

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5844 of 2014

DECIDED ON: NOVEMBER 14, 2018

MANPREET KAUR & ANOTHER

.....APPELLANTS

VERSUS

NARENDER G. PARMAR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Amit Arora, Advocate
for the appellants.

Mr. Rajneesh Malhotra, Advocate
for respondent No.3-Insurance Company.

Mr. Ram Avtar, Advocate for
Mr. Naveen Kapoor, Advocate
for respondent No.5.

AVNEESH JHINGAN, J (ORAL)

The widow and minor daughter of Angrej Singh-deceased are in appeal against the award dated 15.02.2014, passed by Motor Accident Claims Tribunal, Tarn Taran (for short 'the Tribunal'). The appeal has been filed against dismissal of claim petition filed under Section 166 of the Motor Vehicles Act, 1988 (for brevity 'the Act').

2. The owner of truck bearing registration No. GJ-12-Z-1480

(hereinafter referred to as 'truck'); driver of truck and insurer of truck i.e ICICI Lombard General Insurance Company Ltd; owner of crane bearing registration No. GJ-15-K-7914 (for brevity 'crane') and insurer of crane i.e. New India Insurance Company Ltd., have been arrayed as respondents No.1 to 5 respectively in the appeal.

3. Brief facts necessary for adjudication of present appeal are that a motor vehicular accident took place on 20.01.2009. Angrej Singh alongwith Sanjeev Kumar and Deepu Khalasi were coming and carrying the crane from Gandhidham to Vapi. Due to puncture, they parked their crane on one side of the road and were taking rest. In the meantime, the truck came from Vapi side and struck into the crane, as a result thereof, Angrej Singh died on the spot. Deepu Khalasi and Sanjeev Kumar suffered injuries. FIR No. 5, dated 21.01.2009 was registered at Police Station Aadhoi, District Kutchha (Gujrat) at the instance of Sanjeev Kumar.

4. The legal heirs of Angrej Singh-deceased filed a claim petition under Section 166 of the Act.

5. The Tribunal after considering the facts and appreciating the evidence adduced, dismissed the claim petition on the ground that the claimants failed to prove rash and negligent driving of truck.

6. Heard learned counsel for the parties, perused the record.

7. Learned counsel for the appellants contended that the Tribunal erred in dismissing the claim petition, as the claimants adduced evidence by way of statement of Manpreet Kaur and Khazan Singh to establish that the accident occurred due to rash and negligent driving of the truck.

8. Learned counsel for the insurer argued that none of the two witnesses

(Manpreet Kaur and Khazan Singh) in their affidavits deposed that the accident occurred due to rash and negligent driving of the truck.

9. For claiming compensation under Section 166 of the Act, twin requirements are to be proved by claimants:

- (i) Involvement of offending vehicle;
- (ii) That accident occurred due to rash and negligent driving of the offending vehicle.

10. In the present case there is no dispute with regard to the involvement of truck in the accident. The only issue arising for consideration is whether the accident occurred due to rash and negligent driving of the truck.

11. The law is well settled that the onus of proof under the Act is not as heavy as in the criminal proceedings. It is to be decided upon principle of preponderance of probabilities. The Supreme Court in case **Parmeshwari vs. Amir Chand and others;** 2011 AIR (SC) 1504, has 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."

12. In the present case accident was witnessed by Sanjeev Kumar and Deepu Khalasi. These two persons were there alongwith the deceased at the

time of accident. Moreover, FIR was registered at the instance of Sanjeev Kumar but the claimants only examined Manpreet Kaur (widow of the deceased) and Khazan Singh. From perusal of their affidavits filed, it is evident that not even a single word has been mentioned that the accident occurred due to rash and negligent driving of the truck. The reasons are but obvious, as none of them was witness to the accident. The accident occurred in Gujrat and these two witnesses are residents of Tarn Taran. For the reasons best known to the claimants, neither Sanjeev Kumar nor Deepu Khalasi stepped forward to depose that the accident was caused due to rash and negligent driving of the truck.

13. No shadow can be cast upon the findings recorded by the Tribunal that the claimants failed to discharge the onus regarding rash and negligent driving of the truck.

14. The appeal is dismissed.

15. However, since the involvement of truck is not in question, appellants shall be entitled to a sum of ₹ 50,000/- under Section 140 of the Act, which shall be paid by the insurer of truck. Keeping in view the fact that the accident occurred in 2009, it would be desirable that the aforesaid amount is paid to the claimants within six weeks from today.

NOVEMBER 14, 2018

sham

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No