

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

FAO-1665-2012 (O&M)
Date of decision: 01.11.2017

Mukesh Devi and others

.... Appellants

Versus

Sandeep and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr.Vikrmajeet Singh, Advocate
for the appellants.

Mr.Manoj Chahal, Advocate
for respondents No.1 and 2.

Mr. Rajneesh Malhotra , Advocate
for respondent No.3.

Avneesh Jhingan, J.

The issue involved in the present appeal is regarding the discharge of onus in claim proceedings under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

The Motor Accidents Claims Tribunal (for short, 'the Tribunal') dismissed the claim petition on the ground that rash and negligent driving of tractor bearing registration No. HR-36B/0754 was not proved.

Aggrieved of the said award, the present appeal has been filed.

Bal Kishan, aged 28 years, lost his life in a motor vehicular accident on 13.11.2009. He was travelling on a tractor. The tractor turned turtle. As a result of which, he suffered grievous injuries and succumbed to injuries on the way to the hospital. FIR was registered on 14.11.2009 on

the statement of Sukhbir, who was travelling on the tractor.

The legal heirs of Bal Kishan filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'). The fact of lodging the FIR was mentioned in the claim petition. The copy of FIR was neither attached nor produced. However, in order to prove the rash and negligent driving of the driver of the tractor, Ashok-PW2 deposed before the Tribunal and filed his affidavit as Ex.PW2/A. No other witness was produced.

Learned counsel for the appellants has argued that the criminal proceedings have no effect on the claim made under the Act. He further argued that from the deposition of PW2, it was proved that the accident occurred due to rash and negligent driving of the driver of the tractor.

Learned counsel for respondent No.3 defended the award and contended that the initial version of the FIR was that accident occurred due to rash and negligent driving of the truck. He stated that supplementary statement was made by Sukhbir and other witnesses namely Vikram and Rajesh which was recorded on 15.12.2009 and it was on their statements that the driver of the truck was arrested on 16.12.2009. Learned counsel further contended that the claimants have failed to prove the rash and negligent driving of the tractor.

The law is settled by the Hon'ble Apex Court in decision of **Kamlesh and others vs. Attar Singh and others, 2015(15) SCC 364.** The relevant para is reproduced as under :-

8. We have heard learned counsel for the parties

and perused, inter alia, the evidence on record of Ram Parshad PW2 and Devender PW.3. The method and manner in which the accident has taken place leaves no room for doubt that it was a case of composite negligence of drivers of both the vehicles, that is the driver of Maruti car and driver of tempo. Though Police has registered a case against driver of the tempo Attar Singh and has filed a charge sheet but the same cannot be said to be conclusive. Though, Attar Singh has stated that it was in order to oblige the driver of the Maruti car, a case was registered against him. Be that as it may, it appears both the drivers have tried to save their liability. In such circumstances, the version of eye-witnesses, PW.2 and PW.3 assumes significance. The fact remains that car had dashed the tempo on the middle portion near footstep. Thus the method and manner in which the accident has taken place leaves no room for doubt that both the drivers were negligent. Man may lie but the circumstances do not is the cardinal principle of evaluation of evidence. No effort has been made by the High Court to appreciate the evidence and method and manner

in which the accident has taken place. Both the aforesaid witnesses have stated Maruti Car was in excessive speed. However, it appears driver of tempo also could not remove his vehicle from the way of Maruti Car. Thus, both the drivers were clearly negligent. It appears from the facts and circumstances that both the drivers were equally responsible for the accident. Thus, it was a case of composite negligence. Both the drivers were joint 'tort-feasors', thus, liable to make payment of compensation."

Similarly, this Court in Anguri Devi and others vs. Lakhvinder Singh alias Lakha and others, 2017(3) PLR 86 has held as under :-

"16. 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 driver 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) RCR (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.”

From the perusal of the above decision, it is evident that the result of criminal proceedings should not effect the claim proceedings under the Act rather it is to be established on the evidence produced.

Hon'ble Apex Court in case **Surender Kumar Arora and another Vs. Manoj Bisla and others, 2012 (4) SCC 552** has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

In the present case, the petition was moved under Section 166 of the Act and claimants in order to discharge their onus to prove rash and negligent driving of the tractor, produced Ashok as PW2. From the reading of his statement, it would prima facie appear that onus was discharged by the claimants. But this statement was not found worth reliance by the Tribunal.

In the appellate proceedings, High Court can re-appreciate the pleadings and record as held by the Hon'ble Apex Court in case of **Kishan Gopal and another vs. Lala Ram and others, 2013 AIR SC (Civil), 2465.**

The factual matrix has to be re-appreciated. The accident took place on 13.11.2009 as per the version of the claimants. Deceased Bal Kishan, Sukhbir and Ashok were travelling on a tractor bearing registration

No.HR-36B-0754. The said tractor was being driven by Sandeep son of Kapoor Singh. The tractor turned turtle resulting into death of Bal Kishan and injuries to Ashok. An FIR was registered on 14.11.2009 on the statement made by Sukhbir, It is pertinent that Sukhbir was one of the person travelling on the tractor. According to the statement of Sukhbir, the accident was the result of an unknown truck which was being driven in rash and negligent manner. Neither the claimants nor Ashok showed any grievance with regard to FIR. But for the reasons best known either to the claimants or to Sukhbir, suddenly on 15.12.2009, a supplementary statement was recorded of Sukhbir and other witnesses namely Vikram and Rajesh. Entire statement recorded earlier was changed. As per the supplementary statement, the driver of the tractor was driving the tractor in a rash and negligent manner because of which this accident occurred. The driver of the tractor was arrested on 16.12.2009 and even charge-sheet was presented in the criminal proceedings. No explanation is forthcoming that what was the occasion or what had happened for change of heart of Sukhbir.

According to claimants, they discharged the onus placed upon them under Section 166 of the Act by deposition of Ashok who was travelling on the same tractor and was injured. He supported the contents of the claim petition.

Learned counsel for the appellants heavily relied upon the said statement and rather his entire case is, after recording of this statement the onus was discharged and the rash and negligent driving of the tractor was

proved.

Learned counsel for the respondents on the other hand contested the matter by arguing that no one was aggrieved of the FIR and what was the occasion for Sukhbir to get the supplementary statement recorded.

The issue is to be seen from another angle. Ashok who deposed before the Tribunal himself was injured and according to learned counsel for the appellants, his statement was also recorded by the police in the hospital. He never registered any FIR. He never challenged the contents of the FIR earlier registered by Sukhbir. Sukhbir changed the contents that he never deposed before the Tribunal. The other two witnesses namely Vikram and Rajesh who were witness in the criminal proceedings also never stepped in the witness box in the proceedings before the Tribunal. The driver of the tractor was also not examined.

The claimants in the claim petition though gave a reference of the FIR registered but neither the contents of the FIR were reproduced nor the same was placed on record. It is fatal to the case of the claimants when coupled with the fact that the charge sheet against the tractor driver based on the supplementary statement of Sukhbir was placed on record and relied upon as it favoured their contention.

Learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in *N.K.V.Bros. (P.) Ltd. vs. M.Karumai Ammal and others etc., 1980 AIR (SC) 1354* to state that because of merely some doubt here or some obscurity there, the claimants should not suffer.

There is no dispute to the said proposition. The fact remains that inspite of the decision of the Hon'ble Apex Court in **N.K.V.Bros. (P.) Ltd.'s case (supra)**, under Section 166, the onus to prove rash and negligent driving and involvement of the vehicle is on the claimants. The issue is to be decided whether the said onus has been discharged or not?

Even after re-appreciating the entire facts and material, there is no fault in the award passed by the Tribunal in dismissing the claim petition. The only one witness produced is not worth reliance and the issue raised above remained unanswered.

As a result, the appeal has no merits and is hereby dismissed.

(AVNEESH JHINGAN)
JUDGE

01.11.2017

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Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : Yes