

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

F.A.O. No.8728 of 2014(O&M)

Date of Decision: 20.12.2018

Nisha Jhakhar and others

.....Appellants.

Versus

Darshan Singh and others

..... Respondents.

AND

F.A.O. No. 10144 of 2014(O&M)

Shri Ram General Insurance Company Limited

.....Appellants.

Versus

Nisha Jhakhar and others

..... Respondents.

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashit Malik, Advocate
for the appellants (in FAO No. 8728 of 2014) and
for respondents no.1 to 5 in FAO No. 10144 of 2014.

Mr. Rajbir Singh, Advocate
for Mr. Sanjeev Goyal, Advocate
for the appellant (in FAO No. 10144 of 2014) and
for respondent no.3 in FAO No. 8728 of 2014.

Respondents no.1 and 2 in FAO No. 8728 of 2014 and
respondents no.6 and 7 in FAO No. 10144 of 2014 *ex parte*.

LISA GILL, J.

This judgement shall dispose of FAO No. 8728 of 2014 and
FAO No.10144 of 2014 as both the appeals arise from common award dated
26.05.2014, passed by the learned Motor Accident Claims Tribunal, Karnal
(for short 'tribunal').

FAO No. 10144 of 2014 has been filed by the Insurance
Company challenging its liability to pay the compensation as well as the
quantum of compensation awarded to the claimants.

FAO No. 8728 of 2014 has been filed by the claimants seeking enhancement of the compensation awarded to the claimants. For the sake of convenience, facts are being extracted from FAO No.8728 of 2014.

As per the averments in the claim petition under Section 166 of the Motor Vehicles Act (for short 'M.V.Act') Madan Lal (deceased) and Amit Kumar son of Virender Kumar, on 11.04.2011 were going to Pillani from Pathankot by a bus. In the early morning of 12.04.2011, when the bus reached near Chowk of Merut Road, on G.T. Road, Karnal, Madan Lal got down from the bus and went to ease himself. When, he was in the process of crossing the G.T.Road, a truck bearing registration no. HR-37-8920 driven by its driver in a rash and negligent manner came from Namastey Chowk side, Karnal and hit Madan Lal by coming on wrong side of the road. As a result thereof, Madan Lal received multiple, serious and grievous injuries on various parts of his body. Madan Lal succumbed to the injuries received by him at the spot. FIR No. 304/2011, under Sections 279, 304-A IPC, Police Station City Karnal, was registered against respondent no.1-Darshan Singh, in this respect.

Petition under Section of 166 and 140 of the M.V. Act, was filed, seeking compensation on account of the death of Madan Lal in this accident.

Claim was resisted by the respondents. Joint written statement were filed by respondents no.1 and 2 and another by respondent no.3.

Following issues were framed by the learned tribunal:-

1. Whether deceased Madan Lal son of Basti Ram died in a road side accident which took place after mid night on 12.04.2011 near Meerut Road, crossing on G.T.Road, Karnal because of rash and negligent driving of the

- respondent no.1 being driven of offending vehicle i.e. truck bearing registration no. HR-37-8920?OPP
2. If issue no.1 is proved in affirmative, whether the claimants are entitled for compensation if so to what amount and on what terms and conditions and from whom?OPP
 3. Whether respondent no.1 was not holding a valid and effective driving license at the time of this accident and the vehicle in question was being plied, if so to what effect?OPR-3
 4. Whether the vehicle in question was being plied without a valid policy and in contravention of terms and conditions of the policy, if so to what effect?OPR3
 5. Relief.

Both the parties led evidence in support of their respective stands.

Learned tribunal on considering the facts and circumstances of the case as well as evidence on record, awarded a total sum of ₹54,86,760/- along with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount to the claimants.

Aggrieved therefrom, FAO No. 10144 of 2014 has been filed by the appellant-Insurance Company and FAO No. 8728 of 2014 has been filed by the appellant-claimants.

Learned counsel for the appellant-Insurance Company vehemently argues that the learned tribunal has wrongly held the appellant liable to pay compensation. It is submitted that the accident in question is not proved to have been caused by the offending truck bearing registration no. HR-37-8920. It is contended that registration number of the offending truck or the name of the driver is not mentioned in the FIR. The said details were provided to the police authorities after an unexplained delay. Moreover, driver of the offending truck has been acquitted by the learned trial Court on 01.07.2014, because the propounder of the FIR failed to testify

before the learned trial Court. Therefore, learned tribunal has wrongly concluded that the accident in question was caused due to the rash and negligent driving of the abovesaid offending truck. It is further submitted that compensation under the conventional heads as awarded by the learned tribunal is excessive and is required to be reduced. It is submitted that there is no ground for any kind of enhancement in the compensation awarded by the learned tribunal as prayed for, by the claimants in their appeal. It is thus prayed that the appeal filed by the Insurance Company be allowed and the one filed by the claimants be dismissed.

Learned counsel for the appellant-claimants, on the other hand submits that the accident in question is duly proved to have been caused by truck bearing registration no. HR-37-8920, which is duly insured with the appellant-Insurance Company. It is further stated that the matter was duly investigated by the police authorities and final report/challan under Section 173 Cr.P.C., was presented against the accused. Merely, because the accused was acquitted cannot be a ground to conclude that the accident in question was not caused by the offending truck. It is submitted that judgement of the criminal Court is not binding on the learned tribunal. It is further argued that the present proceedings, the Motor Vehicle Act, is a beneficial legislation and the claimants have proved their case on the basis of preponderance of probabilities. No collusion between the claimants and the owner/driver of the offending truck has been alleged or pleaded and the driver of the offending truck did not appear in this case. It is also urged that compensation awarded to the claimants be enhanced. Reliance is placed on **Magma HDI General Insurance Company Limited Vs. Sapna and others 2017(2)**

PLR 813, Reliance General Insurance Company Limited Vs. Mohinder Kaur and others, 2015(3) R.C.R (Civil) 697 and Pepsu Road Transport Corporation, Patiala Vs. Joginder Kaur 2001 (3) R.C.R (Civil) 166 by learned counsel in support of his contentions. Therefore, the appeal filed by the appellant-Insurance Company should be dismissed and the one filed by the appellant-claimants be allowed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

FIR No. 304 was registered on the next day of the accident on the statement of Amit Kumar (PW-3). PW-3-Amit Kumar stated that he along with deceased-Madan Lal were serving the Army together and on 11.04.2011 at about 5.00.p.m., they were proceeding to their respective villages after availing leave from their battalion. They boarded the bus at Pathankot. It was about 2.00.a.m., at night that their bus stopped at the G.T.Road, Meerut Road, Karnal and Madan Lal (deceased) de-boarded the bus for urinating. As he was going towards the side by crossing the G.T.Road, an unidentified truck being driven by its driver, who could not be named came from the side of Delhi and struck against Madan Lal. It is further stated that due to darkness, registration number of the truck could not be noted. Madan Lal, received injuries, due to which he died on the spot. As per report under Section 173 Cr.P.C., (Ex.P-4), it is revealed that a supplementary statement of Amit Kumar was recorded on 11.06.2011, wherein registration number of the offending truck was revealed. Thereafter on 25.06.2011, one Karamvir Singh son of Chattru during the investigation in the matter revealed the name of the truck driver to be Darshan Singh son

of Shingara Singh resident of Karnal. The accused was then proceeded against, but ultimately acquitted on 01.07.2014 by the learned Judicial Magistrate Ist Class, Karnal. It is relevant to note that Amit Kumar, propounder of the FIR did not appear before the learned Judicial Magistrate Ist Class, Karnal, nor was Karamvir Singh (person revealing name of the driver) examined.

PW-3-Amit Kumar, testified before the learned tribunal in the present proceedings. In his affidavit Ex.PW3/A, it is stated that he boarded a bus from Pathankot at about 5.00.p.m., along with Madan Lal, who was working in the same unit. At about 2.00.a.m., on 12.04.2011, when they reached Meerut Chowk, G.T.Road, Karnal, Madan Lal de-boarded the bus and was in the process of crossing the G.T.Road to ease himself, when the offending truck bearing registration no. HR-37-8920 driven by its driver-Darshan Singh in a rash and negligent manner hit against Madan Lal. As a result thereof, Madan Lal received fatal injuries. FIR No. 304 dated 12.04.2011 (Ex.P-4) was registered against the driver. In his cross-examination, PW-3, has denied the suggestion that he was on duty at 56 APO on the day of accident or that he was not present as a passenger in the bus in which deceased-Madan Lal was travelling. There is indeed no evidence on record to indicate as to how identity of the offending truck or its driver came to light during investigations. PW-3-Amit Kumar, while testifying before the learned tribunal has not shed any light as to how and in what manner he came to know about the registration number of the truck in question. In the FIR, it is clearly mentioned that he could not decipher the registration number of the truck as it was dark. In his testimony before the

learned tribunal, Amit Kumar has not revealed the source of his knowledge about the details of the offending truck or its driver. Amit Kumar's explanation that he did not appear before the learned trial Court in the criminal proceedings as he did get leave, rings hollow and is totally unsubstantiated.

Karamvir Singh son of Chattru i.e. the person who reveals the name of the driver of the offending truck, as per report under Section 173 Cr.P.C., has not been examined. There is indeed not an iota of evidence on record to show that the accident in question was caused by the rash and negligent driving of the offending vehicle by its driver or that the said vehicle was even involved in the said accident.

There is merit in the argument raised by learned counsel for the appellant-Insurance Company that the claimants have failed to prove their case even on the basis of preponderance of probabilities. There is no doubt that mere acquittal of the driver of the offending vehicle by itself cannot lead to an inference of the accident not taking place as may be claimed in the petition seeking compensation. At the same time, it is incumbent upon the claimants to prove their case on the touchstone of preponderance of probabilities.

In the instant case, there is indeed no evidence to indicate the involvement of the offending truck in the accident in which Madan Lal (deceased) lost his life. Said finding of the learned tribunal on this issue is accordingly set aside and it is held that the accident in question is not proved to have been caused due to rash and negligent driving of the offending truck bearing registration no. HR-37-8920 by Darshan Singh-respondent no.1.

Keeping in view reversal of the finding of learned Tribunal on issue no.1, the question of quantum of compensation pales into insignificance.

No other argument has been raised.

Accordingly, FAO No. 10144 of 2014, filed by the appellant-Insurance Company, is partly allowed and FAO No. 8728 of 2014, filed by the appellant-claimants, is dismissed with no order as to costs.

20.12.2018		[LISA GILL]
s.khan		Judge
Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.