

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:13.10.2017

FAO No. 5535 of 2012(O&M)

Jaswinder Kaur and others

---Appellants

vs.

Sucha Singh and others

---Respondents

FAO No. 6179 of 2012(O&M)

Baljit Kaur and others

---Appellants

vs.

Sucha Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rajbir Singh, Advocate for the appellants.
Ms. Isha Goyal, Advocate for respondent Nos. 1 and 2
Mr. Gopal Mittal, Advocate respondent No. 3
Mr. N.K.Awasthy, Advocate for respondent Nos. 4 and 5
Mr. Manmohan, Advocate for respondent No. 6

Rekha Mittal, J.

CM No. 25345-CII of 2012 in FAO- 5535 of 2012

CM No. 29065-CII of 2012 in FAO- 6179 of 2012

Prayer in these applications is for condoning delay of 104 and

103 days respectively in filing the appeals.

In view of averments made in the applications and arguments advanced by counsel for the applicants, the applications are allowed and delay of 104 and 103 days respectively in filing the appeals is condoned.

CM No. 20807-CII of 2012 in FAO- 5535 of 2012

CM No. 20799-CII of 2012 in FAO- 6179 of 2012

Counsel for the applicants states that the applications for additional evidence may be dismissed as not pressed.

Ordered accordingly.

Main cases

This order will dispose of 5535 and 6179 of 2012 as these have emerged out of the same accident dated 7.2.2010 and involve identical questions of law and fact for adjudication. For brevity, facts are taken from FAO No. 5535 of 2012.

Jaswinder Kaur and others filed an application under Section 166 of the Motor Vehicles Act, 1988 (in short “the Act”) for grant of compensation in regard to death of jasvir Singh in a motor vehicular accident that took place on 7.2.2010. As per averments raised in the application, on the fateful day, after attending marriage, Jasvir Singh along with Gurcharan Singh @ Charan Singh was going from New York marriage palace to Dirba City in Zen Car bearing No. HR-22-B-2198 (hereinafter to be referred to as “Zen car”). They were followed by Harnek Singh son of Gurdial Singh and Hakam Singh former Sarpanch resident of village Mehlan in a separate car. When they came out of the aforesaid marriage palace, Alto car bearing No. PB-11-AE-6696 (hereinafter to be referred to as

“Alto car”) came from the side of Dirba and hit the car in which Jasvir Singh and Gurcharan Singh were travelling. A jeep Mahindra Pick up bearing No. PB-13-M-3264 (hereinafter to be referred to as “Mahindra Pick up”) also came from the side of Dirba driven in a rash and negligent manner and at a high speed by Sucha Singh and hit Zen car. Jasvir Singh and Gurcharan Singh suffered multiple injuries and died at the spot. FIR No. 12 dated 7.2.2010 under Sections 279, 304-A and 427 of the Indian Penal Code (in short “IPC”) was registered against Sucha Singh at Police Station, Dirba.

Driver and owner of Mahindra Pick up filed joint written statement and, in turn, denied that accident occurred on account of rash and negligent driving of Mahindra Pick up with the averments that the accident occurred due to negligence of drivers of Alto and Zen cars. The insurance company of Mahindra Pick up filed its separate written statement denying its liability to pay compensation. Driver of Alto car also filed reply controverting the allegations that he was responsible for causing the accident. It has further been pleaded that neither Lakhwinder Singh son of Krishan Chand registered owner of Alto car ever admitted that accident occurred on account of negligent driving of Zen car. Lakhwinder Singh owner of Alto car also filed reply in line with the averments raised by driver of the said car. The insurance company of the Alto car also filed reply denying its liability to pay compensation on various grounds.

The controversy between the parties led to framing of following issues by the trial court:-

1. Was Jasvir Singh killed in a motor vehicle accident caused

on account of rash and negligent driving of Mahindra Pick Up jeep bearing registration No. PB 13 M 3264 by respondent No. 1 and/or Alto car bearing registration no. PB 11 AE 6696 by respondent No. 4 belonging to second and fifth respondent and insured with third and sixth respondent, respectively, on 7.2.2010 at about 5.30 p.m. near New York Marriage Place, Dirba?OPA

2. If issue No. 1 is proved are the applicants entitled to any compensation, if yes to what amount and from whom?OPA
3. Were respondents Sucha Singh and Parshotam Kumar not holding a valid and effective driving licences at the time of occurrence, if yes, its effect? OPR 3 and 6.”

To prove their case, the claimants examined Harnek Singh author of FIR No. 12 dated 7.2.2010 and an eye witness to the occurrence and one of the claimants namely Jaswinder Kaur widow of the deceased appeared in the witness box. To rebut evidence of the claimants, Parshotam Kumar, driver of Alto car appeared as RW1, Sucha Singh, driver of Mahindra Pick Up RW2 and Mithu Lal, registered owner of Mahindra Pick up RW3.

After having heard counsel for the parties and in the light of materials on record, the Motor Accidents Claims Tribunal, Sangrur (in short “the Tribunal”) answered issue No. 1 against the claimants and resultantly the application was dismissed but without recording findings on other issues.

Counsel for the appellants would contend that the learned Tribunal has proceeded to decide issue No. 1 in a manner as it was dealing with criminal liability of drivers of Mahindra Pick Up and Alto car. Further argued that the Tribunal has not adverted to the statements of Parshotam

Kumar and Sucha Singh, drivers of Alto car and Mahindra Pick Up, respectively for concluding that accident was the result of negligence on the part of driver of ill fated Zen car in which the deceased was travelling. Further argued that in para 26 of the award, the Tribunal has noticed that driver of Zen car was obligated to ensure that no vehicle was coming from either side of the road before driving car out of marriage palace to the road but there is no finding with regard to the direction in which the marriage palace was situated and the direction in which the Zen car was to go though admittedly it was proceeding towards Dirba.

Counsel representing the respondents have supported findings recorded by the Tribunal that the claimants have failed to establish that driver of Mahindra Pick Up is author of the accident or rashness and negligence in causing the accident can be attributed to him. It is further argued that as per case of the claimants, they have not attributed rashness or negligence to driver of Alto car.

Another submission made by counsel representing respondent Nos. 1 and 4 is that as Zen car after hitting the Alto car swerved towards right side and driver of Mahindra Pick Up could not anticipate any such happening, he cannot be indicted for causing the accident due to his rash and negligent driving.

I have heard counsel for the parties, perused the paper book and the records.

Before adverting to the submissions made by counsel for the parties, it is appropriate to recall that proceedings before the Tribunal are summary in nature and do not admit strict principles of law of evidence.

Equally settled is that issues before the Tribunal are to be decided on the basis of balance of probabilities and not by applying proof beyond doubt which is a sine qua non for holding an accused guilty of committing offence in a criminal trial.

Reverting to the case at hand, to establish their plea that accident is the result of rash and negligent driving of Mahindra Pick Up, claimants examined Harnek Singh, an eye witness to the occurrence and author of FIR No.12 dated 7.2.2010 registered in Police Station, Dirba. Sucha Singh driver of Mahindra Pick Up appeared in the witness box and so also Parshotam Kumar driver of Alto car.

Though the Tribunal in para 29 has noticed that it has not been disclosed if the Zen car was driven by Jasvir Singh or Gurcharan Singh or by somebody else but it is nobody's case that besides Jasvir Singh and Gurcharan Singh (since deceased) somebody else was also an occupant of the car either as a driver or a traveller. As both the occupants of Zen car succumbed to the injuries sustained in the occurrence and none of the claimants was present at the spot, the claimants had to rely upon what had been disclosed to them by one of the eye witnesses to the occurrence namely Harnek Singh. Under the circumstances, issue No. 1 is required to be decided on the basis of composite view of plea of the claimants, driver of Alto car and Mahindra Pick Up in their replies and testimonies of Harnek Singh AW1, Parshotam Kumar RW1 and Sucha Singh RW2.

As has been rightly argued by counsel for the appellants, while recording findings with regard to obligation of driver of Zen car, to ensure that no vehicle was coming from either side, the Tribunal is silent as to on

which side of the road marriage palace is situated; whether after coming out of the marriage palace and for going towards Dirba, a person has to go towards left or right side of the marriage palace or driver of Zen car was supposed to cross the road located in front of the marriage palace for going towards Dirba. Under the circumstances, observations recorded by the Tribunal qua obligation of driver of Zen car or his failure to discharge that obligation are not well founded. Counsel for the respondents have failed to point out any materials to form basis of this finding by the Tribunal.

Before advertng to the pleadings and evidence on record, it is pertinent to note that on the basis of FIR got registered by Harnek Singh AW1, investigation was conducted in the matter and challan was presented against Sucha Singh driver of Mahindra Pick Up. Sucha Singh RW2 has admitted that he is facing criminal proceedings in respect of the occurrence. He had not made any representation before any authority that FIR has been falsely recorded against him. Mahindra Pick Up was got released by him on supurdari from the Court. He was driving the said vehicle at the time of occurrence.

Claimants, in para 24 of the application, have pleaded that Gurcharan Singh and Jasvir Singh were coming from New York marriage palace to Dirba in Zen car after attending marriage. Harnek Singh son of Gurdial Singh and Hakam Singh ex Sarpanch were following them in a separate car. Just coming out from the New York marriage palace, Dirba, an Alto car came from Dirba side and struck in the car of Gurcharan Singh and Jasvir Singh. A Mahindra Pick Up was also coming from Dirba side rashly, negligently, carelessly, without blowing any horn, in a zig zag manner and at

a very high speed and struck in the car of Jasvir Singh and Gurcharan Singh. Due to this striking, Gurcharan Singh and Jasvir Singh got injuries and died on the spot. The accident took place due to rash, careless and negligent driving of Mahindra Pick Up by Sucha Singh.

Harnek Singh AW1 tendered into evidence his duly sworn affidavit and reiterated version brought forth by the claimants. In his cross examination by counsel representing driver, owner and insurer of Mahindra Pick Up, he has deposed in the following terms:-

“In the marriage, liquor was served. However, the same was not served on our side. We have left the palace at about 5-00 p.m. and had crossed 7-8 Kilometers from the palace towards Dirba side. Gurcharan Singh and Jasbir Singh were going in car No. HR 22B 9198 and I was driving car No. CH 1945. There was gap of about half a kilometer between the two cars. Car of Gurcharan Singh and Jasbir Singh had touched Alto car coming from Dirba side and had taken a turn towards right side and thereafter one Mahindra jeep coming from Dirba Side struck against car of Gurcharan Singh and Jasbir Singh and crushed the same. Mahindra jeep was coming in a rash and negligent manner at that time.

Sucha Singh (respondent No. 1 therein) filed joint reply with owner of Mahindra Pick Up. In response to para 24 of the application, it has been averred, reads thus:-

“This para establish that initially Zen and Alto cars struck with each other in the middle of the road and thereafter Mahindra Pick Up struck with the car. It means both the vehicle i.e. Drivers of Zen and Alto Car were negligent.”

In cross examination of Harnek Singh, no such version was put to him that Zen and Alto cars struck with each other in the middle of the road or drivers of the Zen and Alto cars were negligent in causing the accident. Rather he has been suggested that accident had taken place due to the fact that car of deceased had taken turn towards right side.

Sucha Singh in his testimony by way of affidavit Ex. RW2/A has reiterated the version given in the reply. However, it has nowhere been stated by him that after collision with Alto car, Zen car was taken towards right side of the road. Nothing has been stated by Sucha Singh as to what was the distance between Alto car and Mahindra Pick Up which were admittedly coming from Dirba side. He has not explained if he had taken any care/steps to avoid collision with Zen car. It is not his plea that after seeing the Zen car and Alto car having collided, he had no time to stop his vehicle to save collision with Zen car. He has not stated about speed of Mahindra Pick Up driven by him at the relevant time. That being so, it can be safely held that Sucha Singh who was the best person to explain as to how and why the accident took place did not reveal the true and detailed facts, therefore, an adverse inference is liable to be drawn against him.

Parshotam Kumar, driver of Alto car, in reply to para 24, has averred that Alto car has been falsely involved in the alleged accident. The deceased himself was negligent while driving Maruti Zen car. He tendered into evidence his affidavit Ex. RW1/A. A relevant extract from para 1 of the affidavit reads as follows:-

“The accident took place due to rash and negligent driving of Sucha Singh while driving Mahindra Pick up

Jeep No. PB-13-M-3264 as is also admitted by claimants in the claim petition and FIR was also registered against Sucha Singh. Moreover, driver of Maruti Zen Car No. PB-22-B 9198 was also driving the car in rash and negligent manner. The deponent and Alto car No. PB-11-AE-6696 has been falsely involved in the alleged accident to get the compensation.”

In his cross examination by counsel representing driver, owner and insurer of Mahindra Pick Up, he has denied the suggestion that accident did not take place due to negligent driving of Mahindra Pick Up or the same had taken place due to his negligence. He has further deposed that Maruti Zen car was coming from palace at a high speed and it hit Alto car which he was driving. He did not know what happened thereafter as he went away after abandoning the Alto car there. He did not witness the Zen car hitting any other vehicle.

Parshotam Kumar in his reply as well as affidavit Ex. RW1/A has not explained as to how the driver of Zen car was rash or negligent in his driving. In his cross examination by counsel representing the driver, owner and insurer of Mahindra Pick Up which was conducted subsequent to his cross examination by counsel for the claimants, he has deposed that Zen car was coming from palace at a high speed and hit Alto car which he was driving.

On due consideration of testimony of Parshotam Kumar, no such finding can possibly be recorded that driver of Zen car was rash or negligent or lacked in care expected from a prudent driver

The Tribunal has commented adversely against the claimants on the basis of two different versions i.e. one given in the application and the other brought forth in cross examination of Harnek Singh PW1. The version raised in para 24 of the application has been noticed while describing facts of the case. However, Harnek Singh PW1 in cross examination had stated that they had crossed 7-8 kilometers from the palace toward Dirba side. There is no challenge to this fact in further cross examination of Harnek Singh. No such plea has been raised by the respondents either in reply or by way of evidence that Zen car was coming out of marriage palace when the occurrence took place. That being so, no adverse view is to be taken against the claimants on the basis of two versions noticed by the Tribunal.

The Tribunal has also held against the claimants for their failure to make it clear whether Zen car was driven by Jasvir Singh or Gurcharan Singh or somebody else. No doubt, it is not clear on record if Zen car was driven by Gurcharan Singh or Jasvir Singh but it is neither plea of the claimants nor any such fact has been elicited during evidence that besides Gurcharan Singh and Jasvir Singh, somebody else was also travelling in the car either as a driver or otherwise. Hence, failure of the claimants to explain if the car was driven by Gurcharan Singh or Jasvir Singh, at best, can go against both sets of claimants if any exclusive or contributory negligence is attributed to driver of Zen car.

As has been noticed hereinabove, there is no challenge to testimony of Harnek Singh that they had already crossed 7-8 kilometers from the palace towards Dirba side when the accident took place. Indisputably, initially there was collision between Zen and Alto car. It is

not plea of the claimants or version of Harnek Singh PW1 that Gurcharan Singh and Jasvir Singh sustained any injury when Zen touched Alto car. Parshotam Kumar, driver of Alto car has failed to establish that driver of Zen car was rash or negligent, resulting in touching of Alto and Zen cars. Sucha Singh has not disputed that Mahindra Pick Up was coming from Dirba Side when the accident took place. Counsel representing driver of Mahindra Pick Up has tried to draw some mileage from the fact elicited in cross examination of Harnek Singh AW1 to the effect that car of Gurcharan Singh and Jasvir Singh had touched alto car and had taken turn towards right side and thereafter Mohindra jeep struck against car of Gurcharan Singh and Jasvir Singh. The mere fact that after touching Alto car, Zen car had taken a turn towards right side is not sufficient to record a finding that driver of Zen car was either rash or negligent or both in driving Zen car. If driver of Zen car in the process of avoiding collision between Alto and Zen car tried to take his car towards right side or Zen car swerved towards right side because of hitting of the two cars, driver of Zen car can neither be blamed for the initial occurrence or for the Zen car having turned towards right side. As has been noticed earlier but at the cost of repetition, Sucha Singh RW2 is conspicuously silent as to what care and steps were taken by him to avoid collision with Zen car. Though Sucha Singh in his affidavit RW2/A has deposed that the aforesaid cars collided in the middle of the road but no such fact has been brought forth in cross examination of Harnek Singh. Testimony of Parshotam Kumar driver of Alto car is not worthy of reliance to attribute any negligence to driver of Zen car. Taking a cumulative view of the facts and circumstances discussed hereinbefore, it

can safely be held that the accident is the result of composite negligence of Alto car and Mahindra Pick Up. Had the Alto car not struck against the Zen car, Zen car might not have swerved towards the right side. The driver of Mahindra Pick Up did not take care and adequate steps to avoid collision between Mahindra Pick Up and Zen car. There is no challenge to testimony of Harnek Singh that Gurcharan Singh and Jasvir Singh sustained injuries not because of striking of Alto and Zen cars but because of striking of Zen car and Mahindra Pick Up. In view of the above, negligence to the extent of 20% is attributed to Alto car and 80% to Mahindra Pick Up. Accordingly, findings recorded by the Tribunal on issue No. 1 are set aside and the said issue is answered in favour of the claimants in the aforesaid terms.

The Tribunal has not recorded findings qua other issues. Since findings of the Tribunal on issue No. 1 have been set aside, the matter requires remittance to the Tribunal for deciding other issues on the basis of evidence on record.

For the foregoing reasons, the appeals are allowed. The awards are set aside. The matter is remitted to the Tribunal for deciding other issues on the basis of evidence already adduced by the parties. However, the Tribunal may permit the parties to adduce additional evidence, if an application is filed and allowed in this regard.

The parties through their counsel are directed to appear before the Tribunal on 14.11.2017.

(Rekha Mittal)
Judge

13.10.2017

paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No