

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

(1)

**FAO No.1767 of 2012 (O&M)
Date of Decision: May 03, 2018.**

Balbir Singh

.....APPELLANT(s).

VERSUS

Dilbagh Singh and others

.....RESPONDENT(s).

(2)

FAO No.1768 of 2012 (O&M)

Jeet Singh and another

.....APPELLANT(s).

VERSUS

Dilbagh Singh and others

.....RESPONDENT(s).

(3)

FAO No.1769 of 2012 (O&M)

Lajwanti and others

.....APPELLANT(s).

VERSUS

Dilbagh Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Neeraj Khanna, Advocate
for the appellant (s).

Mr. R.K. Bishamboo, Advocate
for respondent No.3-insurance company.

SURINDER GUPTA, J.

The above captioned appeals have been taken up together for disposal as these appeals arise against the separate awards, all dated 15.12.2010 passed by Motor Accident Claims Tribunal, Fatehgarh Sahib (later referred to as 'the tribunal') relating to accident, which occurred on the intervening night of 31.01.2000 and 01.02.2000 with truck bearing registration No.HR-07-1855 (later referred to as 'the offending vehicle'), which resulted in death of Jitender, Ajaib Singh and Gurdas Singh. The tribunal partly allowed the claim petitions filed by claimants by awarding them compensation of ₹50,000/- under Section 140 of Motor Vehicles Act, 1988 (in each claim petition) with the observation that claimants have failed to prove that the accident was caused due to rash and negligent driving of the offending vehicle by its driver Dilbagh Singh.

For the sake of convenience, facts and evidence recorded in case “*Lajwanti and others Vs. Dilbagh Singh and other, MACT case No.129 of 2008*” is taken while disposing of these appeals, as the pleadings regarding the accident and evidence led in all the three cases are similar.

The claimants have described the mode of accident in para 24 of the claim petition, which reads as follows:-

“During the intervening night of 31.1.2000 and 01.02.2000, Jawant Singh was going from Vill. Tepla to Salawa Sugar Mills Amloh by driving Truck No. HNC-1251 on the correct left hand side of the road at a moderate speed. The said truck was loaded with Sugarcane. Owner of the truck Balbir Singh, Jitender Singh s/o Balbir Singh and Ajaib Singh friend of Jitender Singh were also travelling in the cabin of driver of said truck. Truck No.HNB-8075 loaded with Sugarcane was

following Truck No.HNC-1251. Truck No.HNB-8075 was being driven by Gurdas Singh in the same manners and Jasbir Singh was also sitting in the driver Cabin with Gurdas Singh. Both the trucks started from village Tepla at about 9.00 p.m. when both the trucks reached near Multani Dhaba within the area of village Jalbera Distt. Fatehgarh Sahib on G.T. Road. The rear right side inner tyre of Truck No.HNC-1251 got punctured. The said truck stopped on its correct left hand side of the road with its left side wheels on kachcha portion. Gurdas Singh also stopped his truck ahead the punctured truck and drivers as well as occupants of both the trucks alighted, put reflectors, stones etc. on the road and parking lights of both the trucks on. All had started replacing the punctured tyre in the light of torch by lifting the truck on jack. At about 12.30 a.m., a Truck bearing registration No.HR-07-1855 being driven rashly and negligently by respondent No.2 came from back side i.e. from Rajpura side, the driver of said truck was so negligent that ignoring parking light, torch light and reflectors and other precautions taken by the occupants of both the trucks, brought his truck on the extreme left side of the road and hit against the persons, changing punctured wheel, even no other vehicle was coming from opposite side on other lane of the G.T. Road. As a result of this accident three persons namely Gurdas Singh, Jitender Singh and Ajaib Singh suffered multiple, simple and grievous injuries and died on the way to hospital, whereas Balbir Singh who was under the truck was survived. This accident took place on account of sole rash and negligent driving of Truck No.HR-07-1875 by the respondent No.2, owned by respondent No.1 and insured with respondent No.3. Hence, the respondents

No.1 to 3 are jointly, equally and severally liable to pay the amount of compensation along with interest and costs etc.”

In order to prove their case, claimants examined Balbir Singh as PW2, who tendered affidavit Ex.P2, giving the entire details of the incident. This witness along with deceased Jitender and Ajaib Singh was travelling in truck bearing registration No.HNC-1251 and another truck bearing registration No.HNU-8075, being driven by deceased Gurdas Singh was following them. Both the trucks left village Tepla together and the incident took place at around 12.30 a.m. in the intervening night of 31.01.2000 and 01.02.2000. He has stated in his affidavit, tendered in examination-in-chief as follows:-

“At about 12.00 AM, when both the trucks reached near Multani Dhaba within the area of Jalbehra, Distt. Fatehgarh Sahib on Rajpura to Ludhiana road. The rear right side inner tyres of my truck got punctured. The driver of my truck stopped their truck on its correct left hand side of the road with its left side wheels on *Kacha* portion. The driver of truck No.HNU-8075 after overtaking our truck stopped his truck ahead of our truck at a distance of 20 yards. All the occupant to both the trucks including drivers alighted from their respective trucks after putting parking lights on and placed reflector, branches of tree, stones etc. around both the truck. All started replacing the punctured tyre in the light of torch by lifting the truck on jack. At about 12.30 am i.e. intervening night of 31.01.2000 and 01.02.2000 a truck bearing registration No.HR-07-1855 which was being driven by its driver in a rash and negligent manner came from behind from Rajpura side. The driver of truck

was driving the truck so rashly and negligently that he ignored the parking lights, reflector, stones, branches of tree and all the precautions taken by us and brought his truck on the extreme left side of the road and hit against the persons who were replacing the tyre. As a result Gurdass Singh, Jitender Singh and Ajaib Singh suffered multiple, simple and grievous injuries. Others also suffered minor injuries. The driver of offending vehicle stopped the truck after covering a distance of 15-20 feet and peeped behind from the cabin. I saw driver of the offending truck was aged about 30 years and was Hindu gentleman. On hearing hue and cry of the persons (sic who had) suffered injuries, the driver of the offending truck fled away from there along with his truck. All the injured persons were taken to Civil Hospital, Fatehgarh Sahib, but Gurdass Singh, Jatinder Singh and Ajaib Singh died on the way to Civil Hospital, Fatehgarh Sahib on account of injuries suffered by them in this accident.”

The driver and owner of the offending vehicle in their written statement have denied the accident and to similar effect is the reply filed by insurer of the offending vehicle.

The tribunal discarded the statement of PW2 Balbir Singh on the ground that identity of the driver of the offending vehicle as per testimony of Balbir Singh is doubtful. The accident was held as proved with the observations in para 15 of the award, which reads as follows:-

“In these circumstances, this court has no hesitation in holding that an accident had indeed taken place with truck bearing registration No.HR-07-1855, which resulted in death of Gurdass Singh. However, this court cannot lose sight of the fact that the accident had taken

place in the middle of the night and that too in the peak winter seasons i.e. on the night intervening 31.01.2000 and 01.02.2000 when open areas in the State of Punjab are generally engulfed in dense fog. The said fact has half heartedly also been admitted by the star witness of the claimants i.e. PW-2 Balbir Singh son of Kartar Singh who has stated that there was fog at some places. In such like situation, when the visibility is reduced to a few feet, PW-2 Balbir Singh could not have been in a position to see the speed or the manner in which the truck in question was being driven so as to attribute negligence to its driver. In these circumstances while it can be said that the deceased had been run over by the truck bearing No.HR-07-1855, but the testimony of PW-2 Balbir Singh cannot be said to be sufficient to hold that respondent No.2 was driving the truck rashly and negligently.”

Learned counsel for the appellants has argued that the accident is admitted. Balbir Singh, in his affidavit, has stated that right side inner tyre of truck got punctured and driver had stopped the truck on its correct left side of the road with left side wheel on the kacha portion. The other truck bearing No.HNU-8705 had also stopped at the distance of about 20 yards. The occupants of both the trucks alighted and after putting parking lights on, placing reflectors, branches of tress and stones etc. around the trucks, they started replacing the punctured tyre in the light of the torch. It was at this stage, the offending vehicle came to the spot. It was being driven in a rash and negligent manner. The indicators, parking lights, reflectors, branches of tress, stones were ignored and the persons, who were replacing the tyre were badly hit, resulting in severe injuries to them. The

he had crossed a truck parked on the left side of the road. The tribunal has tried to give protection to the driver of the offending vehicle with observation that time of accident was season of dense fog in this area of Punjab State. Even if, this plea of tribunal is accepted, in that case, it reflects negligence of the driver of offending vehicle, who during the dense fog, was supposed to drive the vehicle at a very slow speed after taking all precautions. The evidence of Balbir Singh could not be discarded merely on the ground that number of the offending vehicle was not mentioned in the FIR. The tribunal had accepted that the accident with the offending vehicle had taken place and the only question to be determined by the tribunal was whether it was caused due to rash and negligent driving of offending vehicle by its driver. Even if, the number of the offending vehicle has not been mentioned in the FIR, once the tribunal has concluded that the accident is duly proved, no dispute remain regarding identity of offending vehicle. Statement of Balbir Singh regarding the manner of accident could not be discarded as the driver of the offending vehicle has not dared to step into the witness box to rebut him.

Learned counsel for the insurance company has argued that the identity of the offending truck was not disclosed in the FIR. In case, Balbir Singh had seen the accident, he must have mentioned the number of the offending vehicle while reporting the matter to the police. This shows that he was not present at the spot. The claimants have filed petition under Section 166 of Motor Vehicle Act and onus was heavily on them to prove that the accident was caused due to rash and negligent driving of the offending vehicle by respondent No.1, which they utterly failed to prove.

Even if, version of the claimant is to be believed, it is a case of contributory negligence as the punctured truck had been parked on the side of the road and the offending vehicle had hit the deceased while coming from behind. He has placed reliance on the observations in case of ***Raj Rani and others Vs. Oriental Insurance Company Ltd and others 2009 ACJ 2003.***

Firstly, I have a look on the observations of the tribunal relating to accident. The tribunal has recorded a categorical finding that accident had taken place with the offending vehicle resulting in death of three persons. The above findings of the tribunal are not under challenge by the owner, driver or insurer of the offending vehicle. Above findings have rendered this fact irrelevant as to whether the number of the offending vehicle was mentioned in the FIR or not.

Now, the only question to be seen is as to whether the accident was caused due to rash and negligent driving of the offending vehicle. The tribunal has, however, observed that at the relevant time, open areas in the State of Punjab remain under dense fog, as such, Balbir Singh was not in a position to see the speed and manner in which the offending vehicle was being driven so as to attribute negligence to its driver. The above observations of the tribunal are not sustainable for the reason that Balbir Singh, while appearing as PW2, has stated that near the place of accident, there was a *Dhaba*. On that day, there was fog at some places, however, there was no fog at the place of occurrence and it was moon lit night. In MACT case No.131 of 2008 titled as *Balbir Singh Vs. Dilbagh Singh and others*, eyewitness Balbir Singh, who appeared as PW1, has stated that in the month of January, there was dense fog, however, his statement cannot be

interpreted to the extent so as to held that there was dense fog on the day and at the time and place of accident. Even during the foggy hours of day or night, the driver of a vehicle is required to be more vigilant and to keep the speed at such a level so as to apply brakes if he finds an object within the range of his visibility. The offending vehicle had run over three persons resulting in serious injuries and their deaths. Balbir Singh has specifically stated that before changing tyre, which got punctured, sufficient indications were placed on road by putting parking lights on, reflectors, branches of trees and stones on the road. The fact that the driver of the offending vehicle ignored all these indications and hit three persons, who were changing the tyre of the truck, reflects his negligence. For reaching the conclusion that driver of the offending vehicle was negligent, it was not required to prove his speed and mode and manner of driving of offending vehicle. Moreover, it is apparent that the tribunal has relied on the testimony of Balbir Singh while concluding that “the accident had indeed taken place with truck bearing registration NO.HR-07-1855”. Except the testimony of Balbir Singh, there is no other evidence on file which the tribunal could rely upon while recording the above findings. This shows that the tribunal has accepted the presence of Balbir Singh at the spot, as such, his testimony that the accident was caused due to rash and negligent driving of offending vehicle by respondent No.1 cannot be discarded.

In view of above facts and circumstances, I find reasons to agree with the submission put forth by learned counsel for the appellants. The findings of the tribunal on issue No.1 are not sustainable in the eyes of law and as such, are reversed. It is held that claimants have been able to

prove that the accident was caused due to rash and negligent driving of offending vehicle by respondent No.1.

While recording findings on issue No.2, the tribunal has not discussed about the quantum of compensation to which the claimants are entitled due to death of Jitender, Ajaib Singh and Gurdas Singh. I am of the opinion that the case be sent back to the tribunal to record finding on issue No.4 afresh as the assessing of compensation in appeal will take away right of the claimants/respondent(s) challenging the same in first appeal.

The findings of the tribunal on issues No.1 and 2 are affirmed, while on issue No.4 are set aside. The appeals are accepted and the cases are remanded to the tribunal with direction to hear counsel for the claimants and respondents and record findings on issue No.4 afresh. The amount of compensation as per award, if already released, will be adjusted in the compensation, computed by the tribunal while recording findings on issue No.4.

Parties are directed to appear before the tribunal on 28.05.2018.

May 03, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No