

1) **FAO-25 of 1997**
Date of decision: 12th February, 2016

Versus

2) **FAO-26 of 1997**

Versus

3) **FAO-27 of 1997**

Versus

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Mr. R.K. Bashamboo, Advocate
for respondent No.3.

LISA GILL, J.

This judgment shall dispose of *FAO-25-1997* titled as *Smt. Azad and others vs. Pale Ram and others*, *FAO-26-1997* titled as *Ishwar Singh vs. Pale Ram and others* and *FAO-27-1997* titled as *Dharam Pal vs. Pale Ram and others* as they all arise out of a common award dated 1st August, 1996 by learned Motor Accident Claims Tribunal, Jind.

Facts of the case are taken from *FAO-25-1997* for the sake of convenience. It is revealed in the claim petition that on 23rd of September, 1994 at about 3:15 p.m., Rohtas (since deceased), Dharam Pal, Banwari and Ishwar Singh were proceeding from Jind to Kaithal in a Maruti Car driven by Rohtas. Dharam Pal was sitting in the front seat while Ishwar Singh and Banwari were sitting on the rear seat. When they crossed village Kandela and were about eight or nine kilometers away from Jind, a four-wheeler, blue in colour bearing No.HR-31-1493 was proceeding ahead of their Maruti Car. When Rohtas attempted to overtake the said four-wheeler, its driver Pale Ram-respondent No.1 suddenly veered towards the right side of the road due to which the Maruti Car driven by Rohtas struck against the back side of the four-wheeler and due to that impact the Maruti Car was pushed towards the unmettaled (*Kacha*) portion of the road on the right side, first hitting against the culvert and then against a *Kikkar* tree. The front portion of the car was badly damaged and all the four occupants of the car suffered numerous injuries. They were removed from the car and taken to Civil Hospital, Jind. Rohtas succumbed to his injuries and the others suffered various injuries. FIR No.232 was registered at Police Station Sadar Jind, however, the registration number of the offending vehicle or the name of the driver were not mentioned in the FIR.

Four claim petitions were preferred under the Motor Vehicles Act, 1988, three by the injured claimants and one by the legal heirs of the deceased-Rohtas seeking compensation on account of injuries suffered by them and on account of death of Rohtas. Respondents resisted all the claim petitions while submitting that no

accident took place with the four-wheeler Tata 407 No.HR-31-1493. FIR in question was registered in collusion with the police only in a bid to claim compensation. Insurance Company further pleaded that the driver of the four-wheeler was not holding a valid license at the time of the accident and on account of breach of the terms and conditions of the insurance policy, it was not liable in any manner.

At the time of framing of issues all the four claim petitions were directed to be consolidated vide order dated 20th July, 1995 with a direction that evidence be recorded in the main claim petition i.e. *No.18 of 1995* titled as *Smt. Azad etc. vs. Pale Ram and others*.

On the basis of the pleadings of the parties, following issues were framed by the learned Tribunal:-

1. Whether the accident in question took place due to rash and negligent driving of Pale Ram respondent No.1. Driver of Tata 407/HR-31-1493? OPP.
2. If issue No.1 is proved in the affirmative to what amount of compensation the petitioner is entitled to claim and from whom? OPP.
3. Whether respondent No.1 was holding a valid driving license at the time of accident? OPR.
4. Relief.

Evidence was adduced by the parties to support their respective stands. Learned Tribunal on consideration of the pleadings as well as the evidence on record concluded that the claimants had failed to prove that the accident in question was caused by respondent-Pale Ram while driving the four-wheeler No.HR-31-1493. In this view of the matter, all the four claim petitions were dismissed.

FAO-25 of 1997 has been preferred by the legal representatives of the deceased-Rohtas impugning the award dated 1st August, 1996 whereby the claim petition has been dismissed. *FAO Nos.26 & 27 of 1997* have been preferred by the injured claimants Ishwar Singh and Dharam Pal respectively. No appeal has been preferred by the injured-Banwari.

Learned counsel for the appellants vehemently argues that registration of the FIR in itself is sufficient to prove that the accident in question, whereby Rohtas lost his life and other claimants suffered serious injuries, has indeed occurred due to the driving of the offending vehicle in a rash and negligent manner by respondent-Pale Ram. The FIR, not being a compendium or encyclopedia of all facts, learned Tribunal has grossly erred in drawing an adverse inference against the claimants for non-mentioning of the number of the offending vehicle or the name of the driver. Once it is proved that respondent-Pale Ram was indeed proceeded against in criminal proceedings arising out of the FIR (Ex.P1), it proves that accident in question was caused by him while driving the offending vehicle. Thus it is prayed that the impugned award be set aside and adequate compensation be awarded to the appellants.

Learned counsel for the respondents on the contrary refutes the said argument and submits that there is a complete lack of evidence in this case to show that the accident in question had been caused due to rash and negligent driving of the alleged offending vehicle by the respondent-Pale Ram. It is, thus, prayed that the impugned judgment and decree be upheld.

I have heard learned counsel for the parties and have gone through the pleadings as well as the evidence on record.

There is no doubt that the FIR is not in an encyclopedia of the entire facts of the case. It is also correct that in a given case even where no FIR is registered, the learned Tribunal can arrive at a conclusion of an accident having been caused by a particular person due to his rash and negligent driving, on the basis of evidence which may be led by the parties. In the present case, a perusal of Ex.P1, FIR No.232, dated 23.02.1994, lodged on the statement of Dharam Pal reveals that no details of the offending vehicle or the driver are forthcoming. Dharam Pal has stated in the FIR that the number of the offending vehicle could not be identified. All the four persons i.e. Rohtas and the injured-claimants were travelling in Maruti car. They were returning from a rally of the Haryana Vikas Party at Jind. It is stated by Dharampal that there were a number of vehicles ahead of their Maruti car as well as behind it. A blue coloured four-wheeler was proceeding ahead of them at high speed. It was also supporting a flag of the Vikas Party. As Rohtas attempted to overtake this four-wheeler, its driver came towards the right side and hit against the Maruti car, which resultantly struck against a culvert and then a Kikkar tree. The Maruti car is stated to have suffered damage and the occupants received multiple injuries. They were removed to the hospital and Rohtas succumbed to his injuries. Dharampal specifically states that the number of the offending vehicle could not be noted and neither could the driver of this vehicle be identified.

The name of the driver has surfaced after about three or four months of the registration of the FIR. There is nothing on record as to how and by whom the driver was identified. Reference to the statement of PW-5 Dharampal before the learned Tribunal that he had mentioned the registration number of the offending vehicle as well as the name of the driver before the police is not borne out from the record. It is not in dispute that respondent-driver Pale Ram was arrested three or four months after registration of the FIR and it is also not disputed that he has been acquitted in this case by the learned trial Court vide judgment dated 28th March, 1998 on account of lack of evidence.

Learned counsel for the appellant does not dispute the veracity of the photocopy of this judgment dated 28th March, 1998 produced in Court today. A perusal of this judgment reveals that PW-5 Dharam Pal has not even deposed in the said criminal proceedings. In the instant matters claiming compensation, the evidence of PW-3 Banwari and PW-6 Ishwar Singh, who are the injured-claimants does not reveal any detail regarding the manner in which the accident took place. The registration number of the vehicle or the name, description of the driver is not mentioned even at this subsequent stage. PW-3 Banwari states that he was going back from Jind to Kaithal in a Maruti Car with the other three i.e. Rohtas, Dharam Pal and Ishwar. When they reached near village Kandela their car suffered an accident due to the striking of a blue-coloured canter, the registration number of which is not known to him. When their car was overtaking the canter, its middle portion hit against the car due to which the car went out of

control and struck against a Kikkar tree. Not another word has been uttered by this witness in regard to the accident, the details/registration number of the offending vehicle or the description or details of the driver. PW-6 Ishwar Singh does not even come forth with the manner in which the accident took place. He only states that he suffered injuries in the accident in question and remained under treatment for one day at Civil Hospital, Rohtak and thereafter, at Bhanot Hospital Sonipat. There is nothing on record to show how the name of the respondent driver-Pale Ram has surfaced in the criminal proceedings, who was arrested a few months after the alleged accident. The Investigating Officer has not been examined by the claimants. The learned Tribunal has, therefore, rightly held that the testimony of PW-5 Dharam Pal is not sufficient to prove the case of the claimants as this witness has not even stated that he had seen respondent No.1 driving the vehicle at the time of accident and furthermore the claimants Rohtas and Ishwar Singh have maintained a studious silence in respect to complicity of the respondent Pale Ram in causing the accident in question. The appellants claim to be returning from a rally of the Haryana Vikas Party and there were a number of other vehicles which were returning from the same venue. The offending vehicle is stated to be going at a high speed. Rohtas, since deceased tried to overtake the said vehicle, when it veered to the right due to which the accident occurred. Admittedly no other witness has been examined to prove that the accident took place due to negligence of the respondent driver while driving the offending vehicle. In the criminal proceedings none of eye-witnesses of the alleged accident appeared and neither was the

driver identified, resulting in the acquittal of the driver. Evidence on record is clearly deficient to prove that the accident in question was caused by the offending vehicle No.HR-31-1493, being driven by respondent-Pale Ram.

Learned counsel for the appellants are unable to point out any illegality, infirmity or perversity in the findings returned by learned Tribunal which calls for any interference by this Court. Consequently, the impugned award dated 1st August, 1996 passed by learned Motor Accident Claims, Tribunal, Jind is upheld and all the three appeals are dismissed with no order as to costs.

February 12, 2016
m. sharma

(LISA GILL)
JUDGE