

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

Date of Decision : 22.11.2018

1. FAO No.751 of 2012 (O&M)

Sham Lal

..... Appellant

Versus

Kala and others

..... Respondents

2. FAO No.1060 of 2010 (O&M)

Kala and another

..... Appellants

Versus

Sham Lal and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Ashok K.Sharma Bhana, Advocate
for the appellant (FAO-751-2012).
for the respondent No.1 (FAO-1060-2010).

Mr. Kanwal Goyal, Advocate
for the appellants (FAO-1060-2010)
for respondents No.1 & 2 (FAO-751-2010).

Ms. Vandana Malhotra, Advocate
for the insurance company.

AJAY TEWARI, J. (Oral)

CM-25417-CII-2018 in FAO-751-2012

This is an application for bringing on record the legal
representatives of the deceased-appellant-Sham Lal who is stated to have

passed away on 24.12.2015.

For the reasons recorded in the application, the same is allowed and the persons mentioned in the paragraph No.2 of the application are impleaded as legal representatives of the deceased-appellant-Sham Lal, subject to all just exceptions. Amended Memo of Parties is taken on record.

Main cases

This order shall dispose of two appeals.

These two appeals have been filed against the judgment and award dated 14.11.2009 passed by the Motor Accident Claims Tribunal, Jind. ***FAO No.751 of 2012*** has been filed by the claimant for enhancement while ***FAO No.1060 of 2010*** has been filed by the driver-owner challenging the imposition of compensation upon them.

In this appeal, I would refer to them as claimant and respondents No.1 and 2 for the purpose of these appeals. The brief facts as came out in the petition were that on 07.05.2008 the appellant-claimant-Sham Lal was going from his village Bailerkha to Badanpur on his motorcycle and at about 07.00 P.M. a three wheeler being driven by respondent No.1 rashly and negligently came from the opposite side and hit the motorcycle, as a result of which he suffered the injuries and that is why he filed the claim petition. Claim having been allowed, both the appeals have been filed. Counsel for respondents No.1 & 2 has argued that the FIR was lodged after 7 days and even in the FIR the number of the vehicle was not mentioned and even as regards the identity of respondent No.1, the FIR itself which was lodged by the claimant himself

recorded that he had come to know about the name of the driver later on from his son who had in turn learnt it from the police station. As per counsel for respondents No.1 & 2 there was no evidence, no eye witness of the accident and no explanation given as to how the claimant came to know that infact the accident had taken place with the vehicle of respondents No.1 & 2 because in his testimony he had admitted that he had been rendered unconscious at the time of the accident. Counsel for the claimant has argued that Nirmala Devi, Constable PW had appeared and testified that respondent No.1-Kala-Driver had been challaned for the same accident and in terms of the decision of ***Girdhari Lal Vs. Radhey Sham & others 1993 (2) PLR, 109*** it was sufficient to prove the involvement of respondent No.1 in the accident.

Counsel for respondents No.1 & 2 has argued that in a case where the identity of the vehicle/driver is established then the fact that the driver has been charged in a criminal case would be sufficient for the tribunal to come to a conclusion regarding his negligence but where the identity of the driver/vehicle has not been established (as in the present case) the judgment of ***Girdhari Lal (Supra)*** would have no application.

In my opinion, the argument of the counsel for respondents No.1 and 2 has to prevail. Even today before me counsel for the claimant has not been able to point out any objective evidence which may show that the accident had taken place with the vehicle driven by respondent No.1. Nirmala Devi had not disclosed how the police came to the conclusion that it was respondent No.1 who was responsible for the accident. She had only testified that respondent No.1 has been challaned

in this case. No doubt a claim under the Motor Vehicles Act, 1988 has to be decided beneficially yet it can not mean that there is no requirement for the claimant to prove even by a slight preponderance of probability that the accident had taken place with the offending vehicle.

In the circumstances, the appeal of respondents No.1 and 2 bearing FAO No.1060 of 2010 is allowed. Award is set aside. Cross appeal filed by the claimant bearing FAO No.751 of 2012 for enhancement is dismissed.

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

22.11.2018
pooja sharma-I

(AJAY TEWARI)
JUDGE

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