

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.521 of 2003

Date of Decision: 02.12.2016

Kusum Lata and others

... Appellants

Vs.

Rambeer Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sudhir Rana, Advocate,
for the appellants.

Mr. Neeraj Khanna, Advocate,
for respondent No.3.

Amol Rattan Singh, J.

This is an appeal by the claimants before the Motor Accident Claims Tribunal, Ambala, after the claim petition filed by them was dismissed, the negligence of respondent no.1 herein, in causing the accident by rash and negligent driving, not having been proved against him.

2. The facts leading up to the filing of the claim petition, as are being taken from the impugned Award, are that it was stated in the claim petition that on 13.01.2001, at about 9:30 pm, Nathi Ram was going on foot from the ITI Chowk, Yamuna Nagar, towards the Radour Chowk from the Jagadhri-Yamuna Nagar bye-pass. It was stated that he was walking on the left side of the road and as he reached near the railway bridge, an Armada jeep bearing registration no.HR-23A-0191, being driven by respondent no.1,

allegedly in a rash and negligent manner, came from behind and hit him, by going on to the extreme left side of the road, as a result of which he suffered fatal injuries.

The deceased was stated to be 34 years old, running a Kiryana shop at village Amloha, earning Rs.10,000/- per month.

Consequently, the claim petition was filed by his widow, four minor children and his mother.

3. On notice being issued to the respondents, i.e. the driver, owner and the insurer of the aforesaid jeep, the first two respondents, i.e. the driver and owner, filed a joint written statement admitting the factum of the accident but denying any negligence on the part of the first respondent.

The insurance company filed a separate written statement alleging collusion between the claimants and the first two respondents and completely denying the accident.

Preliminary objections were also raised that respondent no.1 was not holding a valid and effective driving licence, that the jeep was being driven in contravention of the terms of the policy and rules and that the petition was bad for mis-joinder and non joinder of necessary parties. The insurance companys' liability to pay any compensation was denied by quoting Sections 147, 149, 157 and 170 of the Motor Vehicles Act, 1988.

On merits, the particulars of the deceased were also denied by the insurance company, i.e. respondent no.3.

4. A replication having been filed by the claimants, to the written statement filed by respondent no.3, denying the contents thereof and reiterating those of the claim petition, further specifically denying any collusion between them and the owner and the driver of the vehilce, the

following issues were framed by the learned Tribunal:-

- “1. Whether the accident in question had taken place on account of rash and negligent driving of Armada Jeep No.HR-23-A-0191 by its driver Ranbeer Singh-respondent no.1 and nathi Ram allegedly died? OPP
2. If issue no.1 is proved, to what amount of compensation, if any, the claimants are entitled to and from which of the respondents? OPP
3. Whether respondents are not liable to pay any compensation on account of the preliminary objections taken in the written statement? OPR
4. Relief.”

5. The insurance company also filed an application under Section 170 of the Motor Vehicles Act, seeking permission to raise all pleas as are available to the insured, with the application allowed by the Tribunal, consequent upon which the counsel for respondent no.3 was permitted to cross-examine the witnesses of the claimants, on the issue of negligence.

6. During the pendency of the petition, the claimants also filed an application seeking to convert the petition from one under Section 166 of the Act of one under Section 163-A thereof.

Decision in that application was deferred by the Tribunal till the time that the issue of negligence was not decided, to determine as to whether the accident had taken place at all or not, with the vehicle in question.

7. In support of their petition, the claimants examined Naresh Kumar, Gian Chand Sharma and Rajinder Kumar, other than the first claimant, Kusum Lata.

Respondents no.1 and 2 examined Kamal Puri, Joginder, HC

Richhpal Singh, ASI Surjit Singh and one Gurmukh Singh, as their witnesses.

Documentary evidence in the form of the driving licence of respondent no.1, the registration certificate of the jeep and a copy of the insurance cover were also tendered.

8. On issues no.1 and 3, i.e. essentially the issue of whether the accident had taken place at all on account of which any compensation was to be paid, were taken up together by the Tribunal, first noticing that the claimants had placed on record a report filed under Section 173 Cr.P.C. by the police in the Court seized of the criminal case against respondent no.1. It was also seen that a charge sheet had been framed by the Court, with the aforesaid report and the charge sheet being Exs.P1 and P2 before the Tribunal.

The FIR was held to be proved by RW3, HC Richhpal Singh.

9. The Tribunal went on to notice that the FIR had been lodged by one Joginder (RW2), on 14.01.2001, at about 12:05 am, i.e. within about two hours of the accident.

In the FIR, it was stated that an unknown vehicle had hit some unknown person, whose left leg was amputated and that he was handicapped.

It was further noticed by the Tribunal that in the initial part of the report filed under Section 173 Cr.P.C., the accident was also shown to have been caused by some unknown vehicle which had hit an unknown handicapped person, but in the latter of the report, it was stated that after strenuous efforts, the name of the accused had been found to be Ranbir Singh and the vehicle was found to be one bearing registration no.HR-23A-0191.

However, it was not stated in the report as to what/who was the source from whom the Investigating Officer had traced out the name of the accused.

The Tribunal also recorded a finding that the name of the first respondent as the driver of the aforesaid vehicle, was "introduced on 23.02.2001, i.e. after one month and ten days".

10. It was next noticed that PW3 Gian Chand Sharma, an Ahlmad in the Court of the Chief Judicial Magistrate, Jagadhri, had also stated in his cross-examination that the FIR did not contain either the number of the vehicle or name of the driver, though he stated that the accused was arrested on 23.02.2001.

RW2, Joginder, had also testified to the effect that an unknown vehicle had caused the accident at about 10:00 pm on 13.01.2001 and that on his statement, the FIR had been registered as such. This witness denied having made any statement regarding the identity of the vehicle.

However, the Tribunal recorded that in cross-examination, this witness "made a somer sault" by stating that the accident did not take place in his presence and in fact, he was called from his house by the police, to put his thumb impression on some papers.

11. RW3, HC Richhpal Singh, was also found to have stated that the FIR was registered as a hit and run case, but this witness supported the contention that respondent no.1 was "involved on 23.02.2001".

It was further found by the Tribunal that ASI Surjit Singh (RW4), who had investigated the case, while in his examination-in-chief stated that he had recorded the statement of Joginder as an eye witness to the accident and that the contents of the FIR were true, to the effect that it was a hit and run case, however, in cross-examination, he stated that he had found out during investigation that respondent no.1 had caused the accident, yet he remained silent about the source of his information, as to how he had found

Ranbir Singh to be the driver of the vehicle.

12. The claimants also examined one Rajinder Kumar as PW4, who stated that on the date of the accident, he was returning to his village on his cycle from the Timber Market at Yamuna Nagar, after receiving payment of his timber and that when he reached near the railway crossing towards the ITI Chowk, he saw a person walking on the left side of the road and that an Armada jeep bearing registration no.HR-23A-0191 hit against him (the pedestrian). This witness further testified that though initially the jeep driver had applied the brakes and looked behind, but thereafter he simply gathered up speed (took the vehicle away).

PW4 further stated that many people gathered at the spot and that he had given the number of the jeep to those persons but had thereafter left for his village. On 16.01.2001 a police Constable had visited his residence, to whom he disclosed the number of the jeep.

The Tribunal further recording a finding that on cross-examination of this witness by counsel for respondents no.1 and 2, he was seen to be favouring the claimants by suggesting that there were lights and therefore, he had noted the number of the jeep.

Thereafter, when he was cross-examined by the counsel for the insurance company, he stated that he had also disclosed about the accident to the village Numberdar, Sarpanch and Chowkidar but none of them had accompanied him to the police station. He also stated that there are a number of shops near the place of the accident and that about 15/20 persons had collected there.

13. On appraising the aforesaid evidence, the learned Tribunal held that PW4 could not be believed because had he witnessed the accident and

disclosed the number of the vehicle to the police on 16.01.2001, then the report under Section 173 Cr.P.C. would have to be disbelieved, alongwith testimony of the Investigating Officer, because the version of the police was that the name of the driver (respondent no.1 herein) was added as an accused for the first time on 23.02.2001. Hence, the Tribunal found it strange as to why the Investigating Officer withheld the particulars of the vehicle for more than 40 days and did not proceed against the driver. Further, even the Investigating Officer, as RW4, did not testify that he had learnt about the particulars of the vehicle on 16.01.2001, i.e. within three days of the accident.

Yet further, the Tribunal held it hard to believe that after seeing the accident, PW4 Rajinder Kumar, despite having noted down the number of the vehicle, would give it to somebody without disclosing his own particulars, despite which the police first contacted him on 16.01.2001, when the number of the vehicle was disclosed. Similarly, his statement that neither the village Sarpanch nor the Chowkidar accompanied him to the police station upon him having disclosed about the accident to them, was found to be not believable.

14. The Tribunal also recorded its observation inferring a doubt on the identity of the deceased, because as per the post mortem report, Ex.P3, an unknown person had been subjected to post mortem examination. Column no.5 of the report mentioned that the body was smelling of alcohol and immediately thereafter it was stated that there was an incised wound over the middle of the chest and glass piece embedded in it. It was also recorded that “Broken glass pieces of bottle removed from underneath the shirt and pocket of shirt which show many irregular shape tears”.

On the above recording in the post mortem report, the Tribunal

expressed its doubt about the cause of death and identity of the accused, further stating that though in the report it was shown that the left lower limb of the accused already stood amputated above the hip joint, however, neither in the claim petition nor in the testimony of the first claimant, even a word had been uttered to the effect that the deceased was handicapped, though PW4, Rajinder Kumar, had stated so. However, the Tribunal found it difficult to believe his testimony.

15. Thus, on account of the aforesaid misgivings expressed by the Tribunal, as regards the evidence led before it, it recorded a finding that the driver named in the petition had been introduced only to claim compensation and as such, the plea of collusion raised by the insurance company, between the claimants and the first two respondents, was held to be not unfounded.

16. Consequently, with the issue of any negligence by respondent no.1 in having caused any accident while driving the vehicle owned by respondent no.2 and insured by respondent no.3, not having been proved, the claim petition was dismissed, with no finding recorded as regards the quantum of compensation that the claimants may otherwise have been entitled to, if the issue of negligence had been held in their favour.

17. Before this Court, Mr. Sudhir Rana, learned counsel appearing for the appellants-claimants, submitted that the Tribunal wholly erred in firstly disregarding the report submitted under Section 173 Cr.P.C. to the Court seized of criminal proceedings against respondent no.1, as also in disbelieving PW4 Rajinder Kumar, eye witness to the accident.

He further submitted that the doubt expressed on the identity of the deceased was also wholly uncalled for, simply because the claimants did not mention about the handicap of the deceased.

Mr. Rana submitted that the proceedings before the MACT being only summary in nature, the Tribunal should not have gone on to treat them like criminal proceedings, by raising a doubt on the testimonies of the witnesses examined by the claimants.

He, therefore, submitted that the husband of the first appellant and father of the minor claimants having died in the accident in question, the Award of the Tribunal deserves to be set aside and appropriate compensation paid to the appellants-claimants.

18. Controverting the aforesaid arguments, Mr. Neeraj Khanna, learned counsel appearing for the respondent-insurance company, however, submitted that a perusal of the Award amply revealed that PW4 was a wholly introduced witness, as even the person who had the FIR lodged, immediately after the accident, made no mention whatsoever of either the first respondent, or the vehicle, or even of PW4 being an eye witness.

Learned counsel further submitted that it also could not be actually established that, in fact, the deceased had died due to a motor vehicle accident, or on account of some fight/scuffle etc.

He, therefore, prayed for dismissal of the appeal.

19. Having considered the aforesaid arguments, as also the Award of the learned Tribunal, as regards the identity of the deceased, I would not hold that simply because the deceased was not specifically stated to be handicapped, in the claim petition or in the testimony of the first appellant, it cannot be taken that it was actually the body of the husband of the first claimant that was subject to the post mortem examination. Similarly, just because there were broken pieces of glass removed from the body/underneath the shirt of the deceased, it would not prove that he had not died in a motor

vehicle accident, because in the event of such an accident, it was equally possible that either the glass of the window shield of the vehicle broke and fell upon the deceased, or more likely, since the broken glass has been described in the post mortem report to be pieces of a bottle, it is equally possible that a bottle held by the deceased broke upon impact of the vehicle with the deceased or upon the deceased touching the ground with the bottle between his hand and chest.

In fact, that most likely is what cause the glass to be broken, if one is to examine the contents of the post mortem report, as reproduced in the impugned Award.

20. Yet, with the post mortem report also stating that the body was smelling of alcohol, it would be difficult to hold that respondent no.1 was guilty of negligent driving, even if the report under Section 173 Cr.P.C., read with the testimony of the police officials, is to be believed that the accident actually happened with him driving the vehicle described in the claim petition.

Undoubtedly, proceedings before the Motor Accident Claims Tribunal are summary proceedings and evidence is not to be appraised as if it were a criminal trial. Hence, usually, with one witness appearing to testify that he actually saw the accident and the police actually having filed a challan before the competent Court in criminal proceedings, Courts are loathe to holding that the person named in the FIR and the report under Section 173 Cr.P.C. was not the driver of the vehicle described in the claim petition and the FIR and report.

However, in the present case, seeing that no basis whatsoever was given, either in the report under Section 173 Cr.P.C., or in the testimony

of the Investigating Officer, RW4, as to how he had come to the conclusion that respondent no.1 was actually driving the vehicle that hit the deceased, leading to his death, seen with the fact that the post mortem report also described the body to be smelling of liquor, with broken pieces of a glass bottle removed from the body, it would not be possible to simply go by the testimony of PW4, to the effect that he actually witnessed the accident, with respondent no.1 guilty of negligent driving.

No doubt, an eye witness may have left the spot for any reason, after describing the number of the vehicle that he saw involved in an accident and therefore, it is possible that Joginder, at whose instance the FIR was shown to be lodged, may not have actually met the eye witness. However, the cross-examination of RW2, Joginder, revealed that he was actually not even present at the spot and had simply been "introduced" as a complainant by the police.

Thus, with the circumstances all seen together, it would not be possible, in the opinion of this Court too, to hold respondent no.1 guilty of any kind of negligent driving.

This would be also so, because the reasoning of the Tribunal to the effect that the Sarpanch and Numberdar of the village also refusing to accompany PW4 to lodge an FIR, is difficult to believe. Even if that were to be accepted, the testimony of the police officials does not inspire any confidence, because either their testimonies or that of PW4, is obviously incorrect, as reasoned by the Tribunal. Thus, if PW4 is to be believed, that he disclosed to a Head Constable of the police the number of the vehicle on 16.01.2001 itself, within three days of the accident, then obviously there would be no reason for the first respondent to have been implicated in the

case only about 40 days later.

Further, the doubt expressed by the Tribunal on the correctness of the report under Section 173 Cr.P.C., is not unfounded, with the investigating officer, RW-4 ASI Surjit Singh, not being able to depose as to how he came to the conclusion that respondent no.1 herein was found to be the person driving the vehicle that had allegedly hit the deceased.

21. All in all, appraising the entire evidence together, though if the accident actually took place due to the negligence of respondent no.1, leading to the death of the deceased, his widow and children have obviously suffered unnecessary for the fault of the police, due to lack of proper investigation, but at the same time, with such a large doubt cast on the identity of the vehilce and its driver, in the opinion of this Court, even if it is eventually insurer of the vehilce that has to pay compensation, it would be wholly unfair to hold the first respondent guilty of negligent driving.

It may be noticed here that despite query, nothing was forthcoming from any counsel as to outcome of the criminal case pending against respondent no.1.

22. In the aforesaid circumstances, I find myself unable to interfere in the findings of the Tribunal and consequently, this appeal is dismissed, but with no order as to costs.

December 2, 2016
dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No.