

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

I. **FAO-5433-2014**
Date of decision:11.01.2018

RANDHIR ... Appellant

Versus

ANIL KUMAR @ KARAMBIR & ORS Respondents

II. **FAO-5434-2014 (O&M)**

SACHIN AND ORS ... Appellants

Versus

ANIL KUMAR @ KARAMBIR & ORS Respondents

III. **FAO-5435-2014 (O&M)**

PARTAP AND ORS ... Appellants

Versus

ANIL KUMAR @ KARAMBIR & ORS Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sandeep Goyal, Advocate,
for the appellant(s).

Mr. Rajesh K. Sharma, Advocate,
for respondent No.3-Insurance Company.

HARI PAL VERMA, J.

This order shall dispose of three appeals i.e. FAO No.5433 of
2014 titled as '*Randhir Versus Anil Kumar @ Karambir and others*', FAO

No. 5434 of 2014 titled as '***Sachin and others Versus Anil Kumar @ Karambir and others***' and FAO No.5435 of 2014 titled as '***Partap and others Versus Anil Kumar @ Karambir and others***', as all the appeals have been filed against the common award dated 10.01.2014 passed by Motor Accident Claims Tribunal, Panipat (for short, '*the Tribunal*') and are arising out of the same accident. However, for brevity, facts are being taken from FAO No.5433 of 2014.

Before the Tribunal, three claim petitions under sections 166/140 of the Motor Vehicles Act, 1988 (for short 'the Act') were filed by the respective claimants. The claimant Randhir (in FAO No.5433 of 2014) filed a claim petition No.135 of 2012 for grant of compensation on account of injuries sustained by him in the accident whereas claimants Partap and others (in FAO No.5435 of 2014) filed claim petition No.136 of 2012 seeking compensation on account of death of Rajinder and claimants Sachin and others (FAO No.5434 of 2014) filed claim petition No.137 of 2012 for grant of compensation on account of death of Ramkesh.

Briefly stated, on 13.06.2010, the injured Randhir along with deceased-Rajinder and Ramkesh had gone to attend the marriage on a motorcycle bearing registration No.HR-06K-4833. The motorcycle was being driven by Rajinder (deceased). When they reached near Bhatta at Village Khotpura, in the meantime, a tractor-trolley bearing registration No.HR-05AA-3044 being driven in a rash and negligent manner hit against the motorcycle. As a result thereof, all the occupants of the motorcycle fell down on the road and received multiple injuries on their persons. Ramkesh succumbed to his injuries at the spot, whereas injured Randhir and Rajinder were shifted to Prem Hospital, Panipat. However, Rajinder expired during

treatment on 21.06.2010. The injured Randhir telephonically informed one Rajesh Gupta and on whose statement, an FIR No.153 dated 14.06.2010 was registered at Police Station Sadar, Panipat. It was alleged that the accident took place due to rash and negligent driving of the offending tractor-trolley.

In the written statement, respondents No.1 and 2 i.e. driver and owner of the offending vehicle, raised preliminary issue regarding maintainability of the claim petition, locus standi of the petitioner-appellants, suppression of material facts and cause of action. On merits they denied all the facts stated in the claim petitions for want of knowledge and pleaded that the vehicle has been falsely implicated by the police at the instance of petitioner-appellants.

Similarly, respondent No.3-Insurance Company while filing written statement has alleged that the vehicle was being driven in violation of the terms and conditions of insurance policy. Without admitting its liability, all defences available to the insurer under Sections 134-C, 147, 149, 157 and 170 of the Act were taken. FIR was also said to be false and fabricated having been registered in collusion with the police and respondents No.1 and 2.

The Tribunal vide award dated 10.01.2014 dismissed the claim petitions, holding that the claimants failed to prove the involvement of the offending vehicle in the accident.

Aggrieved against the aforesaid judgment whereby their claims were rejected, the claimants-appellants have approached this Court by way of different appeals.

Learned counsel for the appellants has argued that the Tribunal has not considered the fact that the FIR was registered on the very next day

of the accident regarding the involvement of the vehicle in the accident. The Tribunal also did not consider the fact that after the accident, the claimant-injured, namely, Randhir (an eyewitness) became unconscious and was admitted in the hospital. He was under shock when he came to know that his two companions had expired in the accident. Therefore, he was not in a position to give a statement to the police regarding the accident, when they met him in the hospital on the date of accident. The next day when he regained consciousness and discharged from the hospital, he immediately joined the investigation and reported the matter to the police. But the police did not act immediately and it is only after a delay of about three months i.e. on 08.09.2010, a criminal case was registered against respondent No.1. But the Tribunal took it otherwise and dismissed the claim petitions on the ground that if Randhir had witnessed the accident and noted down the registration number of the offending vehicle, he would have intimated the identity of the offending vehicle when police met him in the hospital on the same day.

On the other hand, learned counsel for the respondent No.3-Insurance Company has stated that the claim petitions have been rightly dismissed by the Tribunal and no interference is warranted.

I have heard learned counsel for the parties.

The main issue, in all these appeals, is as to whether claimant Randhir has received injuries and deceased Rajinder and Ramkesh expired due to the injuries received in the motor vehiclular accident, due to rash and negligent driving of respondent No.1 of the vehicle bearing registration No. HR-05AA-3044.

The findings recorded by the learned Tribunal on this issue are

as under:-

“17. Though it appears that an accident has taken place, however, name of the driver and registration number of the offending vehicle has not been mentioned in the FIR, so as to give insight into the facts of the case. The FIR in this case has been recorded on the statement of one Rajesh Gupta and admittedly, he is not an eye-witness to the accident. He was not present at the place of occurrence when the accident had occurred. As per the FIR, he has been informed by claimant Randhir that they met with an accident with an unknown tractor-trolley.

18. In support of his case, claimant Randhir appeared in the witness box as PW-1 and has tendered his affidavit Ex.PW1/A deposing therein that when they reached near Bhatta of village Khotpura, then in the meantime, some unknown driver after causing the accident, fled away with his tractor-trolley due to which Ramkesh died on the spot. He has further stated that when he got consciousness, he joined the investigation by alleging that the respondent No.1 was driving the offending tractor-trolley bearing registration No.HR-05AA-3044 in rash and negligent manner. During his cross-examination, this witness has deposed that police met him in the hospital on the same day during night hours and thereafter, police never met him. He has even stated that he was discharged from the hospital on the next day. If claimant Randhir regained consciousness on the same day of accident and police also met him on the same day, then why he has not disclosed the registration number of the offending vehicle and name of its driver there and then. Perusal of the final report under section 173(2) Cr.P.C. shows that respondent No.1 Anil Kumar was arrested on 08.09.2010 in the criminal case. If claimant Randhir was discharged from the hospital on the next day of accident, then as to why he did not take any action against the respondent No.1. There is nothing on record to suggest as to how claimant Randhir had the knowledge of the name of the driver of the alleged offending vehicle. It is not the case of the claimant Randhir that he was known to Anil Kumar, respondent No.1 earlier. The testimony of claimant Randhir (PW1) is quite doubtful. If testimony of Randhir (PW1) is taken as a truth, then he should have placed on record copy of his such statement

made before the police. Further if PW-1 Randhir had witnessed the accident and noted down the registration number of the offending vehicle, he would have intimated the identity of the offending vehicle to the police when police met him in the hospital on the same day, as testified by him during his cross-examination.

19. *As such, the self-serving statement of claimant Randhir, not supported with any other independent evidence, do not inspire faith. It is settled proposition of law that the negligence of the offending vehicle has to be proved on record by leading independent evidence in the claim petition and merely because FIR has been registered against a vehicle and the driver, it cannot be deduced conclusively that the accident had been caused due to the negligence of the driver impleaded by the claimants specially when collusion has been alleged.*

20. *Because of the inconsistencies and contradictions observed herein above, he does not deserve to be relied upon. In-fact he twisted the entire story with the sole motive to implicate the offending vehicle as the vehicle which had caused the accident, whereas as per the first version in FIR Exhibit-P2, it was some unknown tractor-trolley which caused the accident and not the offending tractor-trolley.*

21. *The facts discussed above clearly indicate that PW1 Randhir is deposing falsely on the point of registration number of the offending vehicle. He had not noted down the registration number of the offending vehicle at the relevant time. His statement is so inconsistent in itself as well as contradictory to the report regarding the accident recorded at the first instance by the police that he is proved to be a false witness. Learned counsel for the claimants placed reliance upon **Kusum Lala & Ors. versus Satbir and Ors. AIR 2011 Supreme Court 1234, Smt. Renu Devi and others versus Sh. Mohammad Yunis, 2013, Vol.2 PLR (P&H) 743 and National Insurance Company Ltd. versus Bala Devi and others, 2006 (4) RCR (Civil) 131**, but the same are not applicable to the facts of the present case and thus, the same are distinguishable.*

22. *In the above premises, the conclusion manifest is that the offending vehicle was not the vehicle involved in the accident in which deceased Ramkesh and Rajinder died due to the injuries*

suffered by them and claimant Randhir received injuries in the said accident. Resultantly, issue No.1 is decided against the petitioners.”

Hon'ble the Apex Court in ***Surender Kumar Arora and another Vs. Manoj Bisla and others***, 2012 (4) SCC 552 has held that under Section 166 of the Act, initial onus to prove that the accident had occurred due to rash and negligent driving of the offending vehicle, is on the claimant.

Admittedly, the accident took place on 13.06.2010 in which two persons died and one was injured, who is the claimant and also an eyewitness. The FIR was registered on the statement of one Rajesh Gupta, who was not an eyewitness to the accident. As per the FIR, Rajesh Gupta was informed by the claimant Randhir that they met with an accident with an unknown tractor-trolley. The Tribunal found contradictions in the statement of claimant Randhir. His testimony is doubtful which is not even supported by any independent witness. It is a settled proposition of law that the negligence of the offending vehicle has to be proved on record by leading independent evidence and merely because FIR has been registered against a vehicle and its driver, it cannot be said that the accident had been caused due to the negligence of that vehicle and its driver. Even otherwise, the driver of the vehicle was arrested in the case after a delay of about three months i.e. on 08.09.2010. There is nothing on record to suggest as to how claimant Randhir had the knowledge of the name of the driver of vehicle. Nothing has come on record that the injured eyewitness Randhir was not fit to make statement to the police, but still FIR was got registered by one Rajesh Gupta. Thus the very accident has not been proved by the claimants.

Since the claimants have failed to prove the involvement of the offending vehicle in the accident, the Tribunal has rightly dismissed the claim petitions. This Court does not find any cause for interference in the

well reasoned award passed by the learned Tribunal.

Accordingly, all these appeals being devoid of merit, are hereby dismissed.

(HARI PAL VERMA)
JUDGE

11.01.2018
Sanjeev

Whether speaking/reasoned	Yes/No.
Whether Reportable:	Yes/No.