damaged in the accident and PW.1 escaped only with minor injuries which did not require medical treatment. If it is believed that for any reason whatsoever, he escape only with minor injuries, there is no explanation as to why it took him and PW.2 Prem Singh, two hours in taking the deceased to the hospital. The accident had taken place at 8.30 pm, and the deceased was brought to Jindal Nursing Home, Panipat at 10.30 pm as per statement of PW.3 Dr. Rajender Parshad Jindal. The distance between the place of accident and Jindal Nursing Home was merely 14/15 km. Had PW.1 Satender Kumar been present at the time of accident, he would not have wasted two hours in shifting his father to a hospital when the accident had taken place not at a far away place from Panipat town, where there are number of hospitals to provide prompt medical care to such like patients/injured.*

14. *Learned counsel for the claimants has cited a judgment of Hon'ble Madras High Court in "**New India Assurance Company Ltd. Vs. G. Vijaya Kandiban & Anr. IV (2006) ACC 96**" to show that statements of the witnesses recorded by the Court on oath are on higher pedestal than the FIR. I do agree that FIR is not a substantial piece of evidence and the statements of the witnesses recorded on oath are certainly on higher pedestal than the FIR, but in this case, the question is whether the claimants have been able to explain the delay*



in lodging the FIR and if not its consequence coupled with other evidence and circumstances on the file which I have discussed above.

15. For the reasons recorded above, this issue is decided against the claimants.”

ANALYSIS OF THE RECORD

10. Satender, eye-witness, was examined as PW-1, who stated that his father was driving the motor-cycle and he was pillion-rider thereon and in his statement he stated the whole factum of accident and the factum of death of his father on the way to PGIMS, Rohtak, where Dr. Jindal of Jindal Nursing Home, Panipat referred his father to PGIMS Rohtak. He further stated that due to intervention by the village Panchayat, an attempt for settlement was made with respondent No.1, Sanjay, but the compromise efforts failed, leading to subsequent lodging of the FIR. Despite extensive cross-examination, his credibility remained intact. The Tribunal's failure to accord due weight to this unimpeached testimony constitutes a manifest error.

11. FIR is Ex.PA and a perusal of the same shows that the factum of accident is stated therein.

12. Prem Singh, Ex-Sarpanch, Village Chhajpur, was examined as PW-2, who alongwith Jagdish was going ahead of Hawa Singh (deceased) and his son Satender. He in his examination-in-chief has stated the whole factum of accident. His statement fully aligns with the version given by PW-1 (Satender). PW-2 (Prem Singh), too, withstood cross-examination without any material contradictions being elicited. The Tribunal's disregard of such independent and corroborative testimony of eye-witness is legally untenable.



13. In motor accident claims, the standard of proof is preponderance of probabilities, not proof beyond a reasonable doubt. The reliance at this stage can be made to the judgment rendered by the Hon'ble Supreme Court in the case of Anita Sharma Vs. New India Assurance Co. Ltd. 2021(1) SCC (CrI) 473, wherein the Supreme Court has held as under :-

“22. *Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in [Dulcina Fernandes v. Joaquim Xavier Cruz](#) (2013) 10 SCC 646, wherein this Court reiterated that:*

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt.”



14. The corroborated testimony of PWs 1 and 2 suffices to establish the factum of the accident.

15. Dr. Rajinder Parshad Jindal, Jindal Nursing Home, Panipat was examined as PW-3, who testified that Hawa Singh (deceased) was admitted in his hospital on 20.06.2005 (i.e. the date of accident) at 10:30 PM with the history of road side accident. He further stated that Hawa Singh (deceased) got severe head injury and fracture both bone right leg and deceased was treated by Neuro Surgeon Dr. Sanjay Gupta, who was working in his Nursing Home. He further stated that deceased was operated in his hospital in his presence by Dr. Sanjay Gupta. PW-3 Dr. Rajinder Parshad Jindal further stated that deceased was quite serious and ruqa was sent to the police station regarding deceased's admission in his hospital. PW-3 Dr. Rajinder Parshad Jindal proved Ex.PB, which was photocopy of rukka. He further stated that Hawa Singh (deceased) was referred to PGIMS Rohtak due to the seriousness of his condition. He was cross-examined at length, but his veracity could not be shaken. This medical testimony establishes both the nature of injuries sustained and their direct connection to the accident. The Tribunal's failure to consider this evidence amounts to a perverse appreciation of material facts. A perusal of the above shows that the learned Tribunal has totally ignored the evidence on record which proves the factum of accident and dismissed the claim petition on flimsy grounds.

16. A perusal of the written reply filed by respondent No.1 (Sanjay) driver of the offending vehicle further shows that there is an admission of registration of FIR against him. However, the learned Tribunal, instead of relying on the overwhelming evidence, dismissed the claim petition.



17. In view of the above, the present appeal is **allowed** and the findings of the Tribunal on Issue No.1 are hereby set aside. Consequently, Issue No.1 is decided in favour of the appellants-claimants and against the respondents. The appellants-claimants are held entitled to compensation.

18. So, far as Issue Nos.2 and 3 are concerned no finding was given by the learned Tribunal and evidence is required to be led for deciding issue No.2 and 3. Therefore, for decision on Issue Nos. 2 and 3, the matter is remanded back to the Tribunal to decide the same within a period of two months from the date of receipt of copy of this judgment.

19. The insurance company is hereby directed to deposit the current scheduled fees to Mr. Aseem Aggarwal, Advocate within a period of twenty days from the date of receipt of copy of this judgment, in view of the order passed in FAO No.1682 of 2007 dated 18.07.2024 by this Court.

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

March 04, 2025
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(SUDEEPTI SHARMA)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No