

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

FAO No.1778 of 2016 (O&M)

Date of Decision: July , 2016

Bajaj Allianz General Insurance Company Limited ...Appellant

Versus

Ranjit Kaur and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ashwani Talwar, Advocate for
the appellant – Insurance Company.

HARINDER SINGH SIDHU, J.

This is an appeal by the Insurance Company (Bajaj Allianz General Insurance Company Limited) against the Award dated 27.1.2016 of the Motor Accident Claims Tribunal, Sangrur (for short 'the Tribunal'), whereby, compensation of Rs.34,67,824/- was awarded to the claimant-respondents for the death of Gurmail Singh in a vehicular accident.

Brief facts of the case are that Gurmail Singh (deceased) was employed as Line man in the Punjab State Power Corporation Ltd. (PSPCL). On 11.1.2015 at about 8 AM, he was going from Sangrur to village Bhindran on his Aactiva Scooter bearing registration No.PB-13R-5188 for installation of new electric meters and for recording the readings of the electric meters. When he reached at a distance of 500 yards away from the Gate of New Mastuana Sahib towards Bhawanigarh in the revenue limits of village Mangwal, Tehsil and District Sangrur, a Zeta Volkswagen car bearing registration No.PB-31K-0079 driven rashly and negligently by

Harjinder Singh - respondent no.4 came from the wrong side and struck against the Activa Scooter. As a result thereof, Gurmail Singh fell on the road and received serious injuries. The said car also dragged Gurmail Singh along with his scooter up to a distance of 10/11 feet. While on the way to Hospital, Gurmail Singh succumbed to the injuries.

The legal representatives of the deceased filed claim petition under Section 166 of the Motor Vehicles Act, 1988 pleading that the deceased was aged about 56 years and working as Line man in PSPCL, Sub Division (Sub urban Sangrur). His monthly income was Rs.49,816/- and Rs.12,350/-were being deducted in GPF.

Upon notice, respondents No.4 and 5 filed separate written statement controverting the case of the claimants and stating that false FIR has been got registered against respondent No.4 by the police in connivance with the claimants. Appellant – insurer filed separate written statement and pleaded collusion.

Pleadings of the parties led to the framing of following issues:-

“1. Whether the Gurmail Singh died in a Motor vehicle accident which took place on 11.1.2015 at about 8.00 A.M in the area of village Mangwal on account of rash and negligent driving of car bearing registration No. PB-13K-0079 by respondent No.1 Harjinder Singh? OPA.

2. If issue No.1 is proved whether the claimants are entitled to compensation, if so to what extent and from which of the respondents? OPA.

3. Whether the driver of car No.PB-13K-0079 was not holding valid and effective driving licence at the time of accident, if so its effect? OPR

4. Whether the owner of car has committed breach of any

other condition of the Insurance Policy, if so its effect.? OPR

5. *Relief.”*

Issue No.1 was decided in favour of the claimants and it was held that the accident had taken place due to rash and negligent driving of vehicle No.PB-31K-0079 by respondent Harjinder Singh. The net salary of the deceased was taken to be Rs.47,816/- after deducting tax of Rs.2,000/- per month. After considering the number of dependants (3), 1/3rd was deducted towards personal and living expenses of the deceased and monthly dependency was assessed at Rs.31,878/- i.e. Rs.3,82,536/- per year. The Tribunal applied multiplier of 9 and total loss of dependency was assessed at $382536 \times 9 = \text{Rs.}34,42,824/-$. Besides, a sum of Rs.1,00,000/- for 'loss of consortium' was awarded to claimant(wife) and Rs.25,000/- for 'funeral expenses' to the claimants.

Arguments have been heard and paper-book perused with the assistance of Ld. Counsel for the appellant.

Challenging the Award, it is argued on behalf of the appellant – Insurance Company that involvement of the offending vehicle in the accident is manipulated by the claimants. In support thereof it has been argued that in the FIR lodged by Jagvir Singh, although the number of the vehicle was mentioned but the name of the driver was not mentioned. When he appeared before the Tribunal as CW4 and deposed by way of an affidavit he specifically mentioned the number of the offending vehicle as also the name of its driver – respondent No.4. But while appearing before the Judicial Magistrate Ist Class, Sangrur in the criminal case relating to the said accident, he resiled from his statement. He neither identified the vehicle nor

the driver. This resulted in the acquittal of Harjinder Singh – respondent No.4 vide judgment dated 9.7.2015 of the Judicial Magistrate, Sangrur.

In other words, the sole argument on behalf of the appellant is that as on the statement of the same witness before the criminal court, the alleged accused has been acquitted by the Criminal Court, the statement of such witness recorded before the Tribunal in claim case cannot be relied upon to determine the involvement of the vehicle in the accident.

This Tribunal rejected the aforesaid argument holding that on the evidence before it, it was clearly established that the accident had taken place due to the rash and negligent driving of respondent No.4, which resulted in the death of Gurmail Singh. Reliance was placed on decisions of different High Courts wherein it has been held that the Tribunal is to adjudge the case only on the basis of evidence produced before it and not on the basis of testimonies given before the criminal court.

I do not find any illegality in this finding recorded by the Tribunal which is based on the legal position settled by a long line of judicial precedents.

In **Municipal Committee, Jullundur v. Shri Romesh Saggi and others** AIR 1970 P&H 137, a Division Bench of this Court considered the question:

“Whether the judgment of a criminal court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is conclusive and binding upon the Motor Accident Claims Tribunal dealing with a claim petition under Section 110-C of the Motor Vehicles Act and if not, for what purposes and to

what extent can such a judgment be availed of by the parties concerned?"

Answering the same, it was observed as under:-

"33. To sum up in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nature of the onus may vary and the effect of evidence may not be the same. It will, therefore, be contrary to all fundamental concepts of natural justice to treat the findings of the Criminal Court as binding on the Motor Accidents Claims Tribunal, assuming -- but not holding -- that such a Tribunal is not a Court as defined in Section 3 of the Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.

34. It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the Criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.

35. For the reasons recorded in OUT separate judgments, we answer the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance with law:--

"The Judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110-C the Motor Vehicles Act, and its findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such judgment can however, be relevant only for the purpose and to the extent specified in Section 43 of the Evidence Act"

It was held that the judgment of the Criminal Court determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under the Motor Vehicles Act. The

findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such a judgment is relevant only to the extent specified in Section 43 of the Evidence Act.

The above view was reiterated in **Krishan S/o Mangiram v. Tarawati Widow and Others** 2011 (3) PLR 29 . It was held that a criminal Court's judgment acquitting a driver would have no relevance in a case before the Tribunal and the Tribunal will consider the issue of negligence on the basis of the evidence adduced before it, uninfluenced by the fact of the pendency of the criminal case or the acquittal therein.

“3. It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court. It cannot be used for any other purpose, unless it is a case of conviction rendered on admission before the criminal Court where the conviction by the criminal Court on an issue of negligence will have immense value before the Tribunal.”

In **The General Manager, Bihar Road Transport Corporation v. Smt. Uma Rani Behura and others** 1998 WBLR 344, a Division Bench of the Calcutta High Court held that a judgment of acquittal in a criminal case is admissible in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the

result of such criminal case. But the findings of the criminal Court are not binding on the civil case.

“7. A judgment of acquittal passed in a criminal case is admissible in evidence in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. It is now well settled principle of law that the findings of a criminal Court are not binding on the Civil Court although the converse is true.”

In **Hem Ram and Another v. Krishan Chand and Another** 2015(9) R.C.R (Civil) 311, it was held by the Himachal Pradesh High Court that it is settled position that while a conviction recorded by the Criminal Court is enough to hold that the driver had driven the vehicle rashly and negligently, but his acquittal would be no ground to dismiss the claim petitions.

“28. The question is - whether the findings recorded by the Criminal Court can be made basis for holding that the driver has not driven the vehicle rashly and negligently and the deceased/injured were gratuitous passengers?

29. It is beaten law of land that if conviction is recorded by the Criminal Court, that is the best ground to hold that the driver had driven the vehicle rashly and negligently, but, if the driver earns acquittal, that cannot be a ground for dismissal of the claim petitions”

In **Delhi Transport Co. and Another v. Navjyot Singh and Others** 2015(7) R.C.R (Cr.) 586, the Delhi High Court considered the law on the subject and held that the acquittal of the driver of the offending vehicle by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case .

“7. As stated earlier, Respondents no.1 to 5 had examined PW-4 Kanhaiya Lal as an eye witness to the accident whereas Appellants had produced the driver and conductor of the bus in

support of their claim that the deceased himself was negligent. It was also the contention raised on behalf of the Appellants that acquittal of the driver in the criminal case for the offence punishable under Section 304-A IPC concludes that there was no negligence on the part of Appellant no.2. The Claims Tribunal, however, made an independent assessment of the evidence to reach the conclusion that Appellant no.2 was negligent and was therefore, responsible for causing the accident .

8. *It is no longer res integra that standard of proof of negligence in a criminal case and in a claim petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) are different. It is also well settled that de hors acquittal of the driver in a criminal case , the Claims Tribunal is expected to make an independent inquiry to reach a conclusion whether the negligence on the part of driver of the offending vehicle had been proved on the touchstone of preponderance of probability. Reiterating these principles in **N.K.V. Bros. (P) Ltd. v. M. Kurumai Ammal, (1980) 3 SCC 457**, the Supreme Court held as under:-*

"2.The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient under the law of tort to create liability"

9. *A Single Judge of this Court in **State of Haryana and Anr. v. Sh. Ajay Kumar & Ors., MAC APP.69/2005**, decided on 12.11.2007 held as under:-*

"Similarly the acquittal of the driver of the offending vehicle of the appellant by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case . The MACT cases have to be decided on their own footings and the same are not dependant upon the result or an outcome of a criminal case .."

10. *In **Bimla Devi & Ors. v. Himachal Road Transport Corporation & Ors., (2009) 13 SCC 530**, the Supreme Court reiterated that the test of standard of proof beyond reasonable doubt could not be applied in a claim petition under Section 166 of the Act and that the Claimants are expected to establish negligence on the touchstone of preponderance of probability."*

In **Geeta Devi and others v. Rajesh and Others 2011(7)**

R.C.R (Civil) 2097, the issue was examined in the specific context of a case

where the acquittal was on the ground of the witness turning hostile. It was held that the Tribunal is not to be influenced by the fact that the eye-witnesses who had deposed before the Tribunal had turned hostile during the course of criminal proceedings. The Tribunal is required to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the Criminal Court.

“6. A bare perusal of the impugned order clearly reveals that there are two witnesses . While A.W. 2, Satish, has been produced as an eye- witness , NAW-2 Satish has been produced as the person who lodged the F.I.R. before the police. According to the learned Tribunal, while A.W. 2 Satish was produced as an eye- witness , NAW-2 Satish was not an eye-witness . However, the learned Tribunal has relied more upon the testimony of NAW-2, Satish, and has totally ignored the testimony of NAW-2 Satish, and has totally ignored that in the criminal trial, A.W. 2 Satish was not produced as an eye-witness of the prosecution. Interestingly, NAW-2 Satish has turned hostile before the learned Tribunal, although he had supported the case of prosecution in the criminal trial.

7. Surprisingly, the learned Tribunal has also overlooked the testimony of A.W. 3, Mahaveer. The learned Tribunal is also swayed by the fact that there was some delay in lodging of the F.I.R. before the police. But it has ignored the fact that after the death of Satyaveer, there was no one left in the family except the present appellant, an old woman, who could not have lodged the F.I.R. To say the least, the learned Tribunal has made much out of the delay in lodging of the F.I.R., meanwhile forgetting the fact that a woman who has lost her son may not be in physical or mental position to immediately lodge the F.I.R.

8. A bare perusal of impugned award also reveals that the very approach of the learned Tribunal is misplaced. Instead of analyzing the testimonies of A.W. 2 Satish and Mahaveer, the learned Tribunal is influenced by the fact that those witnesses who were produced as an eye- witness have turned hostile during the course of criminal proceedings itself. It is also more influenced by the testimony of NAW 2 Satish. It is, indeed, trite to state that while the finding of a Civil Court is binding on the Criminal Court, the finding of a Criminal Court could not and should not influence the decision of the Tribunal. The Tribunal is supposed to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given

before the Criminal Court. In this view of the matter, the award is hereby quashed and set aside and the case is remanded back to the concerned Tribunal. The learned Tribunal is directed to decide this case within a period of three months from the date of receipt of certified copy of this judgment.”

Thus there is no merit in this argument of the appellant –

Insurance Company.

No other point was argued.

Appeal dismissed.

July , 2016

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**(HARINDER SINGH SIDHU)
JUDGE**