

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

**FAO No.437 of 2017 (O&M)
Date of Decision: April 04, 2018.**

Saroj Sharma and others

.....APPELLANT(s).

VERSUS

Sanjeev Kumar and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vinod Mahendru, Advocate
for the appellant (s).

Mr. S.S. Meelu, Advocate
for respondents No.1 and 3.

Mr. G.S. Ahluwalia, Advocate
for respondent No.2.

SURINDER GUPTA, J.

This is appeal against the award dated 13.09.2016 passed by Motor Accident Claims Tribunal, Panchkula dismissing the claim petition filed by claimants for the injuries suffered by Baldev Krishan Bhardwaj in a motor vehicle accident, which took place on 24.10.2012 with vehicle bearing registration No.HR-70A-7425 (later referred to as 'the offending vehicle') and his death on 08.04.2013.

The facts enumerating the manner and mode of accident as stated by the claimants in para 24 of the claim petition are as follows:-

“On 24-10-2012 at about 10.45 AM the deceased Baldev Krishan Bhardwaj was coming from Tau Devi Lal

Stadium, Panchkula to his house No.1196, Sector 4 on his Scooty No.HR-03F-9961 on the correct side of the road when the offending vehicle bearing registration No.HR-70A-7425 being driven by respondent No.1 in a rash and negligent manner hit the scooterist from behind at a very high speed and the deceased fell down on the road and his head stuck on the road and he became unconscious and went in to deep Coma. The respondent No.1 stopped for a while and ran away when the deceased was being removed from the site. The deceased who was followed by his brother Shri Balraj Krishan Bhardwaj son of Sh. Sohan Lal Bhardwaj, resident of House No.256, Sector 8 Panchkula witnessed the accident and got the FIR lodged. The accident took place due to rash and negligent driving of the offending vehicle No.HR0-70A-7425 by respondent No.1. The deceased died due to the injuries suffered in the accident and the complications arising thereof subsequently. The claimant No.1 and claimant No.2 to 4 were dependent upon the pension of the deceased as the deceased was contributing all the pension upon the legal heirs/claimants/their children.”

Respondents No.1 (owner of offending vehicle) contested the claim petition with the plea that story of accident as propounded by the claimants is different from the story as mentioned in case No.2867/2013 decided by Chief Judicial Magistrate, Panchkula. The claim petition is bad for non-joinder of driver of offending vehicle as necessary party. Baldev Krishan Bhardwaj died a natural death which has no concern with the injuries suffered by him in the accident. No post-mortem on the dead body of the deceased was got conducted to establish the real cause of his death.

has been roped in merely to enrich through unjustified claim against the answering respondent. In the alternate, it was pleaded that accident, if any, was caused due to own negligence and incapacity of deceased to drive scooter at the old age of 77 years. In para 15 of the reply, the plea with regard to the accident as taken by respondent No.1 is as follows:-

“The accident had not occurred on account of any fault or negligence on the part of the answering respondent; on the contrary, the accident had occurred due to fault and negligence of the deceased who had made an abortive attempt to cross the road from a wrong point falling before the zebra crossing and without using his scooter's indicator for this purpose he attempted to move on to the other side of the road in an unauthorized manner and in this process hit the Car on its left front door slightly without causing any scratch and thus caused the accident on account of his own fault and negligence.”

The deceased went into comma after the accident not due to the injuries but due to his own negligence and old age. The claimants have already received hefty amount of reimbursement of mediclaim from the Government and are not entitled to any compensation from the respondent.

In reply filed by the insurer of the offending vehicle, the accident was denied and it was pleaded that offending vehicle was falsely implicated in this case.

Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the deceased-Baldev Krishan Bhardwaj son of later Sh. Sohan Lal Bhardwaj had died on account of injuries suffered by him in the accident which took place on 24.10.2012 at about 10.45 A.M. due to rash and negligent driving of Vehicle No.HR-70A-7425 by respondent No.1?OPP.

- (2) If issue No.1 is proved, whether the claimants are entitled to receive the compensation from the respondents, if so, at what rate and interest?OPP
- (3) Whether the present claim petition is not maintainable? OPR
- (4) Relief.

In support of their case, appellants-claimants examined Saroj Sharma (claimant No.1) as PW1, Dr. Anurag Lamba as PW2, Dr. Suneet Kumar as PW3, Amit Bhardwaj as PW4, Constable Mahipal as PW5, Dr. Anil Kumar Dhingra as PW6, Parvinder Singh as PW7, Sunil Verma as PW8, Nirmal Singh, Junior Accountant as PW9 and Balraj Krishan Bhardwaj (brother of the deceased) as PW10 and the respondents have examined Bhupinder Singh (respondent No.3-driver) as RW1 and Sanjeev Kumar (respondent No.1-owner) as RW2. The claimants also produced on record medical bills regarding the treatment of deceased.

While recording finding on issue No.1, the tribunal observed that it is not proved that accident was caused due to rash and negligent driving of offending vehicle by respondent No.3 and that death of Baldev Krishan Bhardwaj was caused due to the injuries suffered by him in the alleged accident. With the above observation, the claim petition was dismissed.

As discussed above, respondent No.1 has admitted the accident in reply to para 15 of the claim petition. Onus was on the claimants to prove that the accident was caused due to rash and negligent driving of the offending vehicle by its driver. In order to discharge this onus, the claimants have examined Blaraj Krishan Bhardwaj PW10 as eyewitness of the accident. He has stated that on the fateful day i.e. 24.10.2012, he had

gone to Tau Devi Lal Stadium, Panchkula for morning walk in his car, where his brother Baldev Krishan Bhardwaj also came. When they were returning, he was behind his brother, who was going on his scooty. Near the culvert of Sector 4/12, the offending vehicle came at the spot. It was being driven in a rash and negligent manner and hit the scooty of Baldev Krishan from behind, who fell on the road and sustained grievous injuries. Bhupinder Singh, driver of the offending vehicle, stopped his vehicle for a while and on seeing the serious condition of Baldev Krishan, fled away from the spot. Injured was taken to General Hospital, Sector-6, Panchkula in the van of Police Control Room (PCR) from where he was referred to PGI, Chandigarh but due to serious condition, the injured was taken to Alchemist Hospital, Panchkula from where he was referred to Fortis Hospital, Mohali. Due to impact of accident and seriousness of the injuries, Baldev Krishan became unconscious and went in comma. The matter was reported to the police on 28.10.2012 and FIR No.397 was registered at Police Station Sector-5, Panchkula. In his entire cross-examination, no suggestion was given to him that no accident has taken place due to rash and negligent driving of offending vehicle by its driver. The statement of this witness is unrebutted on this score.

In the case bearing FIR No.397 dated 28.10.2012, police has presented the challan against Bhupinder Singh for causing death of Baldev Krishan due to rash and negligent driving of offending vehicle and he was charge-sheeted. Copy of charge-sheet has been placed on file as Mark-X. Copy of final report submitted in the Court is mark-Y. The police had received intimation regarding the accident immediately after the incident

and had gone to Alchemist Hospital, where they were apprised that the injured had been referred to Fortis Hospital, Mohali. The police had also gone to Fortis Hospital, Mohali where the injured was declared unfit to make statement. Thereafter, brother of deceased Balraj Krishan Bhardwaj went to the police station on 28.10.2012 and got recorded the FIR. The offending vehicle in question was taken in possession by the police and was released on superdari to respondent No.1 Sanjeev Kumar on furnishing adequate superdari bond vide order dated 10.11.2012, copy of which has been placed on file before the tribunal as mark-C.

Bhupinder Singh, driver of the offending vehicle appeared as RW1 and has stated that accident, if any, was caused due to the negligence and incapacity of deceased to drive scooter at the old age of 77 years. He has deposed that no accident occurred on account of his fault and negligence and injured was not wearing safety helmet. While giving description of the accident, he has deposed in para 7 of his affidavit as follows:-

“7. That the injured had made an abortive attempt to cross the road from a wrong point falling before the Zebra crossing and without using any indicator. The injured attempted to move on the other side of the road in an unauthorized manner and in this process hit the car on its left front door slightly without causing any scratch and he was himself negligent in using the road without observing the traffic rules.”

Respondent No.1 Sanjeev Kumar appeared as RW2 and has stated that he has no role in the accident. He has stated that deceased was himself negligent and due to this reason, he has not preferred any claim

petition during his life time.

Learned counsel for respondents No.1 and 3 has argued that the offending vehicle at the time of accident was allegedly being driven by Bhupinder Singh and in the criminal case, Bhupinder Singh has been acquitted which shows that accident was not caused due to rash and negligent driving of offending vehicle by him.

Accident, in this case, is admitted. From the statement of PW10 Balraj Krishan Bhardwaj, it is proved that the accident was caused by driver of the offending vehicle. His unrebutted statement coupled with fact that the police after investigation has found the version of the complainant regarding the accident as correct and presented the challan, shows that the accident was caused due to rash and negligent driving of offending vehicle by its driver. I find no reason for tribunal to ignore evidence on record while recording findings that it is not established that Bhupinder Singh respondent No.3 was driving the offending vehicle in a rash and negligent manner and caused the accident. The finding recorded by the tribunal in this respect is very casual and without application of mind. The tribunal has not even tried to find as to how the accident was caused. It has not even looked into the fact that the accident is admitted. The mere fact that driver of the offending vehicle has been acquitted by the criminal Court is no reason to disbelieve the the version of the claimants. It is well settled principle of law that quality and nature of evidence required to prove commission of an offence in a criminal case is much higher and stricter than the evidence required in a claim petition to prove the accident and negligence of the driver of the vehicle, which caused the accident. Keeping

in view the above, I set aside the finding recorded by the tribunal to this aspect. It is proved on file that the accident was caused due to rash and negligent driving of the offending vehicle by its driver.

While dismissing the claim petitioner, the tribunal has observed that the claimants have failed to prove that the death of Baldev Krishan Bhardwaj was caused due to the injuries suffered in the accident. It is proved on record that deceased had suffered injuries in the accident. He became unconscious, slipped in deep comma and was repeatedly taken to hospitals. The bills of expenses of treatment have also come on record.

Firstly, I have a look on the statement of wife of deceased namely Smt. Saroj PW1. She has stated that after the accident, her husband was taken to Civil Hospital and then to Alchemist Hospital, Panchkula from where he was referred to Fortis Hospital. He remained admitted in Fortis Hospital from 24.10.2012 to 10.12.2012. The condition of her husband became critical and he was again admitted in Fortis Hospital on 14.12.2012 from where he was referred to Alchemist Hospital where he was admitted on 17.12.2012 with high grade fever and other complications. He was discharged on 01.02.2013 and again admitted in Alchemist Hospital and was operated and then discharged on 21.02.2013 but his condition deteriorated and again on 14.03.2013, he was admitted in Alchemist Hospital, where ultimately he died on 08.04.2013. Before the accident, her husband was hale and hearty and was not suffering from any disease. All the diseases and complications were caused due to the injuries suffered by him in the accident and resulted in his death.

PW2 Dr. Anurag Lamba Neurologist in Alchemist Hospital,

Panchkula, has stated that he had examined deceased on 17.12.2012. Earlier, he was admitted in Fortis Hospital, Mohali from 24.10.2012 to 10.12.2012 for the head injuries suffered by him and was operated there. He remained under his treatment from 17.12.2012 to 01.02.2013.

Dr. Suneet Kumar Verma, Physician, Alchemist Hospital had examined the deceased on 14.03.2012 and found that he was having fever and was unconscious. His oxygen concentrate was low. He was a follow up case of head injury sustained in the accident, which was subsequently treated at Fortis Hospital, Mohali and then in Alchemist Hospital, Panchkula. Earlier, he was treated in Alchemist Hospital for chest infection and at the time of his examination, he was suffering from pneumonia and sepsis. While giving the opinion regarding the cause of death of deceased, he has stated as follows:-

“In my opinion & on the basis of hospital record, his death was due to inflections arising out of sequelae of head injury sustained in Oct, 2012.”

He has further stated that police never came to the hospital for conducting post-mortem to know the cause of death.

From the evidence on record, it is proved that deceased was hale and hearty person. Though he was 77 years of age but he appeared to be quite active and healthy. He was driving his own scooter and had gone for a walk at Tau Devi Lal Stadium, Panchkula. After the accident, he remained unconscious and in comma. He developed various complications including chest congestion, pneumonia, sepsis etc. Dr. Suneet Kumar Verma PW3 has specifically stated that the death of deceased was due to infection because of the injury sustained by the deceased in the accident.

Though the police has not gone for post-mortem of the deceased but for this lapse on the part of police, claimants cannot be penalised. The cause of death is duly proved on record. The mere statement of PW6 Dr. Anil Kumar Dhingra of Fortis Hospital that on 10.12.2012, the deceased was in fairly stable condition, does not suggest that he had recovered from his injuries. The tribunal after taking note of the evidence on record, posed a question as to why the claimants permitted Fortis Hospital authorities to discharge the patient at the risk of his life, if he was suffering from head injury.

From the fact that he was discharged from Fortis Hospital, conclusion was drawn that health of deceased had improved after the alleged accident. The claimants are living in Sector-4, Panchkula and the Fortis Hospital is in Mohali. The attendant always look into the convenience for the patient as well as his family and the quality of treatment while deciding as to in which hospital, the patient is to be kept. It is proved on record that the deceased was repeatedly admitted in Alchemist Hospital in Sector-21, Panchkula which is near to the place of residence of claimants. The fact that the doctors of Fortis Hospital have discharged the deceased, cannot be treated as lapse on the part of claimants. The deceased was unconscious and in comma and it is quite possible that in order to avoid inconvenience to the patient, his family and to avoid unnecessary hospital expenses, the doctors of Fortis Hospital might have thought it appropriate that patient may be kept at home and administered the required medicines. Immediately of his discharge from Fortis Hospital, deceased was again taken to Alchemist Hospital. The tribunal has drawn the inference against

the claimants for the lapse on the part of police to get the post-mortem of the deceased. There is no evidence that police was not informed about the death of the deceased. It was duty of the police to ask for the post-mortem of the deceased to know the cause of his death. However, the claimants have proved the cause of death by examining Dr. Suneet Kumar Verma of Alchemist Hospital. The tribunal has also taken note of this fact as to where the deceased remained after his discharge from Fortis Hospital on 10.12.2012. Wife of deceased in her affidavit has specifically stated that on 14.12.2012, the deceased was again taken to Fortis Hospital from where he was referred to Alchemist Hospital. This shows that family members of deceased were taking all steps for the treatment of deceased but could not succeed in saving his life. The tribunal has discarded the entire version of the claimants while dismissing the claim petition on mere surmises. Findings recorded by the tribunal on issue No.1 are against the facts on record, hence, not sustainable.

As a sequel of my above discussion, I am of the considered opinion that the claimants have been able to prove that the death of the deceased was caused due to injuries suffered by him in the motor vehicle accident due to rash and negligent driving of the offending vehicle by its driver. The findings of the tribunal on issues No.1 and 3, as such, are reversed and issues No.1 and 3 are decided in favour of the claimants and against the respondents.

The tribunal after recording finding on issue No.1, has not dealt with issue No.2 on merits. On reversal of findings on issue No.1, it will be appropriate and in the interest of justice that the tribunal first decide about

quantum of compensation to which the claimants are entitled for the injuries and then death of deceased in the motor vehicle accident as recording of finding on this issue in appeal will deprive either of the parties of its right to first appeal. The matter is referred back to the Motor Accident Claims Tribunal, Panchkula to hear the parties on issue No.2 and record its finding on this issue. Tribunal, if required, may call for further evidence or allow parties to lead evidence on this issue.

As a sequel of my above discussion, this appeal is accepted. The award passed by the tribunal is set aside and the matter is remitted to the Motor Accident Claims Tribunal, Panchkula to record finding on issue No.2 as per the observations above.

Parties are directed to appear before the tribunal on 25.04.2018.

April 04, 2018.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No