

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

527

Date of Decision : 24.9.2018

FAO-4386-2004 (O&M)

Harbans Kaur and others

....Appellants

vs.

Baldev Singh and others

....Respondents

527-2

FAO-4387-2004 (O&M)

Harbans Kaur

....Appellant

vs.

Baldev Singh and others

....Respondents

527-3

FAO-4388-2004 (O&M)

Manjit Kaur

....Appellant

vs.

Baldev Singh and others

....Respondents

527-4

FAO-4389-2004 (O&M)

Amarjeet Singh

....Appellant

vs.

Baldev Singh and others

....Respondents

527-5

FAO-4390-2004 (O&M)

Amarjeet Singh

....Appellant

vs.

Baldev Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

**Present: Mr.Yogesh Goel, Advocate
for the appellant(s).**

None for the respondents No.1 and 2.

Mr. Vinod Gupta, Advocate
for the respondent-insurance company.

AJAY TEWARI, J. (Oral)

These five appeals have been filed against the dismissal of five claim petitions which have arisen from the same accident.

Since very limited points have been urged detailed reference to the facts is not required at this stage.

The Tribunal dismissed the claim petitions by holding that the claimants had not been able to prove that the vehicle was being driven rashly and negligently. There were two deaths and three persons got injured in the accident. All three injured persons had appeared in the witness box and had stated that they were traveling in the Tata Sumo which was being driven rashly and negligently by the driver Baldev Singh and suddenly the car struck into a Kikkar tree. In the cross examination, the question was asked to injured persons that as to how the accident had taken place and coincidentally in all the claim petitions all the injured persons stated that they did not know how the accident took place. The Tribunal took these statements as a kind of admission that the appellants were not able to prove rashness and negligence on the part of the driver. The Tribunal also noticed that in the DDR it was mentioned that the accident had taken place as a result of technical fault and further, that no eye witness has been examined.

Taking the last conclusion first, in my opinion the same is completely wrong. The three injured persons had to be taken as eye witnesses and there was no warrant for the Tribunal holding that there was

no eye witness.

Secondly, it is not disputed that all three injured had categorically stated that vehicle was being driven rashly and negligently when it suddenly struck into a Kikkar tree. The mere fact that they did not know how exactly the accident took place is neither here nor there. Accidents take place in a split second and the exact reason how the accident has taken place may not be known to anybody. Whether in that split second the foot slipped off the brake or in that split second the driver lost his concentration or in that split second he some how pressed the accelerator very hard, but the lack of such knowledge would not detract from the basic testimony that the vehicle was being driven rashly and negligently. The reliance on the DDR which is not a substantive piece of evidence is completely misplaced. I am left with the impression that the Tribunal had dealt with this claim petition in an extremely pedantic manner.

In the entire conspectus of facts and circumstances, I have no hesitation in setting aside the finding that the claimants were not able to establish the rashness and negligence of the driver, on the basis of preponderance of probability. Both the learned counsel agreed that if this issue has to be reversed then the matter has to be remanded back because the Tribunal did not go into the question of compensation at all. Counsel further state that there should be a time cap on trial because it is a very old case. Counsel state that evidence has already been led. Since evidence has already been led, I direct the Tribunal to decide the case within three months from the receipt of the record and the appearance of the parties.

Resultantly, all the appeals are disposed of and the matter is

remanded back to the Tribunal for decision on the other issues and the issue No.1 is ordered to be decided in favour of the claimants-appellants and against the respondents. Let the record (as existing) of the cases be sent to the Motor Accident Claims Tribunal, Ludhiana. Parties through counsel are directed to appear before the Tribunal on 19.11.2018.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

24.9.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No