

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

FAO No.3852 of 2014 (O&M)

Date of Decision: July 04, 2018

Dilpari and others

...Appellants

Versus

Daljit Singh and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr.Munish Puri, Advocate
for the appellants – claimants.

Mr.Arun Abrol, Advocate for
respondent No.1

Mr.Vipul Sharma, Advocate
for respondent No.2– Insurer.

HARINDER SINGH SIDHU, J.

The claimants have filed the present appeal challenging the award dated 19.02.2014 passed by the Motor Accident Claims Tribunal, Pathankot (for short 'the Tribunal'), whereby, their claim petition was dismissed.

Brief facts as disclosed in the claim petition are that on 28.08.2010, Latif (since deceased) was going to Amritsar with his wife Dilpari in truck No.PB-29D-9697 (herein for short 'the offending vehicle'), owned by Daljit Singh – respondent No.1. Latif was on the steering wheel. At about 11.00 pm, when they reached ahead of Dhobra Puli, the vehicle broke down. Latif alighted from the truck and tried to repair it by standing on its front side. Dilpari came out of the truck and sat on a *katcha* berm.

Daljit Singh sat on the driver seat and then started the offending vehicle, which was in gear. Latif was hit by the offending vehicle and he received injuries on his head and stomach. He was taken to Raavi Hospital, from where, he was shifted to Dr.Bhinder Hospital and then Kidney Hospital, Jalandhar and ultimately to PGI, Chandigarh, where he died on 01.11.2010. The accident was alleged to have been caused due to rash and negligent driving of the offending vehicle. FIR regarding the accident was also registered on 27.11.2010 against respondent No.1.

While the claimants based their claim solely on the statement of PW1 Dilpari, the respondents examined RW 1 SI Gurvinder Singh of P.S. Mamoon who deposed that on 2.11.2010 Shambu brother of the deceased had made a statement before him that the accident had been caused by some unknown vehicle which struck the stationary truck of the deceased due to which he received injuries and later died in the PGI, Chandigarh. On his statement DDR Ex R1 was recorded in the Roznamcha. Shambu got a second statement recorded on 3.11.2010 in which he again stated that nobody was responsible for the accident.

Ld. Tribunal dismissed the claim petition primarily on the ground that the version of the brother of the deceased about the cause of the accident was different from in the statement of PW1. Further the FIR having been lodged about three months after the accident it was concluded that the accident had occurred when an unknown truck struck against the truck of the deceased and the offending truck was named after deliberation as the actual truck was not traceable. Further from the inability of the PW1 to disclose the name of the doctor who was to medically check her in Amritsar, the

Tribunal concluded that the version of the claimant that she was accompanying her husband in the truck on the date of the accident as she was unwell and had to consult a doctor was not credible. Thus her presence at the spot was doubted and her entire version was disbelieved. Accordingly, the claim petition was dismissed.

Ld. Counsel for the appellants has argued that the entire approach of the Tribunal is flawed. The accident had taken place on 28.8.2010 and thereafter, the injured Latif remained admitted in different hospitals and he breathed his last on 01.11.2010 at PGI, Chandigarh. The claimants, who are simple, illiterate villages were in shock after the accident. Their entire focus was to save the life of Latif. However, he could not survive. It is stated that accordingly delay occurred in lodging the FIR against respondent No.1. It is argued that the Tribunal erred in discarding the oral evidence led by the claimants, as the requirement of proof in MACT cases is not so stringent as in a criminal case to prove the negligence.

Ld. Counsel for the respondent – Insurance Company has supported the findings of the Tribunal.

I have heard Ld. Counsel for the parties and perused the records with their assistance.

To prove its case the claimants examined the eye-witness Dilpari, widow of the deceased Latif as PW1. She deposed before the Tribunal that on 28.08.2010 she along with Latif was going to Amritsar in the offending vehicle and at about 11.00 pm when they reached ahead of Dhobra Pulli, the vehicle broke down. Latif alighted from the truck and tried to repair it by standing on its front side. She came out of the truck and sat on a *katcha*

berm. Respondent No.1 Daljit Singh was in the truck and he sat on the driving seat. He started the truck and since it was in gear, it moved and ran over Latif, who suffered injuries on his head and stomach. She further stated that Latif was taken to Raavi Hospital, from where he was shifted to Dr.Bhinder Hospital and then Kidney Hospital, Jalandhar and then to PGI, Chandigarh where he died on 01.11.2010. In other words, she corroborated the version given in the FIR.

Reading of statement of PW1 Dilpari reveals that she also disclosed the place of loading of gravels in the offending vehicle. She stated that her husband loaded gravels from Pathankot from a site, where it was being crushed, but she could not tell the name of the owner of that site and crusher. She specifically stated that she was with her husband at the time of accident. The accident took place ahead of Dhobra bridge. The truck went out of order at 11.00 pm and it was standing on the side of the road. She further stated that when her husband (deceased Latif) had just alighted from the truck to check the truck and she alighted to facilitate their child to urinate, respondent No.1 Daljit Singh started the truck, due to which her husband was crushed. It has further come in her statement that the material was to be off-loaded at Amritsar. About the reason for her accompanying the deceased, she stated that on that day, she was sick and, thus, the deceased took her along for her medical check-up.

PW1 Dilpari has affixed her right thumb impression on her statement recorded by the Tribunal, which goes to show that she is an illiterate lady. It cannot be expected from an illiterate lady, the wife of a truck driver to know the minute details about the owner of the site of

crusher, from where her husband loaded the material. She accompanied her husband along with their child just on the assurance of her husband of getting her medically checked up for her illness. In these circumstances, it also cannot be expected that she could know the name of the doctor from whom her husband (deceased) was to get her treated.

So far as the delay in lodging the FIR is concerned, the view of the Tribunal cannot be accepted. It is but natural that after any road accident, the first and foremost concern of the relatives and friends of the injured is to save his life by providing him the best medical aid. Dealing with the issue of delay in lodging an FIR in an motor accident case, the Hon'ble Supreme Court in Ravi versus Badrinarayan and others, 2011(4) SCC 693, observed as under:

“17. It is well settled that delay in lodging the FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the police station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the police station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim.”

Therefore, it is held that the delay in lodging the FIR is well explained in the present case and thus cannot be said to be fatal to the case of the claimants.

Reliance by the Tribunal on the statements Ex R3 and R 4 of the brother of the deceased made before RW 1 SI Gurwinder Singh while

disbelieving the version of the claimant is wholly inexplicable. The brother of the deceased Shambu was not an eyewitness to the accident. He was not in the Truck at the time of the accident. The accident had occurred on 28.8.2010. Latif died on 1.11.2010 at PGI Chandigarh. It is not understandable as to why Shambu suddenly appeared on 2.11.2010 to record his statement Ex R3. Was he present with his brother during his treatment? Who informed him about the actual happenings on the spot of the accident? Nothing is known. He has not appeared before the Tribunal to assert about the manner of the accident. His statements have only been proved by RW1 SI Gurvinder Singh. Implicit reliance on his statements to discredit the version of the PW1 does not appear justified only on the ground of delay in lodging the FIR by her and for her failure to disclose the name of the doctor where she was to get her treatment.

Respondent No.1 in his written statement denied that the claimant was travelling with the deceased on the date of the accident. It was his case that the deceased was accompanied by a cleaner. The Truck was loaded with goods. It broke down. The deceased tried to start it directly from the self by opening the bonnet by inserting a rod. The Truck which was already in gear suddenly started due to which the accident occurred and Latif was crushed under it. Phone call was received by respondent No. 1 from the cleaner. He went to the spot and admitted Latif in Raavi Hospital. He was thereafter taken to different hospitals. He has stated that he was not driving the truck at the time of the accident.

This version of respondent No. 1 totally contradicts the version of Shambu brother of the deceased relying on which the claimant has been

disbelieved and the claim petition has been dismissed.

But there are holes in this version as well. The name of the cleaner who had accompanied Latif has not been disclosed. The cleaner has not appeared to disprove the version of the claimant. Neither has Respondent No. 1 appeared before the Tribunal to rebut the stand of the claimant.

Thus neither the counter version put up by defendant No. 1 nor the version of Shambu brother of the deceased is trustworthy. The version of the claimant appears to be trustworthy and natural.

This Court in Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109, observed about the evidentiary value of pendency of criminal proceedings against the driver, in a case of compensation under the Motor Vehicles Act, as under:-

“xxx xxx xxx There is no denial that Radhey Shyam respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries. xxx xxx xxx”

In case of Mallamma vs. Balaji and others, 2004 ACJ 368, the Karnataka High Court while reversing the finding of the Tribunal on the issue of negligence, held as under:-

“12. Therefore, under these circumstances, I am of the considered view that the Tribunal has wrongly come to the conclusion and held that the claimant has not proved the negligence on the part of the driver of the milk van involved in the accident. Filing of the charge-sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to

prove the same.”

In The United India Insurance Co. Ltd. vs. Deepak Goel and others, MAC.APP.No.750/2006, decided on 24.01.2014, while taking note of the decisions of the Hon'ble Supreme Court, it was observed by the Delhi High Court as under:-

“xxx xxx xxx In a criminal case in order to have conviction, the matter is to be proved beyond reasonable doubt and in a civil case the matter is to be decided on the basis of preponderance of evidence, but in a claim petition before the Motor Accident Claims Tribunal, the standard of proof is much below than what is required in a criminal case as well as in a civil case. Undoubtedly, the enquiry before the Tribunal is a summary enquiry and, therefore, does not require strict proof of liability.

21. Nonetheless, in a case, where FIR is lodged, charge-sheet is filed and specially in a case where driver after causing the accident had fled away from the spot, then the documents mentioned above are sufficient to establish the fact that the driver of the offending vehicle was negligent in causing the accident particularly when there was no defence available from his side before the learned Tribunal. Thus, the claimants have proved negligence of the driver of the offending vehicle”

Ld. Counsel for the respondents have stated that respondent No. 1 has been acquitted in the criminal case vide judgment and order dated 28.05.2015 of JMIC Ist Class. Pathankot. In my view this acquittal will not impact the present case, which has to be decided as per the evidence before the Tribunal.

In view of the above factual and legal position, the finding of the Tribunal on issue No.1 regarding the rash and negligent driving of the

