

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

FAO No. 5378 of 2006

DECIDED ON: DECEMBER 14, 2018

NEW INDIA ASSURANCE CO. LTD.

.....APPELLANT

VERSUS

SMT. ANANT PAL KAUR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Paul S. Saini, Advocate
for the appellant.

Mr. S.S. Rangi, Advocate
for the respondents.

AVNEESH JHINGAN, J (ORAL)

The award dated 28.08.2006 passed by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') has been assailed by the insurer of Maruti Van bearing registration No. CH-03-C-9643 (hereinafter referred to as 'offending vehicle') being aggrieved of the finding recorded by the Tribunal that the accident was caused due to the rash and negligent driving of the offending vehicle.

The brief facts necessary for adjudication of the present appeal are that Mehar Singh was driving the scooter bearing registration No. PB-23-2348

and was going towards village Todarmajra (Ropar). He was being followed by Amarjeet Singh on a separate scooter on which Janmeja Singh was the pillion rider. When Mehar Singh reached near police post of Village Majaat, his scooter was hit from behind by a rashly and negligently driven offending vehicle. Due to the impact, Mehar Singh fell down and sustained serious injuries and died at the spot. FIR was registered at Police Station Kharar.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') was filed by the legal heirs of Mehar Singh.

The Tribunal after considering the facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The owner, driver and insurer of the offending vehicle were held jointly and severally liable to pay the compensation. The Tribunal awarded a compensation to the tune of ₹2,70,000/- alongwith interest @6% per annum. The amount awarded included ₹6000/- for loss of consortium to the widow, funeral expenses and for loss of estate.

Heard learned counsel for the parties and perused the paper book.

Learned counsel for the appellant contends that the Tribunal erred in holding that the accident was caused due to the rash and negligent driving of the offending vehicle. He further contends that in the FIR which was registered on the statement of Amarjeet Singh (PW-3), neither the registration number of the offending vehicle nor the name of the driver was mentioned. He submitted that police had filed an un-traced report in the criminal case.

Learned counsel for the respondents/claimants while defending the award argues that it was duly proved by the deposition of Amarjeet Singh (PW-

3) and Janmeja Singh (PW-2) that the offending vehicle was involved in the accident and was being driven in a rash and negligent manner at that time when the accident took place. He further contends that the make of the car of the offending vehicle was duly mentioned in the FIR as Maruti Van.

The contentions raised by learned counsel for the appellant lack merit.

The law is well settled that in proceedings under Section 166 of the Act, the following conditions are required to be proved:

1. The involvement of offending vehicle;
2. The offending vehicle was driven in a rash and negligent manner.

It is further settled that the onus cast under the Act is not as heavy as in the criminal proceedings. The issue is to be decided on the touchstone of preponderance of probability.

The Supreme Court in ***Parmeshwari Vs. Amir Chand and others, 2011 AIR (SC) 1504***, held as under:

*“The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in ***Bimla Devi and others vs. Himachal Road Transport Corporation and others*** [(2009) 13 SCC 530] are very pertinent.*

"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.”

As per the record of the present case, the onus with regard to the twin conditions has been duly discharged by the claimants. There is no dispute raised to the fact that the deceased was being followed by Janmeja Singh (PW-2) and Amarjeet Singh (PW-3) on a separate scooter at the time of accident. Rather the said fact is fortified as the author of FIR was Amarjeet Singh (PW-3) and FIR was recorded immediately after the accident. Moreover, PW-2 and PW-3 deposed before the Tribunal stating that the offending vehicle was involved in the accident and the accident was caused due to the rash and negligent driving of the offending vehicle. They withstood the test of cross-examination, nothing contrary came on record.

The mere fact that the registration number of the offending vehicle was not mentioned in the FIR itself would not be enough to hold that the depositions of PW-2 and PW-3 are not reliable.

Reliance of the appellant on the fact that an untraceable report has been filed in the criminal proceedings does not enhance its case, as the untraced report filed by the police was not accepted by any court. Moreover, the evidence with regard to criminal case would not *ipso-facto* apply in MACT proceedings. The Tribunal has to decide the claim as per the evidence available before it.

There is no other aspect of the matter, the appellant filed an application under Section 170 of the Act before the Tribunal to defend the case on behalf of the owner-cum-driver of the offending vehicle. The said application was allowed but no steps were taken by the appellant either to produce the owner-cum-driver of the offending vehicle or to summon her. The

consequence of absence of the owner-cum-driver of the offending vehicle is that, an adverse inference is drawn against her.

In such circumstances, no shadow can be cast upon the findings recorded by the Tribunal.

The present appeal is dismissed.

DECEMBER 14, 2018

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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned ***Yes/No***

Whether reportable ***Yes/No***