

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

FAO No. 4481 of 2004
DECIDED ON: MARCH 10, 2017

VINOD DEVI AND OTHERS

.....APPELLANTS

VERSUS

JAIPAL FOZI

....RESPONDENT

AND

FAO No. 5421 of 2004

NAURANG

.....APPELLANT

VERSUS

JAIPAL FOZI

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. R.N. Singal, Advocate
for the appellants.

JASPAL SINGH, J

Challenge in both these appeals is to the award dated July 31, 2004 passed by Motor Accident Claims Tribunal, Fatehabad (for short 'Tribunal') whereby two claim petitions i.e. 85 MACT of 2003 preferred by Naurang and

86 MACT of 2002 preferred by Vinod Devi & another were dismissed by holding that the claimants have failed to establish that the accident had occurred due to rash and negligent driving of jeep No. HR-22-7012 by respondent-Jaipal Fozi.

For the appraisal of matter in controversy the fact have been extracted from 85 MACT of 2003 titled as Naurang vs. Jaipal Fozi. That on October 02, 2000 at about 7.00 PM Mangal Singh (since deceased) was going on tractor bearing registration no. HR-22-1607 being driven by Mangal Singh and owned by Naurang one of the claimants, from Fatehabad to village Dhahi Khurd when he reached near ITI Bhodia Khera, a jeep being driven by respondent rashly and negligently came from opposite side at a high speed without blowing horn came from the opposite side. Although Mangal Singh was driving its tractor at a moderate speed but respondent struck his jeep against the tractor. Due to the impact of accident Mangal Singh fell down and received multiple grievous injuries. The occupants of the jeep also sustained injuries during the course of accident. The tractor was also badly damaged, Mangal Singh alongwith other injured was rushed to Civil Hospital, Fatehabad where after some time he (Mangal Singh) succumbed to his injuries. Seeking compensation on account of death Mangal Singh as well as damage caused to the tractor but the claim petitions were preferred under Section 166 of the Act, which was disposed of vide impugned award dated July 31, 2004.

Aggrieved against the dismissal of both the claim petitions, appellants have approached this Court by way of these appeals which are being disposed of vide this common judgment.

While assailing the impugned award, especially findings rendered

by learned Tribunal on issue No.1, it has been argued with vehemence by learned counsel for the appellants that the same are absolutely against the evidence available on file and mis-appreciation of evidence has resulted into miscarriage of justice. In fact in order to prove negligence on the part of respondent, claimants; besides examining PW-7 Satbir an eye witness of the occurrence, report under Section 173 Cr.P.C filed by the police against respondent in a criminal case bearing FIR No. 416, dated October 03, 2000 under Sections 279, 337 and 304-A IPC and Ex. P7 the site plan of the accident. Satbir (PW-7) has been running a tea stall near the place of accident and his presence at the place of accident is natural. He has clearly deposed that accident took place due to rash and negligent driving on the part of driver of jeep i.e. Jai Pal Fozi. It has been specifically deposed by him that on October 02, 2001 at about 7.00 PM a jeep was coming from Bhattu Kalan side whereas, a tractor was coming from Fatehabad side. Tractor was bearing a registration No. 1607 whereas, number of the jeep was 7012. When he was closing his tea stall then accident took place, which was due to the fault on the part of jeep driver. It has also been categorically deposed by him that person died in the accident was Mangal Singh driver of the tractor.

Learned counsel for the appellants further submits that inspite of overwhelming evidence on record of the case to prove that the accident occurred due to rash and negligent driving of jeep driver and learned Tribunal adopted an extremely harsh approach towards the appellants and dismissed their claim petitions by holding that they have failed to prove that accident had occurred due to the rash and negligent driving of respondent-Jaipal.

The law relating to compensation in accident cases is a beneficial

legislation. Accident victims must be dealt with kindness and the effort should be to compensate them. An accident claim cannot be equated with a criminal case. In an accident claim case the purpose is to compensate the victims whereas in the criminal case the purpose is to put the offending driver behind bars. It is for this reason that time and again it has been held that the degree of proof required to prove negligence in an accident claim case is not as stringent as in a criminal case.

Moreover, the mere fact that respondent has been acquitted in a criminal case does not *ipso-facto* mean that no liability can be fastened upon him in an accident claim case. An accident claim case is to be decided on the basis of an independent finding adduced before learned Tribunal and not being influenced by the acquittal or conviction of the driver of the offending vehicle by the criminal court. Since there is trustworthy evidence of Satbir-PW-7 regarding the accident in which Mangal Singh lost his life due to rash and negligent driving of jeep No. HR-22-7012. The findings recorded by learned Tribunal on issue No.1 deserves to be reversed and to be decided in favour of claimants. Consequently, the claimants deserve to be awarded just and adequate compensation.

After bestowing due consideration to the rival submissions made by learned counsel for the appellants and scrutinizing the impugned award as well as documents available on file, this Court does not find any legal and factual force in the arguments advanced by learned counsel for the appellants.

The appellants have sought compensation under Section 166 of the Act, meaning thereby, that they are under obligation to establish that death of Mangal Singh has occurred in an accident on account of rash and negligent

driving of jeep No. HR-22-7012 by respondent-Jaipal and further that tractor also suffered damages in the accident. Proving of rash and negligent driving is the foundation of claim petition when preferred under Section 166 of the Act. In the case in hand except bald statement of PW-7/Satbir, there is no other evidence. If the testimony of PW-7-Satbir is scrutinized with care and caution, it can be concluded that he is a made up witness and he was not present at the time and place of accident.

Undoubtedly, FIR No. 416, dated October 03, 2000 was registered under Section 279, 337 and 304-A IPC at Police Station Fatehabad in respect of the accident in question in which respondent-Jaipal has already been acquitted vide judgment Ex.R-4. In the said case Ramesh Kumar, Jagdish and Shakuntla were examined as eye witnesses. The copies of their statements were placed on record Ex.R1 to Ex.R3 respectively, recorded in a criminal case. All these three witnesses examined by the prosecution in a criminal case did not toe the line of prosecution and specifically stated that no occurrence had taken place in their presence. There is nothing on record to suggest as to why Satbir was not examined in the criminal case. Had, he seen the occurrence, especially, in the circumstances when Ramesh, Jagdish and Shakuntla did not support the case of prosecution. The name of Satbir did not figure in any of the documents i.e Ex.R1 to Ex.R4 as well as in the report under Section 173 Cr.P.C. Ex.P6. A close scrutiny of the statement of Satbir-PW-7 also shows that his presence at the spot is doubtful. There is no independent corroboration to his statement.

Thus, this Court is of the considered view that learned Tribunal has rightly concluded that the claimants have miserably failed to prove the rashness and negligence on the part of driver of jeep i.e. respondent-Jaipal, in which

Mangal Singh is stated to have lost his life. The findings recorded by learned Tribunal on issue No.1 and consequent dismissal of claim petitions are absolutely in consonance with the evidence available on file and the settled canons of law.

In the light of what has been discussed above, this Court does not find any merit in the instant appeals. As such, both the appeals i.e. FAO No. 4481 of 2004 and FAO No. 5421 of 2004, stand dismissed.

No order as to costs.

MARCH 10, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*