

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.1042 of 2003

Date of decision: July 1 , 2015.

Harbans Lal and others

... Appellants

Versus

Harvinder Pal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Yogesh Saini, Advocate,
for the appellants.

Mr. Suvir Dewan, Advocate,
for respondent No.3.

AMOL RATTAN SINGH, J.

1. The three appellants in this appeal are the parents and sister of Narinder Kumar who, unfortunately, succumbed, on 14.05.1999, to the injuries on his person, as a result of a motor vehicle accident which took place on 13.05.1999.

2. The facts, as taken from the Award of the Motor Accident Claims Tribunal, Ambala, dated 12.11.2012, are that when the said Narinder Kumar was riding a scooter between Rajpura and Ambala, with his brother-in-law, Umesh Kumar, riding pillion behind him, the scooter had just crossed the Petrol Pump at Devi Nagar, when truck bearing registration

No.HR-37-6195, came from the side of Ambala at a high speed and because the driver of the truck could not control the truck, it struck against the scooter resulting in injuries to Narinder Kumar and Umesh Kumar.

Narinder Kumar is stated to have been taken to the Civil Hospital at Ambala, from where he was referred to the PGIMER, Chandigarh, where he unfortunately died. He is stated to have been only 26 years of age.

3. Respondents no.1 and 2, i.e. the owner and driver of the truck, contested the claim petition jointly, which was also separately contested by respondent no.3, i.e. the Insurance Company with which the said truck was insured.

4. Though the ownership of the truck was admitted by respondents no.1 and 2, the factum of the accident having taken place was denied and, additionally, the Insurance Company also alleged collusion between the first two respondents and the claimants, i.e. the present appellants.

5. The first issue framed by the Tribunal was whether the accident in question had taken place on account of the rash and negligent driving of respondent no.2, while on the wheel of the aforesaid truck.

The Tribunal, after appraising the evidence before it, came to the conclusion that the factum of the accident having taken place at all with truck bearing registration No.HR-37-6195, could not be proved and therefore, no relief could be granted to the appellants-claimants by holding the respondents liable for the same. Consequently, the claim petition, which had been filed under Section 166 of the Motor Vehicles Act, 1988, was dismissed, leading to the filing of the present appeal.

6. The Tribunal came to its finding on account of the following facts:-

- i) The FIR in respect of the accident came to be lodged only 3 months and 12 days after the date of the accident, i.e. on 25.08.1999;
- ii) Despite the police having visited the PGI, Chandigarh, on 14.05.199, the registration number of the truck or the identity of the driver/owner thereof was not disclosed by the complainant, Umesh Kumar, who later appeared before the Tribunal as PW2;
- iii) That though PW2 had testified that when the police approached him on 14.05.1999 at 7:00 PM, at the PGI, Chandigarh, they had taken his signatures on a blank paper for recording the FIR and he had informed the police about the registration number of the offending vehicle, these facts were not pleaded in the claim petition;
- iv) That even a perusal of the FIR (Ex.P3 before the Tribunal) showed that it was recorded by the police on the basis of the statement given by Umesh Kumar on 25.08.1999 but even therein, it was not mentioned that Umesh Kumar had given the registration number of the offending vehicle when the police visited him at Chandigarh on 14.05.1999.
- v) Umesh Kumar had, in fact, stated in the FIR that he had made enquiries about the truck and thereafter had come to know that Narinder Kumar was hit by truck bearing registration No.HR-37-6195, driven by respondent no.2, thus proving that Umesh Kumar had not seen the registration number of the truck which had allegedly hit the scooter on which Narinder Kumar and he were travelling;
- vi) That though PW2, Umesh Kumar, had testified that he had made an application to the Superintendent of Police,

the same was never produced in Court, which showed that, in fact, no such application had been made and that the matter was actually reported to the police on 25.08.1999 for the first time, after which the FIR was lodged, which, as per the Tribunal, was as a result of collusion between Umesh Kumar and the police; and

vii) That, in any case, Umesh Kumar had never actually seen the driver of the truck but it was only on his statement that the police had “challaned” respondent no.2 (Rajinder Kumar, driver), as a result of which respondent no.2 was facing a criminal trial.

7. The records of this case having been unfortunately burnt alongwith many other such cases, in this Court, neither the claim petition, nor the reply filed thereto, nor the documents exhibited before the trial Court, were originally on record with this appeal, which was initially reserved by this Court on 26.02.2014, but after going through the arguments and judgments relied upon by learned counsel, it was felt that a rehearing of the matter would be necessary and, consequently, the following order was passed on 11.08.2014:-

“In this case, the claim petition filed by the appellants was dismissed on the ground that the negligence of respondent no.2, while driving the alledgedly 'offending vehicle', did not stand proved, on account of the fact that the FIR itself was lodged after three months and other than that, there was no corroboration at all of the statement made by the complainant in the FIR, that he had actually seen the truck in question to have been either driven by respondent no.2, or to be the one that was actually involved in the accident. Thus, the Tribunal doubted the factum of the accident with the allegedly 'offending vehicle' owned by respondent no.1.

The judgments relied upon by Mr. Pritam Saini, learned counsel for the appellants, all relate to either the effect of a

delayed FIR on MACT proceedings, or on the rule of strict liability when the driver of the offending vehicle is not found negligent.

In the present case, the question of negligence would only come in if the factum of the accident with the offending vehicle is proved in the first place. Though, on account of this, the appeal could have been dismissed, however, since it involves compensation to the next of kin of a young man who died, I am inclined to put up the matter for re-hearing, in order to ensure that nothing which was argued on the date that the order was reserved, has been missed by this Court.

Consequently, the matter be put up for rehearing on 13.08.2014.”

8. When the matter finally came up for actual arguments, it was submitted by Mr. Pritam Saini, learned counsel appearing for the appellants, that once an FIR has been registered against a negligent driver and even a report under Section 173 Cr. P.C. (“Challan”) has been presented by the investigating agency to the competent Court, no further proof is required, in summary proceedings, as to the negligence of the driver of an offending vehicle. As such, as per Mr. Saini, the learned Tribunal wholly erred in law in holding that the factum of the accident having taken place with the truck driven by respondent no.2, has not been proved.

Though, on query, learned counsel admitted that respondent no.2 was eventually acquitted by the trial Court in the criminal case that he was facing, he again reiterated that the parameters of acquittal in a criminal case cannot be read into summary proceedings in another case.

9. In this regard, Mr. Saini first relied upon a judgment of a co-ordinate Bench of this Court in **Girdhari Lal v. Radhey Shyam and others (1993) 2 PLR 109**, wherein it was held as follows:-

“8. There is no denying the fact that the appellant suffered

injuries on account of the accident and was admitted to the General Hospital, Narnaul, as an indoor patient. The fact that he was given plaster bandage on two occasions is not even remotely denied by the respondents. There is no denial that Radhey Shyam respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima-facie safe to conclude that the accident occurred on account of rash and negligent driver of Radhey Shyam respondent in which the claimant suffered injuries.” xxxxxxxx

Mr. Saini further relied upon a judgment of the Supreme Court in Parmeshwari v. Amir Chand and others (AIR 2011 SC 1504), wherein, citing from another judgment in Bimla Devi and others v. Himachal Road Transport Corpn. & others (2009 (3) RCR (Civil) 805), it was held as follows:-

“In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.”

Thus, Mr. Saini submitted, that once the police had actually investigated the matter and found respondent no.2 guilty and had accordingly registered a criminal case against him, due to which he was facing a criminal trial at the time of filing of the claim petition, the Tribunal wholly erred in holding that the criminal trial was being faced by respondent no.2 only on account of collusion by the police with the complainant, i.e.

PW2 Umesh Kumar. The Tribunal should have, in fact, proceeded on the

basis that, for the purpose of grant of compensation, to the kin of a deceased, the report under Section 173 Cr. P.C. was sufficient *prima-facie* evidence and, thereafter, it should have gone on to determine the compensation payable to the claimants.

10. Mr. Saini had earlier relied upon various judgments, on the effect of a delayed FIR on a claim petition for compensation before a Motor Accident Claims Tribunal, as also on the rule of strict liability when the driver of the offending vehicle is not found negligent.

The following judgments were again referred to by him:-

- i) **Ravi v. Badrinarayan and others (2011) 4 SCC 693** (on the effect of a delay in lodging the FIR);
- ii) **N.K.V.Bros. (P.) Ltd. v. M. Karumai Ammal and others (AIR 1980 SC 1354)** (On the issue that a Court/Tribunal should not get bogged down by technicalities etc. while dealing with the claim petitions of victims of motor vehicle accidents).
- iii) **Bimla Devi and ors. (supra)** (also cited by learned counsel on the issue that the Tribunal, *stricto sensu*, is not bound by pleadings of the parties, its function being to determine the amount of fair compensation in the event that an accident has taken place by reason of negligence of the driver of a motor vehicle).

11. Learned counsel for the appellants had also placed on record by moving an application under Order 21 Rule 47, read with Section 151 of the Code of Civil Procedure, the report (“challan”) submitted by the police under Section 173 Cr. P.C., before the trial Court seized of the criminal case registered against respondent no.2. A perusal of the said report, dated 17.09.1999 (as given in the photocopy, in vernacular, though wrongly given as 17.02.1999 in the English translation), the investigating agency had

indicted respondent no.2, Rajinder Kumar, holding him liable to be punished for offences punishable under Sections 279 and 304-A of the IPC.

This report, placed on record before this Court by way of additional evidence, goes unrebutted by the respondents, though it was admitted by the learned counsel for the appellants himself, that respondent no.2 was eventually acquitted by the trial Court.

It is also to be noticed that respondents no.1 and 2, though they had contested the claim petition before the Tribunal, have not put in appearance before this Court. Thus, the appeal was only contested by the Insurance Company, i.e. respondent no.3.

12. Mr. Suvir Dewan, learned counsel appearing for respondent no.3, submitted that once the Tribunal had come to a logical finding, on the basis of evidence led before it, including the testimony of the person who claimed to be an eye witness, that the accident itself, with the allegedly offending vehicle, had not been proved, this Court would not interfere on a finding of fact and reverse the same, to grant compensation to the claimants.

He further submitted that no evidence was led by the appellants, before the Tribunal, that PW2 Umesh Kumar, had himself sustained any injuries, even though he claimed to have been riding on the same scooter with his brother-in-law, i.e. deceased Narinder Kumar. Hence, his presence at the spot, itself was doubtful.

Further, reiterating what has been held by the Tribunal, Mr. Dewan submitted that the entire story of truck bearing registration No.HR-37-6195 having hit the scooter that the deceased was riding, was a complete after thought, only in order to foist some person with liability to pay compensation to the claimants. The very fact that the alleged eye

witness had not been able to identify the truck on the spot, or its driver, and it took him three months to do so, after which he lodged an FIR on 25.08.1999, would show that the accident had actually taken place with an unknown vehicle and respondent no.2 has only been foisted with liability by the police, in collusion with the claimants.

He, therefore, prayed that the appeal be dismissed. However, learned counsel further submitted that in case this Court comes to a conclusion that respondent no.2 was negligent while driving the truck in question, then the matter would need to be remanded to the Tribunal for determination of other issues, including the liability of the Insurance Company on account of non-validity of the insurance policy, validity of the driving licence held by respondent no.2, the amount of compensation to be paid, etc.

13. Having heard learned counsel for the parties and having gone through the pleadings and the limited evidence available before this Court, the question which this Court is obviously required to adjudicate upon, is: whether, on the basis of the reasoning given by the Tribunal, the same being undoubtedly not without logic and very much a possible view, this appeal should be dismissed; or whether, taking into account the fact that the police, after investigation, found a *prima-facie* case to be made out against respondent no.2, of being guilty of negligent driving, thereby causing a motor vehicle accident leading to the death of Narinder Kumar, the finding by the Tribunal, on the issue of negligence, be reversed and the matter remitted for determination of other issues on liabilities *inter se* between the respondents and determination of the amount of compensation to be paid.

14. Though this Court cannot shut its eyes to the fact that,

unfortunately, in today's times, collusion between even investigating agencies and complainants/accused, cannot be ruled out, however, in the absence of any proof even attempted to be led on that issue, the other possibility can also be accepted by this Court, i.e. the complainant, PW2 Umesh Kumar, actually made enquiries as to the identity of the vehicle that had hit the scooter being driven by deceased Narinder Kumar and upon having found that it was truck bearing registration No.HR-37-6195, driven by respondent no.2 and owned by respondent no.1, that had caused the accident, he eventually reported the matter to the police on 25.08.1999, having not being able to give the identity of the truck when the police first met him on 14.05.1999, at the PGIMER, Chandigarh. Thereafter, the police having verified the identity, upon investigation, submitted a report under Section 173 Cr. P.C. to the Court of the competent Magistrate, as regards the criminal proceedings against respondent no.2.

15. No doubt, findings of fact, unless found to be perverse, should not be upset by an appellate Court; however, in cases of compensation claims by the next kin of deceased or by victims who are severely injured in motor vehicle accidents, Courts, including the hon'ble Supreme Court, have generally adopted a view that latitude should be given to claimants and *prima-facie* evidence pointing towards negligence of persons driving an "offending vehicle" should be generally accepted, in order to ensure that the next kin of those deceased, or victims who are severely injured, are not made to suffer when there is no negligence on their own part.

In this regard, what the Apex Court held in *N.K.V.Bros. (P.) Ltd.* (supra) needs to be cited:-

"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This

proverbial recklessness often persuades the Courts, as has been observed by us earlier in other case, to draw an initial presumption in several cases based on the doctrine of *res ipse loquitur*. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The Court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their “neighbour”. Indeed, the State must seriously consider no-fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parcimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of the Constitution lays the jurisprudential foundation for state relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is horrifying is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Court should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.

4. We have been taken through a few intricate legal submissions by counsel but we decline to interfere under Article 136 of the Constitution especially where human misery is pitted against operational negligence.”

Further, in *Parmeshwaris' case* (supra) it was held as follows:-

“10. Unfortunately, this Court finds that the said well considered decision of the Tribunal was set aside by the High Court, inter alia, on the ground that even though complaint was forwarded to SSP Hisar and was further forwarded to SSP Hanumangarh but none from the office of SSP, Hanumangarh came to prove the complaint. The filing of the complaint by the appellant is not disputed as it appears from the evidence of PW.3-Satbir Singh, who is the Assistant Complaint Clerk in the office of Superintendent of Police, Hisar. If the filing of the complaint is not disputed, the decision of the Tribunal cannot be reversed on the ground that nobody came from the office of SSP to prove the complaint. The official procedure in matters of proceeding with the complaint is not within the control of the appellant, who is an ordinary village woman. She is not coming from the upper echelon of society. The general apathy of the administration in dealing with complaints lodged by ordinary citizens is far too well known to be overlooked by High Court. In this regard the perception of the High Court in disbelieving the complaint betrays a lack of sensitized approach to the plight of a victim in a motor claim case.”

16. Without doubt, the circumstances of those cases were not identical to the present one and, in fact, it was argued for the respondents that once the accident itself at the hands of respondent no.2 is not established, then the question of foisting liability upon him and the owner of the truck, does not arise.

However, as already said earlier, strict liability, in the opinion of this Court, need not be proved in such like cases, and once the investigating agency had pointed towards the negligence of respondent no.2 by filing a report under Section 173 Cr. P.C. against him, this Court would rather err in favour of the claimants (appellants) to hold that it is very

possible that it took sometime for the claimants and their kin (specifically PW2 Umesh Kumar), to determine by their own enquiries, as to the identity of the vehicle and the driver of the said vehicle that had caused the motor vehicle accident, before they lodged a formal complaint against the said driver with the police. It is not unknown that police very often refuse to register FIRs, without pointers to the identity of the culprits, by the complainant. Even if that was not so in the present case, to again repeat, this Court would rather err in believing that after the complainant had made his own enquiries and had lodged the complaint, and the police also, at least *prima-facie*, found respondent no.2 negligent in driving the offending vehicle and established in its investigation that it was indeed truck bearing registration No.HR-37-6195 which had hit scooter bearing registration No.HR-01-H-0725, driven by deceased Narinder Kumar, which eventually led to the latter's death. In such a case, the liability to pay compensation, in this Court's opinion, would fall on the respondents. That respondent no. 2 was eventually acquitted in the criminal trial, where the parameters of establishing guilt are far more stringent, would not, in my opinion, detract from the liability of the respondents to pay compensation to the appellants, in a motor accident claims case, in the aforesaid circumstances.

17. Hence, having held as above, the finding of the Motor Accident Claims Tribunal, on the issue of negligence, is set aside and it is held, on the basis of the FIR lodged and report submitted to the trial Court under Section 173 Cr.P.C., in the criminal proceedings initiated against respondent no.2, that for the purposes of the claim petition, he is held to be negligent in driving truck bearing registration No.HR-37-6195, leading to the accident with scooter bearing registration No.HR-01-H-0725, thereby causing the

death of Narinder Kumar, son of appellants no.1 and 2 and brother of appellant no.3.

18. Consequently, the matter is now remitted to the Tribunal to determine the amount of compensation liable to be paid by the respondents to the appellants, as also to determine the liability, *inter se* the respondents, for paying such compensation. Obviously, such amount of compensation would be determined wholly on the basis of evidence to be led before the Tribunal and the *inter se* liability of the respondents to pay such compensation would also be determined wholly on the basis of evidence to be led before it.

The appeal is, thus, partly allowed, with no order as to costs.

July 1 , 2015.
dinesh

(AMOL RATTAN SINGH)
JUDGE