

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

FAO No.3547 of 2001 (O&M)

Date of decision: 31.08.2018

Balwinder Kaur and others

....Appellants

Versus

Randhir Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- None for the appellants.

None for respondent Nos.1 and 2.

Mr. Vinod Chaudhri, Advocate for respondent No.3-Insurance Co.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) for setting aside the impugned Award dated 09.04.2001, passed by learned Motor Accident Claims Tribunal, Rupnagar (*for short 'Tribunal'*), vide which, the claim petition filed by the claimants-appellants (*for short 'appellants'*) stands dismissed.

(2) Appellant No.1 is the wife, whereas Nos. 2 & 3 are the unmarried daughters and No.4 is the minor son of Darshan Singh (*hereinafter referred as 'deceased'*).

(3) Brief facts of the case are that on 25.09.1998 at about 7 PM, deceased was standing on the left side of the *Kacha* portion (berm) on Kurali-Ropar road along with his wife-Balwinder Kaur (appellant No.1/PW 3) to see off their relative, namely, Supinder Singh for Ropar. At that point of time, a truck bearing registration No.HR-31-1891 (*for short 'offending truck'*), driven by respondent No.1-Randhir Singh in a rash and negligent manner at a very high

speed came from Kurali side and hit the deceased. Initially, respondent No.1 stopped the offending truck for few seconds and thereafter, he fled away with the offending truck. The matter was reported to the Police Post Singh Bhagwantpura and deceased was taken to Civil Hospital, Kurali and from where, he was referred to PGI Chandigarh, but on the way, he died.

(4) Upon notice, respondents appeared and opposed the claim petition. Respondent Nos.1 and 2 filed their joint written statement and admitted the factum of accident, but submitted that accident in question had not taken place on account of the fault of respondent No.1, rather the same occurred due to the fault of deceased. Hence, the appellants are not entitled for any compensation.

Respondent No.3-Oriental Insurance Company filed a separate reply and denied the assertions made in the claim petition and, *inter alia*, raised the preliminary objections regarding the cause of action, false and frivolous claim and that driver was not having a valid driving licence at the time of accident in question and such, there was a violation of the terms and conditions of the Insurance Policy. The assertions made in the preliminary submissions were repeated on merits also and in reply to para No.24 of the petition, it has been submitted that no accident had taken place with the offending truck and thus, the claim petition is false and frivolous just to get the compensation from respondent No.3.

Replications were filed to the aforesaid written statements and assertions made in the claim petition were reiterated.

(5) On the basis of pleadings of the parties, learned Tribunal framed the following issues: -

“1. Whether Darshan Singh had died in an accident dated

25.09.1998 on Ropar-Kurali road caused by respondent No.1 while driving truck No.HR-31-1891 rashly and negligently?OPP.

2. *Whether respondent No.1 was not having a valid driving licence at the time of alleged accident?OPR.*
3. *To what amount of compensation, the claimants are entitled to recover? If so, from whom?OPP.*
4. *Relief.”*

(6) In order to prove their claim, appellant No.1-Balwinder Kaur herself appeared as PW-3 and also examined Charan Singh, O/o Civil Surgeon, Ropar as PW-1; Raj Kumar, Constable as PW-2; Karam Singh, Chowkidar as PW-4 and Dr. Chetan Sharma as PW-5 and produced documentary evidence on record.

On the other hand, respondents examined Joseph K. Bassi, Investigator of the Insurance Company as RW-1; Kirpal Singh, Sr. Clerk, O/o DTO, Ropar as RW-2 and tendered into evidence DDR No.9 of Police Post Singh Bhagwantpura (Ex.R-2) as well as certified copy of the Insurance Policy (Ex.R-3).

(7) Learned Tribunal, while deciding Issue No.1, came to the conclusion that although deceased had suffered injuries in the accident, but no document has been placed on record by the claimants that deceased-Darshan Singh sustained injuries in the accident, caused by the offending truck, which resulted into his death. Consequently, Issue No.1 was decided against the appellants and in favour of the respondents.

Learned Tribunal, while deciding Issue No.2, came to the conclusion that respondent No.1 was having a valid driving licence at the time of accident and the same was decided in favour of the appellants.

While deciding Issue No.3, learned Tribunal came to the conclusion that since appellants have failed to prove that deceased died in an accident, caused by respondent No.1 while driving the offending truck, therefore, they are not entitled for any compensation. Consequently, this Issue was decided against the appellants and in favour of the respondents and as a result thereof, dismissed the claim petition. Hence, the present appeal.

(8) It is unfortunate that at the time of hearing, none appeared for the appellants as well as for respondent Nos.1 and 2, despite the fact that accident is alleged to have taken place way-back on 25.09.1998 and the claim petition was dismissed on 09.04.2001 and present appeal is pending since 30.08.2001. But in view of the old matter, this Court thought it appropriate to scrutinize the entire record and decide the present appeal with the assistance of learned Counsel for respondent No.3/Insurance Company.

(9) In view of the facts and circumstances of the present case, the point for consideration in the present case is :-

“ As to whether deceased died in an accident on 25.09.1998, caused by respondent No.1 while driving the offending truck or not? ”

(10) Paper-book reveals that learned Tribunal, while deciding Issue No.1, came to the conclusion that although deceased died in an accident, but not in the alleged accident, caused by respondent No.1 with the offending truck and the conclusion is drawn on the following reasons: -

- i. *Postmortem was not conducted on the body of deceased.*
- ii. *Joseph K. Bassi (RW-1), Investigator, produced the report (Ex.R-1) that no accident had taken place with*

the offending truck.

- iii. *DDR or FIR are necessary to prove the involvement of the offending truck in the accident in question.*
- iv. *No document is produced on record by the claimants to show the involvement of the offending truck.*
- v. *No independent witness has been examined by the appellants to prove their assertions.*
- vi. *Supinder Singh, who is alleged to be an eye-witness, has not been examined by the appellants.*

PW 1-Charan Singh, who brought on record the Birth and Death Register from the Office of Civil Surgeon, Ropar, pertaining to the Police Station Ropar for the year 1998, deposed that as per entry No.2, Darshan Singh son of Joginder Singh, resident of village Chaklan died on 25.09.1998 at Village Chaklan and attested copy of the Certificate, showing the relevant entry, was produced as Ex.P-1 and in Column No.17 thereof, the name of informer is written as Gurmail Singh.

Further, the appellants have produced copy of information dated 25.09.1998 (Ex.P-6), submitted by Gurmail Singh and perusal of the same reveals the date of death of the deceased and Column No.13 reads as under:-

“did the doctor certify/attested/verify: Yes”.

PW 2-Raj Kumar, Constable, Police Post Singh Bhagwantpura brought the DDR Register of Police Post and produced the attested copy of DDR No.26 dated 26.09.1998; DDR No.21 dated 25.09.1998 and DDR No.9 dated 26.09.1998 (Ex.P-2, Ex.P-3 and Ex.P-4 respectively).

Appellant No.1-Balwinder Kaur appeared as PW-3 and, *inter alia*, deposed that her husband, aged 45 years, died in the accident on 25.09.1998 and on that date, she along with her husband and Supinder Singh were standing at

the *kacha* portion of the road of their village Chaklan to see off Supinder Singh. In the meanwhile, a truck bearing No.HR-31-1891 came from Kurali side, being driven in a rash and negligent manner and struck against his husband (deceased) at about 7.00 PM. She noted the number of the offending truck on the spot and after committing the accident, the truck stopped for a moment, but thereafter, fled away. Her husband was taken to Civil Hospital, Kurali and from where, he referred to PGI, Chandigarh after giving him first aid, but he died on the way and the accident took place on account of rash and negligent driving of respondent No.1/driver of the offending truck.

During her cross-examination, stated that she had seen the truck from the distance of about $\frac{1}{2}$ KM and the driver of the offending truck was wearing a *Parna* and the accident had taken place on the *kacha* portion of the road. Also stated that they were standing on the *kacha* portion (berm) of the road and Supinder Singh reported the matter to the police after ten minutes of the accident and police registered the DDR entry, but she is not aware as to whether the driver of the truck was challaned or not. She further stated that left side of the offending truck hit against the deceased and she denied that no accident had taken place with the said truck. Also stated that postmortem was not conducted as she did not know the legal complications and denied the suggestion that she has deposed falsely.

Karam Singh, Chowkidar, appeared as PW-4 and brought the Chowkidara Register, Village Chaklan and deposed that on 25.09.1998, Darshan Singh of Village Chaklan had died in the accident and photocopy of the death entry in his register is Ex.P-6.

Dr. Chetan Sharma, working as Senior Resident, Department of Cardiologist, PGI, Chandigarh appeared as PW-5 and deposed that on 25.09.1998, he was posted at Civil Hospital, Kurali. A reference slip dated 25.09.1998 (Ex.P-7) has been made by this witness, which consists particulars of Darshan Singh son of Joginder Singh, Village Chaklan, P.O. Singh Bhagwantpura, who suffered multiple injuries in accident. Then he referred the patient to PGI, Chandigarh after giving him first aid as his condition was serious and the said slip bears his signature, duly identified by him at the time of evidence.

During cross-examination, this witness stated that he had informed the police regarding the arrival of the patient in the hospital.

Joseph K. Bassi, Investigator, appeared as RW-1 and he deposed that he has investigated the matter on the directions of Senior Divisional Manager, Divisional Office-I, Chandigarh and after investigating the matter, he has submitted his report (Ex.R-1).

During cross-examination, he has stated that as per report, no accident had taken place with the offending truck and he cannot say if the deceased had died in the accident or not?

Kirpal Singh, Senior Clerk, O/o D.T.O., Ropar, who appeared as RW-2, has brought the record regarding driving licence of respondent No.1- Randhir Singh son of Surjit Singh.

Learned Counsel for respondent No.3 tendered into evidence DDR No.9, registered at Police Post Singh Bhagwantpura (Ex.R-2) as well as certified copy of Insurance Policy (Ex.R-3) of the offending vehicle, which is valid for the period 13.08.1998 to 12.08.1999.

This Court has perused the report (Ex.R-1), produced by RW-1 Joseph K. Bassi, Investigator and the relevant portion of the same is extracted below: -

“xxxxxxx

I inquired from the mother of Sh. Randhir Singh who informed me that there has been no accident of their trucks in the past. Sh. Randhir Singh did not say any thing accept (sic 'except') that he does not know any thing about it as he is not the driver of trucks.

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All the claim case is fraudulent and Sh. Darshan Singh who was injured and died later on due to accidental fall. Sh. Darshan Singh was taken to hospital at Kurali in injured state and later he died on the way to PGI, Chandigarh, the dead was cremated without post mortem or police report/police action.

xxxxxxxxxxxxx ”

RW 1-Joseph K. Bassi, Investigator submitted the above report and virtually given the findings like a Court of law that injured-Darshan Singh died “*due to accidental fall*”, which is not even the conclusion of learned Tribunal itself that deceased died on account of accidental fall. Further, PW 5-Dr. Chetan Sharma specifically deposed that Darshan Singh was brought to Civil Hospital, Kurali in an injured condition and he was referred to PGI, Chandigarh as his condition was serious. Reference Slip (Ex.P-7) clearly reveals that it was a case of road side accident, but learned Tribunal has given much reliance to the report submitted by the Investigator (Ex.R-1) and has not even properly discussed and appreciated the testimony of PW 5-Dr. Chetan Sharma, who produced reference slip (Ex.P-7). When learned Tribunal itself has come to the conclusion that deceased died in an accident then the report submitted by the Investigator, *inter*

alia, to the effect that deceased died on account of accidental fall is not worth credence that the accident had taken place on account of fall and thus, the report of this witness cannot be the basis for rejection of the claim of the appellants. Still further, it is necessary to make a reference to paragraph 8 of the reply, filed by respondent Nos.1 and 2 also, which is extracted as under:-

“ That this para of the claim petition is correct that the accident took place at about 7 AM on 25.9.98 on Ropar Kurali Road in the area of village Chaklan, PP Singh, PS Sadar Ropar, but the same was not taken place due to the fault of the respondent No.1 but the same was taken place due to the fault of Darshan Singh Deceased. ”

The reasoning given by learned Tribunal that Postmortem of the deceased was not conducted is also not acceptable for the simple reason that there is sufficient material available on record that deceased died in the motor vehicle accident and which is duly proved from the testimonies of PW 1-Charan Singh, official of Civil Surgeon, Ropar, PW 2-Raj Kumar, Constable, PW 3-Balwinder Kaur (appellant No.1), PW 4-Karam Singh, Chowkidar and PW 5-Dr. Chetan Sharma, duly corroborated by Reference Slip (Ex.P-7) as well as admission by respondent Nos.1 and 2 in their reply, extracted hereinabove. Merely that FIR was not registered in the matter or that Supinder Singh was not examined in support of the claim petition is also not fatal to prove the accident in question. At best, the same can be construed only as corroborative or better evidence in support of the claim petition, but it cannot be thrown out merely on the ground that FIR has not been registered or another independent witness has not been examined. The law is well settled that the proceedings under Section

168 of the Act are to be construed as an inquiry and the same cannot be converted into a criminal trial where charges are to be proved beyond reasonable doubt. Moreover, in the present case, PW 3 Balwinder Kaur is the eye-witness and she has fully supported the version of the claim petition, therefore, there was no need to examine Supinder Singh.

In such like cases, preponderance of evidence is to be seen on the basis of probabilities and reference in this regard can be made to a judgment, rendered by the Division Bench of this Court in **First Appeal From Order No.1950 of 1995** titled as **Amolakdeep Singh and another** *Versus* **The Punjab State and another**, **decided on 19.07.1996** and relevant part of the same reads as under:-

“ The only contradiction brought out in the statement of Teja Singh was that he had not mentioned these facts in his statement before the police which was recorded in the hospital and the copy of the DDR (Ex.A-5). In our opinion, the Tribunal has seriously erred in discarding the testimony of Teja Singh merely because there was some variance in the statement made by him while he was in hospital and the statement made before the Tribunal. The Tribunal ignored the well established principle of law that in the proceedings under the Motor Vehicles Act, 1988 issues are required to be determined on the basis of preponderance of the evidence and degree of proof required for award of compensation is not the same as is required for holding a person guilty of an offence. ”

Still further, in '**Bimla Devi and others Versus Himachal Road Transport Corporation and others**, (2009) 13 SCC 530, the Hon'ble Supreme Court has held as under:-

" In a situation of this nature, the Tribunal has rightly taken a

holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. "

In view of above, this Court is fully convinced that findings, recorded by learned Tribunal on Issue No.1 to the effect that although deceased had suffered injuries in the accident, but no document has been placed on record by the claimants that deceased-Darshan Singh sustained injuries in the accident, caused by the offending truck, which resulted into his death, are not legally sustainable and same deserve to be interfered and reversed. Accordingly, it is held that deceased-Darshan Singh died in an accident occurred on 25.09.1998 due to rash and negligent driving of respondent No.1 with the offending truck.

It deserves to be recorded here that for deciding the claim petitions, learned Tribunal should adopt a practical and human approach and should not be swayed with the technicalities of law to deprive the victims of the motor vehicle accident(s), which are increasing day-by-day and every moment i.e. 24 hours, 7 days a week and 365 days of the year and that is evident from the data available on the website of the National Crime Record Bureau and this Court does not want to multiply the pages of this order to that effect.

Since in view of findings on Issue No.1, learned Tribunal dismissed the claim petition summarily and did not record any finding on Issue No.3 regarding amount of compensation for which the appellants may be entitled as well as the liability of the respondents. Therefore, this Court deems it appropriate to allow the present appeal partly i.e. qua Issue No.1 in the above

terms and remand the matter back to learned Tribunal to decide Issue Nos.3 and 4 regarding the amount of compensation as well as liability of the respondents.

Keeping in view the fact that the accident had taken place way-back on 25.09.1998, learned Tribunal is requested to decide the matter within a period of six months on receipt of certified copy of this order, after giving due opportunity of hearing to both sides. Copy of this order be sent to the parties concerned.

Disposed off accordingly.

August 31, 2018
naresh.k/Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes