

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.2212 of 2014(O&M)
Date of Decision: 17.03.2015

Naresh Kumar

..... APPELLANT

VERSUS

Manjit Kaur and others

..... RESPONDENTS

PRESENT: - Mr. Ramesh Sharma, Advocate for
Mr. Robin Dutt, Advocate
for the appellant.

Ms. Ekta Thakur, Advocate
for respondents No.1 to 4.

Ms. Simriti Dhir, Advocate
for respondent No.5.

CORAM: **HON'BLE MR. JUSTICE SHEKHER DHAWAN**

- 1) Whether Reporters of the 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?

SHEKHER DHAWAN, J.

The present appeal is filed by Naresh Kumar,
driver/owner of Car No.CH03P-8310 involved in the

accident, against the award dated 07.12.2013 passed by the Motor Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'The Tribunal').

Brief facts of the case that on 13.04.2012, Gurmit Singh (since deceased) was going for his official duty in Swaraj Mazda bearing Registration No.PB-08-AW-9566. The said vehicle was being driven by Constable Gurminder Singh from Mohali to Kharar. At about 6.20 A.M., the same vehicle met with an accident with Car No.CH-03-P-8310 at Chawla Crossing, Sector 7, Mohali. Resultantly, Swaraj Mazda over-turned and Gurmeet Singh (since deceased) suffered multiple injuries on vital organs of his body including head injuries. He was taken to hospital for treatment where he died on 16.04.2012.

The claimants preferred the claim petition that accident took place because of rash and negligent driving of respondent No.1. The claim petition was contested by respondent No.1, who took the plea that the accident was caused because of rash and negligent driving of driver of Swaraj Mazda as the same vehicle hit against his car. As per appellant Naresh Kumar, he and his daughter also sustained injuries in the accident.

'The Tribunal' after appreciating the evidence available on file came to the conclusion that the accident

was caused because of rash and negligent driving of respondent No.1 and amount of compensation was assessed to be ₹40,57,409/-. The liability was fastened upon Naresh Kumar-appellant and the Insurance Company was not held liable because the Insurance Company was given up by the claimants as the vehicle was not insured at the time of accident.

Mr. Ramesh Sharma, learned counsel for the appellant took the plea that 'The Tribunal' completely ignored the factual position and evidence available on the file. In fact the accident was caused because of rash and negligent driving of Gurminder Singh (PW-3), driver of Swaraj Mazda. Gurmit Singh was standing on Swaraj Mazda. The driver of Swaraj Mazda applied brakes all of sudden. Resultantly, Gurmit Singh fell down and sustained injuries and, thereafter, succumbed to injuries. As per learned counsel for the appellant, this fact has been admitted by PW-3 Gurminder Singh in his cross-examination. More so, the accident was involving two vehicles i.e. Swaraj Mazda and Ceilo Car. Swaraj Mazda is heavy vehicle and if Car had hit against Swaraj Mazda, then the Car should have over turned whereas in fact Swaraj Mazda over turned as the same was being driven in a rash and negligent manner and at a very high speed and the

liability was wrongly fastened upon appellant. Gurmit Singh and Gurminder Singh were police officials and police had not taken the proceedings as per factual position and the liability was shifted upon appellant Naresh Kumar although he was sufferer of this accident.

Learned counsel for the appellant also took the plea that mere registration of FIR is not a conclusive proof so as to determine the liability in such like accidents. In support of his arguments, reliance was placed upon judgment of this Court in case of **Oriental Insurance Company Vs. Kamla Devi and others**, 2008(3) PLR 329 where identical view was taken by this Court.

While arguing on this point, Ms. Ekta Thakur, learned counsel for the claimants took the plea that the appellant has come with the plea that false case was registered against him as Swaraj Mazda was a police vehicle and Gurmit Singh was police official. However, appellant Naresh Kumar never moved any complaint to the higher police officers or before any Court if at all he was falsely implicated in this case. This fact has been admitted by Naresh Kumar in his cross-examination and the findings of 'The Tribunal' are on the basis of said statement as well. More so, in the pleadings also appellant Naresh Kumar has not denied the manner of accident. In a petition filed by the

claimants, the manner of detailed accident was given by the claimants and in the corresponding para No.23 of written reply filed by Naresh Kumar, the simple plea was taken that the claim petition is legal and needs no reply.

As the appellant is asserting his claim mainly on the ground that he has been falsely implicated in this case as police officials were involved in the accident and the liability was wrongly fastened upon him, there was absolutely no bar for appellant Naresh Kumar not to take any such plea in para No.23 of the written reply. He could have also filed complaint against police officials to the higher authorities or a private complaint for his false implication could be filed in the Court but that has not been done. That establish the version of claimants and falsify the version of the appellant. 'The Tribunal' has rightly recorded the findings while deciding the claim petition.

Otherwise, PW-3 Gurminder Singh, who is an eye witness and driver of Swaraj Mazda was put to cross-examination and he has well-stood by the test of cross-examination. He has denied the suggestion put to him that because of sudden application of brakes Gurmit Singh fell down from Swaraj Mazda. Naresh Kumar appellant himself appeared as RW-2 and admitted in his cross-examination that he was not having any receipt or other document

showing that he has made any representation to the police regarding false case having been registered against him. It is the version of the appellant that he and his daughter had sustained injuries in the accident and got the treatment from Chawla Hospital. In the cross-examination, the witness admitted that he was not having any document showing that in fact any treatment was given to him or to his daughter in Chawla Hospital. The appellant has mainly placed reliance upon testimony of RW-3 Lt. Col. R.S. Dhindsa (retired). However, he has also admitted that his presence was not recorded in Chawla Hospital in respect of treatment of daughter of appellant. He had not given to the police in writing at any stage that he had seen the accident. At the time of accident, he was at a distance of 120 feet away from the spot. He had shown his inability to tell the number of vehicles involved in the accident. That way, 'The Tribunal' rightly not placed reliance upon testimonies of RW-2 Naresh Kumar and RW-3 Lt. Col. R.S. Dhindsa rather placed reliance upon oral as well as documentary evidence adduced by the claimants.

As regards to evidentiary value of FIR, the same is certainly a substantive piece of evidence although not a conclusive proof. In the case in hand, if the version put forwarded by the complainant in FIR is taken into account

along with oral evidence by way of statement of PW-3 Gurminder Singh and the remaining documentary evidence including post mortem report, there is no reason to dis-believe the version of First Information Report recorded by the police.

The Tribunal has rightly come to the conclusion that the accident had taken place because of rash and negligent driving of appellant Naresh Kumar and liability has been fastened upon him.

As regards to amount of compensation, there is no challenge to the same. No liability has been fastened upon the National Insurance Company Ltd. (respondent No.5). No other points argued.

The appeal is accordingly devoid of any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

March 17, 2015
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