

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

**FAO No.1453 of 2007(O&M)
Date of decision : 29.02.2016**

Rudhar Mani and another

.....Appellants

Versus

Kulvir Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Deepak Suri, Advocate for appellants.

Mr. N.S. Bhinder, Advocate for respondents No.1 & 2.

Mr. Gopal Mittal, Advocate for respondent No.3.

DARSHAN SINGH, J.

CM-7027-CII-2007

There is delay of 09 days in re-filing the present appeal. The appellants have filed an application under Section 151 of the Code of Civil Procedure, 1908 for condonation of delay.

Heard on the application.

In view of the reasons mentioned in the application, same is allowed and delay in re-filing the present appeal is hereby condoned.

FAO No.1453 of 2007

2. The present appeal has been preferred by the appellants-claimants against the award dated 13.09.2006 passed by the learned Motor Accidents Claims Tribunal, Jalandhar (hereinafter called the 'Tribunal') vide which the claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter called the 'Act') filed by the claimants for grant of compensation on account of death of Sansar Chand Walia in the in the motor vehicular accident, which took place on 07.02.2005, has been dismissed.

3. The facts, in brief, are that on 07.02.2005 deceased Sansar Chand Walia along with his wife Santosh Walia and other relatives attended the marriage party at Royal Retreat Place, near Wonderland, Nakodar Road, Jalandhar. They were returning in their car make Lancer bearing registration No.PB-10AT-5559, being driven by Jai Kumar. They were coming from the said Marriage Place towards Guru Teg Bahadur Nagar, Jalandhar at about 12:15 a.m. (night). When the car took turn from Ravi Dass Chowk towards Guru Teg Bahadur Nagar, Jalandhar, a Mahindra Jeep bearing registration No.PB-09A-4327 came from the opposite side being driven by respondent No.1 in a rash and negligent manner and struck against the car. Even the jeep was turned turtle. The persons travelling in the car suffered injuries. The accident took place due to rash and negligent driving of respondent No.1, the driver of the jeep. Jai Kumar was driving the car at slow speed and on the left side of the road. FIR No.27 dated 27.02.2005 was registered at Police Station Division No.6, Jalandhar against respondent No.1. Deceased was taken to

Gahi Hospital, Jalandhar and then shifted to DMC, Ludhiana, but he succumbed to the injuries on 09.02.2005. A sum of Rs.1,00,000/- was spent on his treatment. It is further pleaded that deceased Sansar Chand Walia was 65 years of age. He was the partner in M/s Apex Industries and M/s Apex Exports Industries. He was having monthly income to the tune of Rs.26,500/- approximately. The claimants have claimed compensation to the tune of Rs.20,00,000/- along with interest @ 18% per annum.

4. The respondents contested the claim petition. Respondents No.1 & 2 have filed the joint written statement wherein they pleaded that at the time of accident, respondent No.1 was driving the jeep from the side of Guru Teg Bahadur Nagar, Jalandhar towards Ravi Dass Chowk, situated on Nakodar Road, Jalandhar. A Lancer car suddenly came from the side of Ravi Dass Chowk and took a sudden turn towards the right hand side, where Ghai Hospital is situated, without bothering the traffic coming on the right side of the road. As the car had taken the sudden turn, the vehicle of respondent No.1 was at a very short distance. He applied full brakes, but despite that, the accident could not be avoided and front portion of the jeep struck against the car. It is pleaded that the accident had taken place due to rash and negligent driving of the driver of the car. Respondent No.3, the United India Insurance Company Ltd., also pleaded that there was no negligence on the part of the driver of the jeep. Certain legal and preliminary objections were also raised and it was pleaded that the respondents are not liable for payment of any amount of compensation.

5. From the pleadings of the parties, the following issues were framed by learned Tribunal:

1. Whether Sansar Chand died in a motor vehicle accident due to the rash and negligent driving of jeep bearing No.PB-09A-4327 driven by respondent No.1 on 7.2.2005? OPP
2. Whether the petitioners are entitled to compensation, if so, to what amount and from whom? OPP
3. Whether respondent No.1 the driver of Jeep No.PB-09A-4327 was not holding a valid and proper driving licence at the time of accident, if so, its effect? OPR
4. Whether the petition is bad for non-joinder of necessary parties i.e. driver, owner and insurance company of Lancer Car No.PB-10AT-5559? OPR
5. Relief.

6. On appreciating the evidence on record, the learned Tribunal came to the conclusion that it was the driver of the car who was rash and negligent while driving the car and taking the turn towards right side to cross the other lane. Respondent No.1 was absolved of the negligence. The driver of the car, owner and insurer were not impleaded as party. So, the claim petition was dismissed. Hence this appeal.

7. I have heard learned counsel appearing for the parties and gone through the record of the case carefully.

8. Learned counsel for the appellants contended that from the statement of PW2 Smt. Santosh Walia, who was also the occupant of the car, it is established that the accident has taken place due to rash and negligent driving of Jeep bearing registration No.PB-09A-4327 by respondent No.1. He contended that the driver of the Lancer car was driving the car at the slow speed and on the correct side of the road. Even the criminal case was registered against respondent No.1 for causing this

accident. Some stray admissions in the statement of PW2 Smt. Santosh Walia is no ground to ignore the consistent evidence adduced by the claimants to establish the negligence on the part of respondent No.1. Thus, he pleaded that the claim petition filed by the appellants has been wrongly dismissed by the learned Tribunal.

9. On the other hand, learned counsel for the respondents contended that from the admissions made by PW2 Smt. Santosh Walia, the sole witness of the occurrence examined by the claimants, it is established that Jai Kumar, the driver of the car has not taken any precaution while taking the right turn to cross the divider and other lane. It was his duty to see and watch the traffic flowing on the other lane before crossing the road. Jai Kumar the driver of the car has violated the traffic rules, which resulted into this accident. The driver of the jeep has tried his best to avoid the accident. A false criminal case has been registered against respondent No.1. They further contended that mere registration of the criminal case will not establish the negligence. The Tribunal was required to evaluate the evidence adduced before it.

10. I have duly considered the aforesaid contentions.

11. It is settled principle of law that in a claim petition under Section 166 of the Act, it is incumbent upon the claimants to establish the negligence on the part of the driver of the vehicle in order to seek the compensation. In the accident case on the mode of accident the claimants have examined PW2 Smt. Santosh Walia, widow of Sansar Chand Walia, who was also the occupant of the car. No doubt in her affidavit Ex.PB, she has supported the version mentioned in the claim petition but from

her cross-examination the entire version of the claimants with respect to the negligence on the part of respondent No.1 the driver of the jeep stands shattered. As per the admitted facts, deceased Sansar Chand Walia along with his family, who was travelling in Lancer car bearing registration No.PB-10AT-5559, was returning from a marriage party and going to his house in Guru Teg Bahadur Nagar. When the car reached at Ravi Dass Chowk, the car took a turn towards right side for going to Guru Teg Bahadur Nagar. At that time Mahindra Jeep bearing registration No.PB-09A-4327 being driven by respondent No.1 came from the opposite side and struck against the car. Thus, it is an admitted fact that the accident took place when the car being driven by Jai Kumar took the turn towards right side from Ravi Dass Chowk to cross the other lane.

12. The flow of the traffic on the road is governed by the Rules of the Road Regulations, 1989 (hereinafter called the 'Regulations'). Admittedly the driver of the car in which the deceased was travelling has taken the turn towards right hand side. There was also divider on the road at that point and he has taken the turn from Ravi Dass Chowk i.e. intersection. As per Regulation 8, it was the duty of the driver of the car to slow down while approaching the intersection and should not have entered the intersection until he became aware that he may do so without endangering the safety of the persons thereon. Regulation 9 further provides that the driver of a motor vehicle entering the intersection is required to give way to the vehicles proceeding to the traffic approaching the intersection at his right hand. Thus, as per the aforesaid Regulations, it was the duty of Jai Kumar the driver of the

Lancer car in which the deceased was travelling, to slow down the vehicle and to ensure that he can enter the intersection without endangering the safety of others. He was also required to give way to all the vehicles proceeding the intersection on his right hand side, but from the cross-examination of PW2 it comes out that the driver of the car has violated the Regulations which was the cause of this accident. PW2 Smt. Santosh Walia, the sole witness of the occurrence, has categorically admitted that the driver of the car did not stop at divider and straightway cross the lane. She further admitted that the jeep was quite near when the driver of the Lancer car turned towards right side. She saw the jeep at a distance of 8/10 yards. She admitted that the driver of the jeep applied the brakes, even than the jeep struck against the car. The jeep was also turned turtle, which shows that respondent No.1 has tried his level best to avoid the accident and to stop the jeep. PW2 has also admitted that there was a speed breaker and the jeep has crossed that speed breaker. So, it cannot be stated that the will would be at the fast speed.

13. Thus, from the aforesaid evidence there is no escape from the conclusion that the driver of the car has violated the Regulations and was rash and negligent while taking the turn towards the right side in order to cross the other lane, which resulted in this accident. Respondent No.1 the driver of the jeep who was coming on his correct lane cannot be held negligent for causing this accident.

14. It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the respondent as the Tribunal is required to

act upon the evidence adduced before it. To support this view reference can be made to case ***Ram Karan Vs. Zile Singh 2001(3) R.C.R (Civil) 582***. In a latest judgment titled as ***Kamlesh and others Vs. Attar Singh and others 2016(1) RCR (Civil) 24*** the Hon'ble Apex Court has laid down that though the police has registered a case against the driver of the Tempo and filed the charge sheet but the same cannot be said to be conclusive.

15. Thus, I have no reason to differ with the findings recorded by learned Tribunal that the claimants have not been able to establish that the present accident was the result of rash and negligent driving of jeep bearing registration No.PB-09A-4327 by respondent No.1. Consequently, no fault can be found in the dismissal of the claim petition by the learned Tribunal.

16. Resultantly, the present appeal is without any merits and the same is hereby dismissed.

29.02.2016
sunil yadav

(DARSHAN SINGH)
JUDGE