

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

FAO No.1159 of 2004 (O&M)

Decided on:-March 06, 2018.

Kulwant Kaur and others

.....Appellants.

Versus

Gurcharan Singh and others

.....Respondents.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. B.S. Baath, Advocate for
 Mr. S.S. Gill, Advocate
 for the appellants.

 Mr. Sudhir Paruti, Advocate
 for respondent No.2.

 Mrs. Swatantar Kapoor, Advocate
 for respondent No.3-insurance company.

HARI PAL VERMA, J.

The appellant-claimants have filed the present appeal against the award dated 16.10.2003 passed by the Motor Accidents Claims Tribunal, Nawanshahar (for short, the Tribunal), whereby the claim petition filed by them under Section 166 of the Motor Vehicles Act, 1988 (for short, the Act) for grant of compensation on account of death of Harbans Singh was decided and an award of Rs.50,000/- was passed in favour of the claimants on account of 'No Fault Liability' as the claimants had failed to prove the very crucial issue No.1 i.e. "*Whether Harbans Singh son of Tara Singh died in the accident, dated 2.5.2002 due to rash and negligent driving of respondent No.1*

who drove bus No.PB-08-0306?” and the said issue was decided against the claimants.

Briefly stated, the appellant-claimants had filed a claim petition under Section 166 of the Act claiming compensation on account of death of Harbans Singh, who died in a motor vehicular accident which took place on 28.04.2000. On the fateful day, deceased Harbans Singh was going along with Sukhwinder Singh and both of them were travelling on their separate bicycles. At about 05.30 P.M., when they had reached near the turning of village Heon, the offending bus bearing registration No.PB-08-0306 (for short, the bus) belonging to respondent No.2 Onkar Bus Service and being driven by respondent No.1 Gurcharan Singh in a rash and negligent manner, struck against deceased Harbans Singh. After causing the accident, the respondent-driver ran away from the spot. Harbans Singh and his son were being followed by Amarjit Singh, Lakhbir Singh and Kulbir Singh, who also reached the spot. Injured Harbans Singh was shifted to Guru Nanak Mission Hospital, but he succumbed to his injuries in the hospital.

The respondent No.2-owner of the bus pressurized Sukhwinder Singh son of the deceased and got a wrong statement signed from him (Sukhwinder Singh) on 02.05.2000.

In their evidence, the appellant-claimants had examined Gurmail Singh as AW1, Paramjit Kaur as AW2 and Lakhbir Singh as AW3, whereas the respondents had examined Gurcharan Singh as RW1, who tendered in evidence Ex.R1, the copy of driving licence and Ex.R2, the copy of insurance policy.

On the crucial issue No.1 that as to whether Harbans Singh died in the accident due to rash and negligent driving of the bus by respondent No.1, the Tribunal had recorded a finding that the very eye-witness i.e. claimant Sukhwinder Singh, who is son of deceased Harbans Singh, did not come forward to step into the witness box so that the respondents could cross examine him. But as Harbans Singh had died after striking against the bus, as he had died after hitting his cycle in a pit, the Tribunal awarded Rs.50,000/- under no fault liability. The relevant paragraph Nos.11 and 14 (wrongly mentioned as paragraph No.12 in the award) of the impugned award read as under:

“11. In the present case, as per case of the claimants, Harbans Singh was travelling on his bicycle alongwith his son Sukhwinder Singh, who was accompanying Harbans Singh on his own separate bicycle. As per RW1 driver of the bus, Sukhwinder Singh had made a statement before the police that he did not want to take any action against RW1. AW1 Lakhbir Singh in his cross-examination, admitted that Sukhwinder Singh had made a statement before the police officials that the bicycle of the deceased had fallen in the pit on the road and he fell down and struck against the bus. The witness also admitted as correct that in his statement, Sukhwinder Singh had stated that the accident had not occurred due to the negligence of the driver of the bus. The said witness further admitted that Mela Singh Lamberdar and Surat Singh of their village had also made similar statements before the police.

14. Although in the present case, claimants have failed to prove issue No.1, but the fact remains that Harbans Singh had died after striking against the bus as he had died after hitting his

bicycle in a pit. It is a fit case, where the claimants are allowed 'No Fault compensation' amounting to Rs.50,000/-. All the respondents are held liable to pay the said amount of compensation jointly and severally, as the respondent No.3 Insurance Company is liable to compensate the insured. This issue is disposed of accordingly.

Not satisfied with the aforesaid award, the claimants have filed the present appeal seeking enhancement of compensation.

Learned counsel for the appellant-claimants has argued that the Tribunal has decided the crucial issues No.1 and 2 in an illegal manner without appreciating the evidence produced by the claimants. The Tribunal has wrongly relied upon the statement of claimant Sukhwinder Singh, which he made before the police in a different situation. Claimant Sukhwinder Singh made a statement before the police under threat as the respondents No.1 and 2 i.e. the driver and owner of the bus were influential persons. Sukhwinder Singh made a statement before the police that he never wanted to take any action against respondents No.1 and 2. Lakhbir Singh AW3, who was an eye-witness has admitted in his cross-examination that claimant Sukhwinder Singh had made a statement before the police because of mental shock as he could not sleep for two nights. Mela Singh Lamberdar and Surat Singh resident of the village had also suffered similar statements before the police, but the said statements recorded before the police were made under pressure as the opposite party was quite influential.

He has further argued that the Tribunal has not relied upon the statement of Lakhbir Singh AW3, who was an eye-witness of the accident.

The proceedings to claim compensation under the Act on account of death of a person, are summary in nature. It is not the quantity of witnesses, rather, it is the quality of witnesses, which is required to be given weightage. Since Lakhbir Singh AW3 has supported the very incident, statement of claimant Sukhwinder Singh made before the police, even if he is the son of the deceased, should not be given any weightage, more particularly when Sukhwinder Singh had made the statement under threat, as the respondents No.1 and 2 i.e. driver and owner of the bus were quite influential persons.

He has further contended that the accident took place on 28.04.2000, Harbans Singh had died on 02.05.2000, but the FIR in the case was registered on 18.05.2000 because the respondents No.1 and 2 were influential persons and the police did not register the FIR earlier. Therefore, delay in lodging the FIR should not be a factor to decline the claim of the appellants. Mere delay in lodging the FIR should not be fatal. He has relied upon **2011(2) RCR(Civil) 190** titled as ***Ravi Versus Badrinarayan and others*** to contend that although lodging of the FIR is vital in deciding motor accident claim cases, but at the same time, delay in lodging the FIR should not be treated as fatal for such proceedings if the claimant has been able to demonstrate satisfactory and cogent reasons for such delay. He has argued that in ***Ravi's case (supra)***, the Apex Court has ignored the delay of three months in lodging the FIR after the accident and awarded compensation to the claimants.

He has also relied upon **2008(2) RCR(Civil) 774** titled as ***Gurdeep Kaur Versus Tarsem Singh*** to contend that in a claim petition filed

under the Act, the evidence should not be scrutinized in the manner as is done in civil and criminal cases. The proceedings before the Tribunal are in the nature of a summary enquiry, whereas in a criminal case, the rule is of proof beyond reasonable doubt and in a civil case, the rule is preponderance of probabilities. If there is some evidence before the Tribunal to prove a fact, no nicety, doubt or suspicion should weigh with it in deciding a case under the Act.

On the other hand, learned counsel for respondent No.3- insurance company has argued that the present is a case with no evidence and the claimants have failed to prove their case beyond all probabilities. Admittedly, claimant Sukhwinder Singh is the son of deceased Harbans Singh and at the time of accident, he was present with the deceased, though on a separate bicycle. Claimant Sukhwinder Singh himself has made a statement before the police that the accident had taken place by chance for which nobody should be held responsible, but he has not stepped into the witness box so that the respondents could be able to cross-examine him.

He has further contended that the accident took place on 28.04.2000, Harbans Singh had died on 02.05.2000 and the FIR was registered on 18.05.2000. However, there is no plausible reason on the part of the appellant-claimants to explain such an inordinate delay in lodging the FIR. Moreover, Lakhbir Singh AW3 has also deposed that the accident was also witnessed by Kulbir Singh, but said Kulbir Singh has also not been examined by the appellant-claimants and, therefore, the crucial issue No.1 has rightly been decided by the Tribunal against the appellant-claimants.

I have heard learned counsel for the parties.

The Tribunal has declined the claim of the appellant-claimants and has granted an amount of Rs.50,000/- under 'No Fault Liability' on the very premises that the claimants have failed to prove the fact of rash and negligent driving on the part of the respondent-driver.

The allegation that the police mounted pressure upon claimant Sukhwinder Singh cannot be accepted in the absence of any substantial evidence. In the case in hand, the accident had taken place on 28.04.2000 and Harbans Singh, who was about 55 years of age and was father of claimant Sukhwinder Singh, had died on 02.05.2000. The FIR in the case was registered on 18.05.2000 i.e. after 16 days of the death of Harbans Singh. There is no plausible explanation on the part of the claimants for this inordinate delay in lodging the FIR.

No doubt, in *Ravi's case (supra)*, the FIR was registered after a period of 3 months of the accident, but in that case, the delay was satisfactorily explained by the claimant. In the cited case, the truck-driver hit a child of about 8 years of age while driving the truck in a rash and negligent manner and Hon'ble Supreme Court had condoned the delay of 3 months in lodging the FIR firstly because it was more important for the father (complainant) to get the injured treated and secondly, the driver of the truck was a neighbour of the complainant and, therefore, there was a pressure on the complainant to sort out the matter amicably. The complainant was also not aware of the niceties of law that lodging of the FIR is a condition precedent before filing the claim petition.

Though delay in lodging the FIR cannot be the sole ground to doubt the case of the appellant-claimants, but as they have failed to prove the allegation of rash and negligent driving on the part of the respondent-driver by withholding the evidence of crucial witness i.e. claimant Sukhwinder Singh son of deceased Harbans Singh and Kulbir Singh, the other eye-witness of the occurrence, the law laid down in ***Ravi's case (supra)*** is not applicable to the facts and circumstances of the present case.

Similarly, there is no dispute as regards the law laid down in ***Gurdeep Kaur's case (supra)*** that the proceedings before the Tribunal are in the nature of a summary enquiry, but still the appellant-claimants are required to prove the allegation of rash and negligent driving on the part of the offending vehicle/driver. As regards the allegation that claimant Sukhwinder Singh was threatened by the police as the respondents i.e. owner and driver of the bus were influential persons is concerned, no such material has come on record that for such threat, claimant Sukhwinder Singh had ever approached the higher police authorities complaining such pressure. He had suffered a statement before the police that bicycle of his father i.e. deceased Harbans Singh fell in a pit on the road and as a result thereof, Harbans Singh fell down on the road and struck against the bus. He had rather stated that the accident did not occur due to rash and negligent driving of the bus. However, he had not stepped into the witness box and the respondents could not cross-examine him. Similarly, another eye-witness i.e. Kulbir Singh was also not examined by the claimants. Therefore, merely because the proceedings under the Act

are in the nature of a summary enquiry, the claim petition cannot be decided by ignoring the evidence available on record.

As the appellant-claimants have failed to prove the crucial issue No.1 regarding rash and negligent driving of the bus by respondent No.1, the Tribunal had rightly awarded Rs.50,000/- to the claimants on account of 'No Fault Liability'. Thus, this Court does not find any illegality in the impugned award dated 16.10.2003 passed by the Tribunal.

Accordingly, the impugned award dated 16.10.2003 passed by the Tribunal is affirmed and the instant appeal, being devoid of any merit, is dismissed.

March 06, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No