

IN THE HIGH COURT OF PUNJAB AND HARYANA,  
AT CHANDIGARH

FAO No. 3452 of 2010

Date of Decision: 24 .10.2016

Smt. Dharma Devi and another

.....Appellants

Vs.

Jitender and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. Ashwani Bhardwaj, Advocate, for  
Mr. Aditya Sanghi, Advocate,  
for the appellants.

Ms. Vandana Malhotra, Advocate,  
for respondent No. 3.

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**AMOL RATTAN SINGH, J. (ORAL)**

This is an appeal filed by the claimants before the learned Motor Accident Claims Tribunal, Narnaul, after the claim petition filed by them, seeking compensation for the death of Ram Kishore, who is stated to have died in a motor vehicle accident on 03.10.2007 at about 4:00 p.m., was dismissed.

2. As per the claimants, Ram Kishore was travelling on a motor cycle to Kanina for official work, accompanied by Ran Singh. Ran Singh alighted from the vehicle on the way but Ram Kishore continued towards Sehaland and when he reached near village Unhani, a Tata 407, light motor vehicle ('offending vehicle'), bearing registration no. RJ-18-G-3271, hit the motor cycle that Ram Kishore was driving, as a result of which Ram Kishore died on the spot.

One Mukesh son of Rohtash is stated to have witnessed the accident, information about which was also received by the aforesaid Ran Singh, and the police thereafter informed.

The deceased was stated to be 53 years old, working as a Government servant, employed as a Fieldman in the Department of Agriculture at Narnaul, drawing a salary of Rs. 10,000/- per month.

2. Upon the claim petition having been filed and notice having been issued to the respondents, i.e. the driver, owner and insurer of the aforesaid vehicle, the first two respondents (the driver and owner) filed a joint written statement denying the accident and further alleging that a false criminal case had been lodged against respondent no. 1, i.e. the driver.

The insurance company in its written statement also pleading the same, further pleaded that it was not liable to pay any compensation because the driver of the offending vehicle was not holding a valid driving licence and that other terms and conditions of the insurance policy had also been violated. Collusion between the claimants and the first two respondents was also pleaded by the insurance company.

3. Upon the aforesaid pleadings, the following issues were framed by the learned Tribunal:-

*“1. Whether Ram Kishore son of Hari Ram died in a road accident which took place on 03.10.2007 in the area of village Unhani (police station Kanina) due to rash and negligent driving on the part of respondent no. 1, the driver of 'Tata 407 No. RJ-18-G-3271? OPP*

2. *Whether the driver of the vehicle in question did not hold a valid driving licence, if so to what effect?*

3. *Whether the petitioners are entitled to award of compensation and if so, how much and from whom? OPP*

4. *Relief. “*

4. The appellants herein (claimants) examined Ran Singh as PW-5, who in cross-examination stated that he had not witnessed the accident, which was actually witnessed by Mukesh. In his examination-in-chief he, however, gave the details of the accident, stating that a Tata-407 vehicle, bearing registration no. RJ-18-G-3271, had hit the motor cycle of Ram Kishore near village Unhani, the “offending vehicle” having been driven rashly and negligently by respondent no. 1.

PW-6 Mukesh also testified with regard to the accident and stated the Ran Singh had later come to the spot and had taken the body of Ram Kishore to the Civil Hospital at Mohindergarh.

It was argued on behalf of the respondents, before the Tribunal, that in the FIR lodged at the instance of Ran Singh, he had told the police that he had not noted the number of the vehicle and the name of the driver etc. and that the death of Ram Kishore had actually been caused by some unknown vehicle. In the FIR, it was also mentioned that Ran Singh was the first cousin of the deceased.

5. Noticing the aforesaid, the learned Tribunal came to the conclusion that if Mukesh had witnessed the accident and had informed Ran Singh, he would have given the number of the vehicle at least to Ran Singh, as Mukesh in his testimony had stated that he knew the vehicle number and the identity of the driver. However, that not having been

done, it could not be discerned as to how Ran Singh came into knowledge of the identity of the vehicle and of the driver.

It was, therefore, concluded by the Tribunal that if that were so, it would be unnatural for Mukesh to not have disclosed the number of the vehicle to Ran Singh, and for Ran Singh not thereafter to have not disclosed it to the police, at the time of registration of the FIR.

Hence, the learned Tribunal found that the death of Ram Kishore having been caused due to an accident with the vehicle driven by respondent no. 1, i.e. the aforesaid Tata-407 light commercial vehicle, was not proved.

6. Even while noticing that no evidence had been led with regard to the driving licence of respondent no. 1 not being valid, it was held that that issue had become meaningless, with the accident not proved. Yet, it was still noticed, that the vehicle was being driven without a route permit in Haryana, though it was registered in Rajasthan as a commercial vehicle, weighing 5700 Kgs.

7. Having however, found that the death of Ram Kishore was not proved to have been caused on account of an accident with the vehicle in question, the claim petition was dismissed.

8. Before this Court, Mr. Bhardwaj, learned counsel for the appellants, submitted that the learned Tribunal had wholly ignored the fact that an FIR was registered against respondent no.1 and thereafter, a report under Section 173 Cr.P.C had also been presented to the competent court, with the police having found the driver-respondent no. 1 to be negligent.

In this regard, learned counsel pointed to the testimony of

PW-7, Sheotaj Singh, Assistant Alhmad in the Court of the JMIC, Mahendergarh, wherein the said witness had proved that a criminal case titled as State vs. Jitender was pending in that Court, for the alleged commission of offences punishable under Sections 279 and 304-A of the IPC, pursuant to which a charge had also been framed against the accused. The testimony of the said witness further shows that the criminal case was at the stage of the prosecution evidence being led.

9. The report under Section 173 Cr.P.C., Ex. PE before the Tribunal, has also been referred to by the learned counsel, a perusal of which shows that an FIR was registered against an unknown vehicle and driver by Ran Singh and upon investigation, a Tata-407 vehicle bearing registration no. RJ-18-G-3271 was taken into custody by the police, with respondent no. 1 also having been arrested on 30.10.2007 and presented before the court from where he was bailed out.

(However, no further details are given in the report under Section 173 Cr.P.C., as to on what basis it was found by the police that it was the aforesaid vehicle which was actually involved in the accident and that it was being driven by respondent no. 1).

10. Ms. Vandana Malhotra, learned counsel for respondent no. 3-insurance company (none having appeared for respondents no. 1 and 2), however submitted that the Tribunal had given detailed reasoning for not believing the testimony of either Ran Singh or Mukesh, i.e. PW-5 and PW-6 respectively and simply because a 'challan' was submitted by the police against respondent no. 1, without any detailed reasoning given on the basis of which he was arraigned as an accused therein, would not prove the negligence of respondent no. 1 even for the purpose of

summary proceedings.

Learned counsel relied upon two judgments of a co-ordinate Bench of this Court, and one judgment each from the Karnataka High Court and Andhra Pradesh High Court, to submit that where an eye witness makes an improvement on his statement before the Court, then simply because the respondent is facing a criminal trial, would be no ground to hold that the said respondent was guilty of negligent driving leading to the accident in question.

Specifically, she relied upon the judgment in **Geeta Devi and others** vs. **Ravinder Kumar and others** 2014 (11) RCR (Civil) 2090, wherein it was held as above.

11. Having considered the aforesaid arguments, as also the Award of the learned Tribunal, though undoubtedly, negligence of a driver of a vehicle stated to be involved in a motor vehicle accident, is not to be proved in a claim petition filed under Section 166 of the Motor Vehicles Act, in the same manner as the guilt of the driver has to be proved in a criminal trial, however, I find myself unable to agree with learned counsel for the appellant, inasmuch as, simply because a report under Section 173 Cr.P.C. was presented by the police to the competent court and respondent no. 1 was facing a trial with a charge sheet drawn up against him, it would not establish his negligence even for the purpose of summary proceedings before a Motor Accidents Claims Tribunal.

If, of course, the report under Section 173 Cr.P.C. had given any reasoning on the basis of which respondent no. 1 was arraigned as an accused or even how it was established that the vehicle involved in the accident, was the one owned by respondent no.2, the arguments could

have been accepted.

However, with no reasoning whatsoever given in the said report, other than stating that upon investigation the vehicle was found to be involved in accident, with its driver being respondent no. 1, in the opinion of this Court also, the onus on the claimants to prove the negligence of respondent no. 1 was not discharged in any manner.

12. Naturally, this Court realises the it would be extremely difficult for claimants who have lost a family member in a motor vehicle accident, to collect evidence to prove the negligence of a driver of a vehicle, unless the said driver is apprehended on the spot or the vehicle itself recovered from the spot of the accident. However, unfortunately with the police also not discharging its duty in the manner it should, by giving any detailed reasoning in the report under Section 173 Cr.P.C., it would also be unjust to foist a person simply arraigned as a respondent in a claim petition, with negligence and liability to pay compensation.

No judgment of the trial court seized of the criminal proceedings against respondent no. 1 has been led even by way of any additional evidence before this Court, from which it could be determined that at least, if not for the purpose of criminal proceedings, for the purpose of summary civil proceedings, the negligence in causing the accident was that of respondent no. 1, or even that the vehicle that was involved in the accident, was the one in question.

Hence, with no material to go on, by which it can be shown that the vehicle bearing registration no.RJ-18-G-3271, was involved in the accident which led to the unfortunate death of Ram Kishore, husband of appellant no. 1 and father of appellant no. 2, I find myself unable to

interfere with the reasoning given in the impugned Award.

13.           Consequently, finding no merit in the appeal, it is dismissed,  
but with no order as to costs.

(AMOL RATTAN SINGH)  
JUDGE

October 24, 2016  
nitin/dinesh

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| Whether speaking/reasoned | Yes |
| Whether Reportable        | Yes |