

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

**Date of decision: 21.11.2017**

**FAO No.4178 of 2013**  
**[MACT Case No.29 of 2011]**

Neeru & another ...Appellants

Vs.

Krishan & others ...Respondents

**FAO No.3733 of 2013**  
**[MACT CASE No.28 of 2011]**

Angoori @ Angoori Kaur ...Appellant

Vs.

Krishan & others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Sanjeev Goyal, Advocate,  
 for the appellants.

Mr. Sudhir Hooda, Advocate,  
 for respondents No.1 & 2.

Mr. Satpal Dhamija, Advocate,  
 for respondent No.3.

**RAJIV NARAIN RAINA, J. (ORAL)**

1. This order will dispose of FAO No.4178 of 2013 [MACT Case No.29 of 2011] and FAO No.3733 of 2013 [MACT Case No.28 of 2011] challenging separate awards dated 14.01.2013 passed by the Motor Accident Claims Tribunal, Sangrur (for short 'the Tribunal') pertaining to the same road accident, which unfortunately occurred on 25.07.2010. Since

the facts are the same in both the cases, the same are disposed of by this common order.

2. The claim petitions presented by the claimants in these two appeals have been dismissed by the Tribunal on the ground that they have failed to prove rash and negligent driving of the 1<sup>st</sup> respondent – Krishan (driver of the offending vehicle) in the matter of causing fatal accident and, therefore, they are not entitled to claim compensation.

3. I have heard learned counsel for the parties at considerable length and have perused the relevant material produced at the trial including contents of FIR No.138 dated 25.07.2010, lodged a few hours after the accident, which happened on 25.07.2010 in the jurisdiction of Police Station Lakhan Majra, District Rohtak. In the accident, Suresh Pal - driver and Om Parkash - conductor of the ill fated truck bearing registration No.PB13-Y-9215 died on the spot. The person, who lodged the said FIR, is Gurmail Chand son of Shri Babu Ram, who would later appear as AW-2 in MACT Case No.29 of 2011 and AW-3 in MACT Case No.28 of 2011 in the trial in support of the case of the claimants. I have also been taken through the cross-examination of Gurmail Chand recorded on 14.08.2012 before the Tribunal. He was the father of deceased Om Parkash, who used to work as Cleaner in the ill-fated truck. He deposed that he was amongst the persons, who took the deceased to the hospital from the accident site. He admits that the Police had recorded his statement on the day of accident, which clearly establishes his presence. However, to my mind his evidence has been incorrectly disbelieved by the Tribunal and I have reasons for this conclusion.

4. I have also been taken through the reasoning of the Tribunal given in Para.16 of the impugned award pronounced in MACT Case No.29 of 2011 as was pointed out by the learned counsel for the Insurance Company, dwelling on the deposition of Gurmail Chand and its worth in the evidence. The line of reasoning given by the Tribunal is best read in his own words instead of in paraphrasing. The relevant extract from Para.16 is reproduced:

“16. ....In respect of the accident FIR Information Report No.138 dated 25.07.2010, under Sections 279, 304-A and 337 of the Indian Penal Code was recorded at Police Station, Lakhan Majra on the statement of AW Gurmail Chand. However, neither it is pleaded in the application that AW2 Gurmail Chand was present at the spot at the time of unfortunate occurrence nor any evidence is there to support this. AW2 Gurmail Chand, no doubt, has claimed that the accident was witnessed by him but it has not been disclosed by him whether he was already present at the spot where unfortunate occurrence took place or was travelling in some other vehicle which was following either the offending vehicle or the truck which the deceased was statedly driving at the time of unfortunate occurrence or was travelling in either of the two trucks. To put it straight, AW2 Gurmail Chand has failed to disclose how and why he came to present on the spot at the time of the occurrence. A perusal of copy of First Information Report, Exhibit A2, falsifies AW2 Gurmail Chand's claim that he witnessed the accident because it reveals that AW Gurmail Chand in his statement made by him before police did not say that he witnessed the accident, rather it was his version before the police that on inquiry he came to know number of the offending vehicle and name of its driver and that he reached (the spot) on receipt of a telephonic message. This assertion of AW Gurmail Chand in his statement made before police on the basis of which

First Information Report, copy Exhibit A2, was recorded goes a long way to establish that he was not present at the spot at the time of unfortunate occurrence and that he reached the spot after coming to know about the accident or say after the occurrence had occurred.”

5. The core issue, which has emerged during the hearing of the appeals, is that Krishan son of Randhir, the driver of the offending truck, arrayed as 1<sup>st</sup> respondent in the claim petitions filed under Section 166 of the Motor Vehicles Act, 1988 was served with summons, but did not come forward to depose even though he had contested the claim petition by filing a separate written statement. He had denied the factum of accident and pleaded that he was falsely implicated in the criminal case.

6. Mr. Sanjeev Goyal, learned counsel for the appellants, submits at the Bar that challan in the criminal case has been presented and the trial is in progress.

7. It is argued by him that an adverse inference should have been drawn against the driver of the offending vehicle by reason of not coming forward to support his pleaded case while shying away from standing in the witness-box to face cross-examination. It was not the duty of the claimants to have produced him. As a matter of fact, the Insurance Company could have adopted the defence of the driver under Section 170 of the Motor Vehicles Act, 1988 and called him as a witness, as he was the best person, who could have reconstructed the accident as he was the only survivor when the two trucks are stated to have collided head on. The trucks were impounded by the Police. There is no delay in lodging of FIR. The factum of accident has not been seriously disputed by the insurer or disbelieved by

the Tribunal except for discrediting the statement of Gurmail Chand, which as earlier said, is also not for the best reasons. In its worst scenario, the case could have been taken as one of contributory negligence, but it is certainly was not a case, where no compensation deserved to be awarded. The plea of contributory negligence could have been established best if the driver – Krishan had deposed in Court as to how the accident took place.

8. Learned counsel for the claimants has cited the judgment of this Court in National Insurance Company Ltd. Vs. Pooja & others, 2016 (1) PLR 185, where on the statement of the father of the deceased was the lodger of the FIR registered when he received the unfortunate telephonic message that his son had met with an accident. The number and description of car was not disclosed by him, which appears natural in the facts and circumstances of the case as he said that he immediately took his son for medical treatment which was the natural reflex to try and save life and not go about collecting evidence.

9. In Parmeshwari Vs. Amir Chand & others, AIR 2011 SC 1504, the Supreme Court held that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The claimants are merely to establish their case on the touchstone of preponderance of probability.

10. In Bimla Devi & others Vs. Satbir Singh & others, (2013) 14 SCC 345, the Supreme Court has observed that dismissal on account of technicalities is not justified in a claim under Section 166 of the Motor Vehicles Act, 1988. The Supreme Court guided that it is desirable to adopt a more realistic, pragmatic and liberal approach in these matters. Merely

because co-passengers were not examined would not be a ground to dismiss the claim holding that petition was lacking in material particulars and evidence.

11. The Supreme Court has guarded in Gurdeep Singh Vs. Bhim Singh & others, (2013) 11 SCC 507 that in motor road accident's claim cases, it is very difficult to get witnesses. The eye-witnesses are also not readily available. Even if available, they are not easily ready and willing to come and depose in a court of law for many reasons. Thus, the Courts have to go by the oath of the claimant only. The facts in *Gurdeep Singh's* case are rather proximate to the facts of the present case.

12. There is always a possibility of discrepancies creeping in the evidence of the claimants' witnesses and the Court has to go by the larger picture and on preponderance of probabilities and make every sound effort that injustice should not result by viewing evidence from a narrow angle. Strict proof of accident caused by a particular vehicle in a particular manner may not be possible for the claimants to revisit what they never saw. They have merely to establish their case on preponderance of possibilities by acceptable link evidence and in this search minor discrepancies may result which are harmless and not fatal to the cause required to be promoted in social legislation. The Tribunal may not even go strictly by the pleadings of the parties, its function being to determine the amount of just and fair compensation in the event of accident has taken place by reason of negligence of the driver of offending motor vehicle, but occurrence must have taken place. Occurrence here is not disputed.

13. I have no doubt that the claimants in both the appeals have made out a case for compensation, but assessment of such compensation should not, in the first instance, rest on the shoulders of this Court since it is in the domain of the Tribunal to make just and fair assessment.

14. Thus, in the considered opinion of this Court, the matter deserves to be remanded to assess compensation and to give an opportunity to the claimants and to the Insurance Company to bring any evidence it has; whether the driver held a valid driving license, since that issue has not been touched and decided by the Tribunal. Since 1<sup>st</sup> respondent – driver did not appear in support of his pleadings in the Tribunal, he would not be permitted to join proceedings, as he has given up such right by foreclosure of defence. If he is allowed to appear in remand proceedings, there is every possibility of him cooking up a story to save himself from the criminal trial, if pending.

15. Accordingly, while disposing of the instant appeals, findings on Issue No.1 are set aside. The parties may lead further evidence including production of site plan, photographs etc. and other relevant material, if available from the criminal trial to assist the Tribunal to take an encompassing view on the materials on record including those as may be introduced in accordance with law.

16. The Tribunal will examine threadbare; whether it is a case of rash and negligent driving or one of contributory negligence and then proceed to assess the just and fair quantum of compensation by passing a fresh reasoned award. It is the hope of this Court that the Tribunal will

endeavour to decide the case afresh as soon as practicable, as the claimants have waited for 7 years in the hope of compensation.

17. In case, the Insurance Company makes an application in remand proceedings under Section 170 of the Act, it will be open to the Tribunal to pass orders on the application in its wisdom, but no opinion is expressed on this point by this Court at this stage.

**21.11.2017**  
Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**

*Whether speaking/reasoned:* *Yes*

*Whether Reportable:* *No*