

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

(I)

**FAO No.201 of 2005 (O&M)
(Tribunal Case No.61 of 2002)**

Lajwanti and others

...Appellants

Versus

Anil Kumar and others

...Respondents

(II)

**FAO No.202 of 2005 (O&M)
(Tribunal Case No.60 of 2002)**

Jaswant Kaur and another

...Appellants

Versus

Anil Kumar and others

...Respondents

Date of Decision: 31.08.2018

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sanjay Jain, Advocate for the appellants.

Mr. Raj Kumar Rana, Advocate for respondent Nos.1 and 2.

Mr. Sanjiv Pabbi, Advocate for respondent No.3-Insurance Co.

MAHABIR SINGH SINDHU, J.

This order shall dispose off above-mentioned two appeals filed under Section 173 of the Motor Vehicles Act, 1988 (*for short 'Act'*) against the common impugned Award dated 26.08.2004, passed by learned Motor Accident Claims Tribunal, Fast Track Court, Ambala (*for short 'Tribunal'*), vide which, the claim petitions filed by the claimants-appellants (*for short 'appellants'*) were dismissed while recording findings on Issue No.1 to the effect that appellants have failed to prove that accident in question had taken place due to rash and

negligent driving of respondent No.1 by his Armada Jeep bearing registration No.HR-30-A-5029 (*for short 'offending vehicle'*).

(2) Brief facts of the case are that on 27.01.2002, Gurdial Singh along with Dharam Singh (both deceased) were going on a Scooter from Village Karasan to Patherheri, being driven by deceased-Gurdial Singh and deceased-Dharam Singh was the pillion rider. At about 11.00 PM, when both of them reached near Pulia (small bridge)/G. Karauli turning on Shahzadpur-Saha road, the offending vehicle came from Shahzadpur side, driven by respondent No.1, in a rash and negligent manner on a very high speed and hit the above mentioned Scooter and as a result of which, both of them fell down along with Scooter on the road side and sustained multiple injuries. Dharam Singh died on the spot, whereas Gurdial Singh died in PGI, Chandigarh on 29.01.2002 on account of the injuries suffered by him and FIR No.12 dated 28.01.2002, under Sections 279, 337 and 304-A, IPC was also registered at Police Station Shahzadpur.

(3) In FAO No.202 of 2005, it has been averred that deceased-Gurdial Singh was a retired driver from U.T., Chandigarh and was getting pension of Rs.5400/- per month besides having income of Rs.6000/- from farming and Rs.2000/- while running milk dairy and the appellants were dependent upon him.

(4) In FAO No.201 of 2005, it has been averred that deceased-Dharam Singh was running *Halwai* business and also doing the agriculture work and was running milk dairy, thereby earning Rs.9000/- per month.

(5) In response to the claim petitions, respondents No.1 and 2 denied the claim of the appellants and filed the joint written statement and submitted that no accident had taken place with the offending vehicle. Also pleaded that if

at all, the accident is proved, the same has been occurred due to the negligence of the deceased and not on account of the fault of respondent No.1. Further pleaded that their vehicle was insured with respondent No.3 at the time of accident and thus, they cannot be held liable to pay the compensation.

Respondent No.3/Insurer filed the written statements in both the claim petitions and denied the averments made therein and, *inter alia*, raising the plea that no accident had taken place with the offending vehicle and further submitted that it was a hit and run case by unknown vehicle. Also submitted that the appellants had procured driver and owner of the offending vehicle at a later stage to extract the money by filing the false and frivolous claim petitions. Further raised the plea of collusion with respondent Nos.1 and 2 and submitted that driver was not having valid and effective driving licence at the time of alleged accident and the same was being driven without any valid Registration as well as Fitness Certificate and the same is in violation of the terms and conditions of the Insurance Policy. The age, income and occupation of the deceased were also denied.

(6) On the basis of pleadings of both the parties, learned Tribunal framed the following issues in both the claim petitions: -

- “1. Whether the accident in question had taken place due to rash and negligent driving of the jeep No. HR-30-A-5029 by the respondent No.1? OPP*
- 2. Whether the claimants are entitled to any compensation, as alleged, if so, to what amount and from whom? OPP*
- 3. Whether the offending vehicle was being driven by a person without holding a valid and effective driving licence at the time of alleged accident? OPR-3.*
- 4. Relief.”*

(7) Learned Tribunal consolidated both the claim petitions, vide order dated 12.09.2003.

(8) In order to prove their claims, Lajwanti one of the claimants appeared as PW-1; Jaswant Kaur-claimant appeared as PW-2; Pawan Kumar, Addl. Ahlmad to the Court of JMIC, Ambala examined as PW-3; Gajraj Singh as PW4 and produced the Death Certificate of Gurdial Singh (Mark 'A'); Post Mortem Report of Gurdial Singh (Ex.P-1); Post Mortem Report of Dharam Singh (Ex.P-2); copy of FIR (Ex.P-3) and copy of Report under Section 173 Cr.P.C. (Mark 'B').

On the other hand, respondent No.1-Anil Kumar appeared as RW-1 and produced his driving licence (Ex.D-1); Verification Report (Ex.R-2) and Registration Certificate (Ex.R-3),

Respondent No.3-Insurance Company examined A.S. Vaish, Investigator of the Oriental Insurance Company as RW-2; Constable Rakesh Kumar as RW-3 and produced Investigator Report (Ex.R-2); copy of FIR (Ex.R-3); Insurance Policy (Ex.RX); statement of Sadhu Ram father of deceased (Mark 'A'); statement of Janam Singh (Mark 'B') and letter to Investigator (Mark 'C').

(9) Learned Tribunal, while deciding Issue No.1 in both the claim petitions, came to the conclusion that there is no evidence on record to hold that the accident in question had taken place due to rash and negligent driving of respondent No.1 by the offending vehicle. In view of above, learned Tribunal recorded finding on Issue No.1, but did not record any finding on the remaining Issues and dismissed the claim petitions summarily.

(10) It is argued by learned Counsel for the appellants that there is sufficient material available on record to prove the Issue No.1 and learned Tribunal has adopted the course like a criminal trial and not like a claim petition and thus, the finding on Issue No.1 deserves to be set aside. Specific reference is made to the testimony of PW-4 as well as report under Section 173 Cr.P.C. (Mark 'B') and also argued that the offending vehicle was taken into possession by the police immediately and there was no complaint that the offending vehicle has been falsely implicated.

On the other hand, learned Counsel for the Insurance Company has opposed the prayer and submitted that learned Tribunal has recorded the finding on Issue No.1 after due diligence and taking into consideration the entire material available on record and the present appeals deserve to be dismissed. Also argued that mere presentation of the report under Section 173 Cr.P.C. is not sufficient to prove that the accident in question had taken place on account of rash and negligent driving of the offending vehicle by respondent No.1.

(11) Heard arguments from both sides and perused the paper-book.

(12) PW 1-Lajwanti (mother of deceased-Dharampal @ Dharam Singh), during her cross-examination by respondent No.3, stated that Gajraj of Village Sahjadpur told her that one jeep had caused the accident and he gave the information on the next day. She denied the suggestion that some unknown vehicle had caused the accident and that the claimants have procured the driver and owner of the offending vehicle at a very later stage only to extract money from the Insurance Company. She also denied the suggestion that the offending vehicle was not involved in the accident.

PW 2-Jaswant Kaur wife of deceased-Gurdial Singh, *inter alia*, deposed that her husband died in a road-side accident on 27.01.2002 in the area of Garason Saha to Sahjadpur road and after the accident, he was taken to PGI, Chandigarh for treatment, but he succumbed to the injuries on 29.01.2002.

During her cross-examination by respondent No.3, she denied the suggestion that they have procured the driver and owner of the offending vehicle at a very later stage only to get an amount of compensation on false grounds from the Insurance Company. She also denied the suggestion that the offending vehicle was not involved in the accident.

PW 3-Pawan Kumar, Additional Ahlmad to the Court of JMIC, Ambala, produced the record of FIR No.12 dated 28.01.2002, under Sections 279 and 304-A, IPC, Police Station Sahjadpur and stated that the case is pending for prosecution evidence.

During cross-examination by respondent No.3, he stated that as per record, FIR was recorded on 28.1.2002. Further deposed that accused was arrested and released on bail by the then JMIC, Ambala City on 04.05.2002 and vehicle was released on Superdari on 04.05.2002.

PW 4-Gajraj Singh, *inter alia*, deposed that on 27.01.2002, he along with his brother-Ompal was going on a Scooter from Shahjadpur side to Kurukshetra side and it was at about 10.30/11.00 PM, when they reached near the Village Nagava on highway of Panchkula-Saha, a Armada Jeep bearing registration No.HR-30-A-5029 crossed their Scooter and after covering a distance of an half furlong, hit the Scooter, which was coming from Saha side. Resultantly, two persons who were riding on the Scooter fell down on the right side of the road along with their Scooter on account of rash and negligent

driving of the driver of the offending vehicle. Immediately, they reached on the spot and noticed the registration number of the Jeep as well as its driver. Thereafter, they reached at Kurukshetra for meeting their relatives and told the number of the offending vehicle to the police after five days when they returned to their Village and police recorded his statement.

During cross-examination by respondent Nos.1 and 2, he stated that they had not noted down the number of the Scooter as they had followed the offending vehicle. Further stated that they noted the number of the jeep after following the same at some distance and later on, they came to know the name of the driver of the offending vehicle as Anil Kumar. Also stated that width of the road is approximately 15 feet and there are pits in the road. He denied the suggestion that speed of the jeep was about 40-50 Kms. Voluntarily stated that during night hours, the vehicle usually run at a high speed. Also denied that accident was not caused due to rash and negligent driving of the Jeep. Further denied that entire accident took place due to rash and negligent driving of the driver of the Scooter or that he had not noted down the number of the offending vehicle and deposing falsely.

During cross-examination by respondent No.3, stated that he is Graduate and well aware about the traffic rules. FIR was recorded in this case at Police Station Shahjadpur. Voluntarily stated that he had noted the number of the offending vehicle and he had seen the offending Jeep in Police Station on 2-3/2/2002. Denied that some unknown vehicle had caused the accident and this was a hit and run case by some unknown vehicle. Further stated that deceased is a resident of about 10/12 KMs away from his Village and he was not having any visiting terms with the deceased family. He denied that he has been procured by

the claimants in connivance with the police at a later stage so that they get the amount of compensation from the Insurance Company or that he is deposing falsely.

RW 1-Anil Sharma (driver/respondent No.1), *inter alia*, deposed that on 27.01.2002, no accident had occurred in the area of Police Station Shahjadpur with the offending vehicle. Further deposed that he has been falsely implicated in the accident in question by the police at the instance of claimants.

During cross-examination by the claimants, he stated that when they were coming from Shajadpur and going to Saha side, the offending vehicle was running at a speed of 80/90 KM per hour and at that time, one Tractor and other 4/5 persons came at the spot. Further stated that there were pits on the road and driver of the Scooter in order to save themselves (both deceased) brought his Scooter towards the offending vehicle on the wrong side and caused the accident. He denied the suggestion that accident had taken place due to his fault. Also stated that he did not move any complaint before any authority for his false implication by the police and he is facing the trial in the Court of JMIC, Ambala. Further stated that after the accident, he stopped his jeep and when people gathered at the spot, he left the place along with his jeep.

During cross-examination by PW-3, he *inter alia* stated that no Investigator of the Insurance Company had come to his place of residence.

RW 2-A.Svesh, Investigator of the Insurance Company, *inter alia*, deposed that he was appointed by the Insurance Company to investigate two cases titled 'Jaswant Vs. Anil' and 'Lajwanti Vs. Anil' and he conducted the investigation at length. Also deposed that on 28.01.2002, FIR was registered against the unknown vehicle being a hit and run case. The accident had taken

place on 27.01.2002, whereas the driver alleged to be involved in the accident had surrendered on 04.05.2002 after three months and seven days. Father of deceased, in his statement dated 13.09.2002, mentioned that scooter No.CH-01-9171 was hit by unknown vehicle and the same was attested by Village Sarpanch, which is Mark 'A'. Janam Singh, brother of deceased, also stated that Scooter No.CH-01-9171 was hit by an unknown vehicle and his statement is Mark 'B'. Further deposed that during investigation, he found that it is a hit and run case by an unknown vehicle and the claimants have procured the driver and owner of the offending vehicle at a very later stage in order to extract the money from the Insurance Company with the help of police. Also found during his investigation that it is totally a false case and the offending vehicle was falsely implicated and was not involved in this case in any manner. Further deposed that he prepared the written investigation reports i.e. Ex.R-1 and Ex.R-2.

During cross-examination by the claimants, he stated that he is not a summoned witness and the Insurance Company had told him to produce the record. Further stated that he had not recorded the statement of claimant-Jaswant Kaur in the investigation of death of Gurdial Singh as well as statements of Gajraj Singh and Om Pal. Specifically stated that he did not investigate the file of criminal case titled 'State Vs. Anil Kumar', Police Station Shahzadpur. Also stated that he came to know that Anil Kumar is quite often to get himself involved in false accident, but he did not record the statement of any person in this regard as they refused to give the statement. Specifically stated that he has gone through the report under Section 173 Cr.P.C.

During cross-examination by respondent Nos.1 and 2, stated that he is not qualified or having any diploma of Investigator and has not recorded the

statements of driver and owner of the offending vehicle (jeep). Further stated that he has never seen Anil Kumar, driver of the Jeep, involved in any other accident case except the present one. Voluntarily stated that he received the information from taxi driver of the area. Also stated that he has not recorded the statement of any taxi driver in this regard. Further stated that he has been appointed by the Insurance Company to investigate the matter and not by the Court.

(13) Learned Tribunal, while recording the findings on Issue No.1, has given the undue weightage to the report submitted by the Investigator appointed by the Insurance Company and did not consider the evidence, produced by the appellants. PW 3-Pawan Kumar has specifically stated that in a criminal case resulting out of FIR No.12 dated 28.01.2002, under Sections 279, 304-A, IPC, P.S. Shahjadpur, driver of the offending vehicle was being prosecuted and this fact has not been denied by the driver himself rather admitted. Therefore, *prima facie*, learned trial Court was convinced that driver of the offending vehicle has committed the offence of rash and negligent driving while causing the death of both the deceased. Still further, PW 4-Gajraj Singh, who is an independent witness, has also duly supported the case of the appellants and his testimony also duly proved that accident in question is the result of rash and negligent driving of the offending vehicle by respondent No.1/driver. Moreover, in such like cases, preponderance of probabilities are to be seen and proof beyond reasonable doubt like a criminal trial is not the requirement of law and reference in this regard can be made to a judgment rendered in '**Bimla Devi and others Versus Himachal Road Transport Corporation and others, (2009) 13 SCC 530**, wherein 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. "

(14) In view of above, this Court is fully convinced that findings, recorded by learned Tribunal on Issue No.1 to the effect that there is no evidence on record to hold that the accident in question had taken place due to rash and negligent driving of respondent No.1 by the offending vehicle, which resulted into the death of Gurdial Singh and Dharam Singh, are not legally sustainable and same deserve to be interfered and reversed. Accordingly, it is held that both deceased-Gurdial Singh and Dharam Singh died in an accident occurred on 27.01.2002 due to rash and negligent driving of respondent No.1 with the offending vehicle and there was neither any collusion of appellants with respondent Nos.1 and 2 (driver and owner respectively); nor PW 4-Gajraj Singh was a procured witness just to claim the compensation.

It deserves to be recorded that for deciding the claim petitions, learned Tribunal ought to have adopted a practical and humane 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 as is evident from the data available on the website of the National Crime Record Bureau and this Court does not want to swell the pages of this order to extract the figures available to that effect.

Since in view of findings on Issue No.1, learned Tribunal dismissed the claim petitions summarily and did not decide the remaining Issues including

Keeping in view the fact that the accident had taken place way-back on 27.01.2002, 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.

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes