

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

(1)

**FAO No.3115 of 2003
Date of decision : 17.01.2017**

Mangat Ram

.....Appellant

Versus

Harpal Singh and others

...Respondents

(2)

**FAO No.3713 of 2003
Date of decision : 17.01.2017**

Mangat Ram

.....Appellant

Versus

Harpal Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present : Mr. Govind Chauhan, Advocate for
Mr. Ashish Aggarwal, Advocate for appellant
in both the appeals.

Mr. Neeraj Khanna, Advocate for respondent-
Insurance Company in both the appeals.

DARSHAN SINGH, J.

This judgment shall dispose of both the appeals captioned above, which have arisen out of the same award dated 13.05.2003 passed by the learned Motor Accidents Claims Tribunal, Kurukshetra (hereinafter called the “Tribunal”) in two claim petitions filed by appellant-claimant Mangat Ram under the provisions of Section 166 of the Motor Vehicles

Act, 1988 (for short - the “Act”). Appellant-claimant Mangat Ram has filed the MACT Case No.18 of 2003 for grant of compensation to the tune of ₹1,50,000/- along with interest for the damage caused to his vehicle *i.e.* Matador bearing registration No.DL-2C-2859. He also filed the MACT case No.19 of 2003 for grant of compensation to the tune of ₹5,00,000/- on account of the injuries suffered by him in this motor vehicular accident, which took place on 12.04.1999.

2. As per the case of the appellant-claimant Mangat Ram, on 11.04.1999 he went to Jalandhar from Karnal in Matador bearing registration No.DL-2C-2859 owned by him. On 12.04.1999 he was coming back from Jalandhar to Karnal in the said Matador, which was being driven by Sher Singh son of Vishnu Ram, resident of Chundipur, Distt. Karnal at the moderate speed. When the Matador reached near village Gobindpura, a Swaraj Mazda bearing registration No.PB-11-2850 was parked in the middle of the road by its driver Harpal Singh (respondent No.1) without giving any indication and switching on the parking lights. Due to darkness in the night, the Matador hit behind the said Swaraj Mazda. Due to the impact, the driver of the Matador died at the spot. The Matador was totally damaged. Appellant-claimant Mangat Ram also suffered the injuries. It is further pleaded that the accident has taken place due to sole negligence and fault of respondent No.1 who parked the Swaraj Mazda in the middle of the road without indicator/parking lights *etc.*

3. Respondents No.1 & 2 contested the claim petition by filing the joint written statement on the grounds that no accident has been caused

by respondent No.1. In fact the driver of the Matador hit the Swaraj Mazda from behind. The other averments in the claim petition were controverted. It was pleaded that the claimants have no locus standi to maintain the claim petitions.

4. Respondent No.3-Insurance Company also contested the claim petitions alleging therein that no accident took place with the alleged Swaraj Mazda bearing registration No.PB-11-2850 resulting into any injury to the claimant or damage to his vehicle. It was further pleaded that the accident had taken place due to rash and negligent driving of Matador bearing registration No.DL-2C-2859 by its driver Sher Singh who hit his Matador against the stationary Swaraj Mazda bearing registration No.PB-11-2850 from behind which was parked on the left side of the road on the Katcha portion. The respondent-Insurance Company also raised certain other additional and preliminary objections and pleaded for the dismissal of the claim petition.

5. Both the claim petitions were consolidated by the learned Tribunal vide order dated 23.08.2001. On the basis of pleadings of the parties, the following issues were framed by the learned Tribunal vide order dated 23.08.2001:-

1. Whether the accident in question resulting injuries to claimant Mangat Ram and damage to Matador No.DL-2C-2859 was caused due to rash and negligent driving of Swaraj Mazda No.PB-11-2850 on the part of its driver respondent No.1? OPP
2. If issue No.1 is proved to what amount of compensation the claimant is entitled to and from whom? OPP
3. Whether respondent No.1 was holding a valid and effective

driving licence on the alleged date of accident? OPR

4. Relief.

6. On appreciating the evidence on record the learned Tribunal held that the accident in question has not been caused due to negligent parking of the vehicle bearing registration No.PB-11-2850 by its driver Harpal Singh. Consequently, the claim petitions filed by the appellant with respect to the compensation on account of damage to his vehicle was dismissed and under no fault liability, he was awarded compensation to the tune of ₹25,000/- on account of the injuries suffered by him.

7. Aggrieved with the aforesaid award dated 13.05.2003, the present appeals have been preferred.

8. Initiating the arguments, learned counsel for the appellants contended that appellant-claimant Mangat Ram has stepped into the witness box as PW-2. He has categorically deposed that Swaraj Mazda bearing registration No.PB-11-2850 was parked in the middle of the road and there was no indicator and parking lights were also not switched on. He further deposed that their Matador was at the moderate speed and due to darkness at night their Matador hit the said Swaraj Mazda from behind. As a result of impact, driver Sher Singh died at the spot and he received multiple injuries. He further deposed that the Daily Diary Report No.4 (Ex.P37) was recorded by the police in collusion with respondent No.1 Harpal Singh. The claimant-appellant had even moved a complaint Ex.P5 to the Deputy Superintendent of Police, Sirhind (Punjab) for taking action against Harpal Singh. Learned counsel for the appellant contended that learned Tribunal has primarily

based its findings on the basis of the DDR Ex.P37. He contended that this DDR was recorded on the statement of respondent No.1 Harpal Singh so it was but natural that he will narrate the version suitable to him. He further contended that when respondent Harpal Singh stepped in the witness box he gave a divergent version and put the blame on the driver of the Matador. He contended that even in the DDR this fact is admitted that the Matador has struck with the Swaraj Mazda from behind. Thus, the factum regarding accident is even admitted in the DDR Ex.P37. He contended that the learned Tribunal was not justified to arrive at the conclusion that respondent No.1 was not negligent for causing the accident. He is the sole author of the accident as he had parked his Swaraj Mazda in the middle of the road without any indicator and he even did not switch on the parking lights, which is itself a negligent act. Thus, he contended that the findings recorded by the learned Tribunal on the issue of negligence are erroneous.

9. On the other hand, Mr. Neeraj Khanna Advocate, learned counsel for respondent-Insurance Company contended that there was no corroboration to the statement of claimant Mangat Ram. He has neither lodged any FIR nor filed any criminal complaint against respondent No.1 for causing this accident by driving his vehicle in a rash and negligent manner. He contended that in the DDR it has been mentioned that while respondent No.1 was trying to stop the vehicle due to some defect in the meanwhile the Matador in question came from behind and hit the Swaraj Mazda. This manner of the accident is also supported from the statement of respondent No.1 Harpal Singh. Thus, he contended that the learned Tribunal

has rightly concluded that respondent No.1 was not negligent/responsible for this accident.

10. I have duly considered the aforesaid contentions.

11. It is settled principle of law that in the claim petitions filed under the provisions of the Act the Tribunals are not required to act like a criminal court. The claimant is not required to prove the issue of negligence beyond shadow of reasonable doubt like a criminal charge. To appreciate the evidence regarding negligence in a claim petition filed under the Act the Tribunal should record the findings by applying the principle of preponderance of probabilities. In the instant case, the evidence has not been properly appreciated by the Tribunal. It appears that the learned Tribunal has been swayed with the mode of the accident mentioned in the DDR Ex.P37. It cannot be lost sight of that DDR No.4 dated 12.04.1999 Ex.P37 has been recorded on the statement of respondent No.1 Harpal Singh. The version mentioned therein cannot be binding on the rights of the claimant. Moreover, respondent No.1 Harpal Singh will naturally put forward the version suitable to him in order to save himself from civil and criminal liability.

12. Even in the DDR Ex.P37 this fact is admitted that respondent No.1 Harpal Singh was driving the Swaraj Mazda at the time of the accident. He has further stated that his vehicle had developed some defect and he was going to stop the vehicle on the Katcha portion of the road and in the meanwhile, the Matador bearing registration No.DL-2C-2859 came from Ludhiana side and the driver of the motor vehicle tried to

stop his Matador but it struck with the Swaraj Mazda from behind. So, even in the DDR Ex.P37 this fact is admitted that the vehicle being driven by deceased Sher Singh has struck the Swaraj Mazda from behind. As per the case of the claimant, the said Swaraj Mazda was already parked in the middle of the road without any indicator and switching on the lights, whereas respondent No.1 Harpal Singh has pleaded that he was going to stop the vehicle on the Katcha portion of the road. The learned Tribunal has not properly appreciated the evidence in order to find out which of the version was correct.

13. The learned Tribunal has observed that the statement of Mangat Ram is not corroborated from any other evidence, but the claimant has brought on record the copy of the application dated 20.04.1999 Ex.P5 moved by him to the DSP, Sirhind (Punjab) for taking action against Harpal Singh. This application has been ignored by the learned Tribunal on the plea that same does not bear the signature of appellant Mangat Ram and no evidence has been led to show that this application was actually received in the office of the Deputy Superintendent of Police, Sirhind. But as already mentioned that the factum of accident is not even denied by the respondents. The learned Tribunal was required to see as to whether the version of the respondent that the vehicle being stopped on the Katcha portion of the road is believable or not. It will not be out of context to mention that in case respondent No.1 would have stop his vehicle on the Katcha portion of the road on the left hand side how the collision took place as the Matador in question was going on the road. It was also to be considered by the learned

Tribunal if a vehicle coming behind will collide with the stationary vehicle on the Katcha portion, whether the driver side will hit the said vehicle. In the instant case driver of the Matador namely Sher Singh has died at the spot, so the force of impact was on the driver side of the Matador. The learned Tribunal has not properly appreciated as to whether this manner of impact can be possible if the vehicle is parked on the left side of the road on Katcha portion. Thus, in these circumstances the findings recorded by the learned Tribunal on the issue of negligence cannot be sustained in the eye of law and the matter requires further probe and appreciation.

14. No other point was argued.

15. Thus, keeping in view my aforesaid discussion the present appeals are hereby allowed. The impugned award dated 13.05.2003 is hereby set aside. Both the cases are hereby remanded to the learned Tribunal to decide the cases afresh by properly appreciating all the evidence, circumstances and aspects of the case. If the learned Tribunal deem it proper and necessary, it can allow the parties to lead further evidence by granting limited and restricted opportunity.

16. The parties are directed to appear before the learned Tribunal on 20.02.2017.

17.01.2017

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No