

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

FAO No. 2767 of 2018 (O&M)

Date of Decision: August 30, 2018

National Insurance Co. Ltd.

...Appellant

Versus

Suman and others

...Respondents

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

Present: Mr.Paul S.Saini, Advocate
for the appellant - insurer.

Mr.Arvind Kumar Yadav, Advocate
for respondent Nos.1 to 4 - claimants.

HARINDER SINGH SIDHU, J.

The insurer has filed the present appeal challenging the award dated 16.2.2018 passed by the Motor Accident Claims Tribunal, Rewari (for short 'the Tribunal').

Brief facts as disclosed in the claim petition are that on 08.07.2016 near Government College, Dujana, District Jhajjar, a vehicular accident took place involving Swift car No.HR-36N-9696 (herein for short 'the offending vehicle'), wherein, Sunil Kumar lost his life. 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 in Police Station Jhajjar.

On a claim petition having been filed by the legal representatives of Sunil Kumar, the Tribunal assessed the income of the deceased at

Rs.8000/- per month, granted addition of 40% towards future prospects,

deducted 1/4th towards his personal expenses, applied the multiplier of 18 (deceased aged 24 years). The loss of dependency was assessed at Rs.18,14,400/- (8400x12x18). Rs.15,000, each, towards 'loss of estate' and 'funeral expenses' were also awarded. In all, compensation of Rs.18,84,400/- along with interest was awarded.

Challenging the Award, Ld. Counsel for the appellant – Insurer has contended that the rash and negligence on the part of the driver of the offending vehicle was not proved before the Tribunal. It is stated that though it was pleaded by the respondents – claimants that the motorcycle of the deceased was hit at its back by the offending vehicle, but the mechanical report reveals that the motorcycle was damaged from front side only. It is stated that no vehicle number was mentioned in the FIR, which was lodged by Phool Kumar, the father of the deceased. It is also contended that the driver of the offending vehicle was acquitted in the Criminal Case registered regarding the accident, and, hence, rashness and negligence on his part cannot be said to have been proved before the Tribunal.

The Trial Court had framed the following issue on the point of rash and negligent driving of the offending vehicle:

“Whether deceased Sunil Kumar son of Phool Kumar died in a motor vehicle accident occurred on 08.07.2016 due to rash and negligent driving of offending vehicle bearing registration No.HR-36N-9696 by driver respondent No.1? OPP”

On the basis of the evidence led by the parties, the Tribunal decided the above issue in favour of the claimants -respondents and it was held that the accident had occurred due to rash and negligent driving of the

offending vehicle.

To prove that the accident had occurred due to rash and negligent driving of the offending vehicle by respondent No.6 – Inderjeet (*respondent No.1 before the Tribunal*), the claimants had examined Om Parkash, alleged eye-witness of the accident as PW2. The final report submitted under Section 173 Cr.P.C. by the Police in the FIR and the copy of order dated 27.10.2016 passed by Judicial Magistrate, framing charge against respondent No.6 were also produced on record. PW2 Om Parkash stated on affidavit that he saw the deceased coming from the side of Bahadurgarh on motorcycle. At the same time, the offending vehicle i.e. Swift car bearing Registration No.HR-36N-9696 driven by Inderjeet in a rash and negligent manner and at high speed came from behind and hit the motorcycle of the deceased. After the accident, the driver of the offending vehicle stopped for a while and then fled away from the spot.

The matter was investigated by the police of Police Station Jhajjar and it was found that the accident had occurred due to rash and negligent driving of the offending vehicle by Inderjeet – respondent No.6. Accordingly, in the report filed under Section 173 Cr.P.C. before the Ilaqa Magistrate, the Police indicted him for committing the offence under Section 304-A, etc. IPC. Further, the Trial Court also finding a prima facie case against him, framed charges against him.

No doubt, in the FIR recorded at the instance of the father of the deceased the vehicle is mentioned as unknown. But the testimony of Om Parkash (PW2), eyewitness to the accident, as elaborately discussed by the Tribunal leaves no manner of doubt about the involvement of the offending

vehicle. Further, the Police filed charge-sheet against respondent No.6 driver of the offending vehicle. Charges were also framed by the Trial Court against him for causing the accident by rash and negligent driving of the offending car. It has also not come in evidence that the driver of the offending vehicle had ever moved any application before the authorities that he had been falsely implicated in the case.

The fact that as per Mechanical report the motorcycle of the victim was damaged from front side only, would not of itself detract from the finding of rash and negligent driving of the driver of the offending vehicle. The manner of accident has been well explained by the eye-witness, investigated by the Police and further prima-facie believed by the Trial Court which framed charges against the driver of the offending car. Thus, there is no basis to interfere with the finding of the Tribunal on this count.

The argument of the Ld. Counsel for the appellant - insurer that findings of negligence cannot sustain as respondent No.6 had been acquitted in the criminal case also cannot be accepted.

It has been consistently held by the Courts that the Tribunal is to adjudge the case only on the basis of evidence produced before it and not on the basis of testimonies given before the criminal court.

In Municipal Committee, Jullundur v. Shri Romesh Saggi and others AIR 1970 P&H 137, a Division Bench of this Court considered the question:

“Whether the judgment of a criminal court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is conclusive and binding upon the Motor Accident Claims Tribunal dealing with a claim petition under Section 110-C of the Motor Vehicles Act and if not, for what purposes and to

what extent can such a judgment be availed of by the parties concerned?"

Answering the same, it was observed as under:-

33. To sum up in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nature of the onus may vary and the effect of evidence may not be the same. It will, therefore, be contrary to all fundamental concepts of natural justice to treat the findings of the Criminal Court as binding on the Motor Accidents Claims Tribunal, assuming -- but not holding -- that such a Tribunal is not a Court as defined in Section 3 of the Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.

34. It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the Criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.

35. For the reasons recorded in OUT separate judgments, we answer the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance with law:--

"The Judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110-C of the Motor Vehicles Act, and its findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such judgment can however, be relevant only for the purpose and to the extent specified in Section 43 of the Evidence Act"

It was held that the judgment of the Criminal Court determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under the Motor Vehicles Act. The findings as to the

guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accident Claims Tribunal. Such a judgment is relevant only to the extent specified in Section 43 of the Evidence Act.

The above view was reiterated in Krishan S/o Mangiram v. Tarawati Widow and Others 2011 (3) PLR 29. It was held that a criminal Court's judgment acquitting a driver would have no relevance in a case before the Tribunal and the Tribunal will consider the issue of negligence on the basis of the evidence adduced before it, uninfluenced by the fact of the pendency of the criminal case or the acquittal therein.

“3. It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court. It cannot be used for any other purpose, unless it is a case of conviction rendered on admission before the criminal Court where the conviction by the criminal Court on an issue of negligence will have immense value before the Tribunal.”

In The General Manager, Bihar Road Transport Corporation v. Smt. Uma Rani Behura and others 1998 WBLR 344, a Division Bench of the Calcutta High Court held that a judgment of acquittal in a criminal case is admissible in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. But the findings of the criminal Court are not binding on the

civil case.

“7. A judgment of acquittal passed in a criminal case is admissible in evidence in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. It is now well settled principle of law that the findings of a criminal Court are not binding on the Civil Court although the converse is true.”

In **Hem Ram and Another v. Krishan Chand and Another** 2015(9) R.C.R (Civil) 311, it was held by the Himachal Pradesh High Court that it is settled position that while a conviction recorded by the Criminal Court is enough to hold that the driver had driven the vehicle rashly and negligently, but his acquittal would be no ground to dismiss the claim petitions.

“28. The question is - whether the findings recorded by the Criminal Court can be made basis for holding that the driver has not driven the vehicle rashly and negligently and the deceased/injured were gratuitous passengers?

29. It is beaten law of land that if conviction is recorded by the Criminal Court, that is the best ground to hold that the driver had driven the vehicle rashly and negligently, but, if the driver earns acquittal, that cannot be a ground for dismissal of the claim petitions”

In **Delhi Transport Co. and Another v. Navjyot Singh and Others** 2015(7) R.C.R (Cr.) 586, the Delhi High Court considered the law on the subject and held that the acquittal of the driver of the offending vehicle by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case .

“7. As stated earlier, Respondents no.1 to 5 had examined PW-4 Kanhaiya Lal as an eye witness to the accident whereas Appellants had produced the driver and conductor of the bus in support of their claim that the deceased himself was negligent. It was also the contention raised on behalf of the Appellants that acquittal of the driver in the criminal case for the offence

punishable under Section 304-A IPC concludes that there was no negligence on the part of Appellant no.2. The Claims Tribunal, however, made an independent assessment of the evidence to reach the conclusion that Appellant no.2 was negligent and was therefore, responsible for causing the accident .

8. *It is no longer res integra that standard of proof of negligence in a criminal case and in a claim petition under Section 166 of the Motor Vehicles Act, 1988 (the Act) are different. It is also well settled that de hors acquittal of the driver in a criminal case , the Claims Tribunal is expected to make an independent inquiry to reach a conclusion whether the negligence on the part of driver of the offending vehicle had been proved on the touchstone of preponderance of probability. Reiterating these principles in N.K.V. Bros. (P) Ltd. v. M. Kurumai Ammal, (1980) 3 SCC 457, the Supreme Court held as under:-*

"2.The plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected and rightly. The requirement of culpable rashness under Section 304-A IPC is more drastic than negligence sufficient under the law of tort to create liability"

9. A Single Judge of this Court in ***State of Haryana and Anr. v. Sh. Ajay Kumar & Ors., MAC APP.69/2005, decided on 12.11.2007*** held as under:-

"Similarly the acquittal of the driver of the offending vehicle of the appellant by the criminal court cannot be taken to have any adverse effect on the findings reached by the Tribunal in an independent compensation case . The MACT cases have to be decided on their own footings and the same are not dependant upon the result or an outcome of a criminal case .."

10. In ***Bimla Devi & Ors. v. Himachal Road Transport Corporation & Ors., (2009) 13 SCC 530***, the Supreme Court reiterated that the test of standard of proof beyond reasonable doubt could not be applied in a claim petition under Section 166 of the Act and that the Claimants are expected to establish negligence on the touchstone of preponderance of probability."

In **Geeta Devi and others v. Rajesh and Others 2011(7) R.C.R**

(Civil) 2097, the issue was examined in the specific context of a case where

the acquittal was on the ground of the witness turning hostile. It was held

that the Tribunal is not to be influenced by the fact that the eye- witnesses

criminal proceedings. The Tribunal is required to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the Criminal Court.

“6. A bare perusal of the impugned order clearly reveals that there are two witnesses. While A.W. 2, Satish, has been produced as an eye-witness, NAW-2 Satish has been produced as the person who lodged the F.I.R. before the police. According to the learned Tribunal, while A.W. 2 Satish was produced as an eye-witness, NAW-2 Satish was not an eye-witness. However, the learned Tribunal has relied more upon the testimony of NAW-2, Satish, and has totally ignored the testimony of NAW-2 Satish, and has totally ignored that in the criminal trial, A.W. 2 Satish was not produced as an eye-witness of the prosecution. Interestingly, NAW-2 Satish has turned hostile before the learned Tribunal, although he had supported the case of prosecution in the criminal trial.

7. Surprisingly, the learned Tribunal has also overlooked the testimony of A.W. 3, Mahaveer. The learned Tribunal is also swayed by the fact that there was some delay in lodging of the F.I.R. before the police. But it has ignored the fact that after the death of Satyaveer, there was no one left in the family except the present appellant, an old woman, who could not have lodged the F.I.R. To say the least, the learned Tribunal has made much out of the delay in lodging of the F.I.R., meanwhile forgetting the fact that a woman who has lost her son may not be in physical or mental position to immediately lodge the F.I.R.

8. A bare perusal of impugned award also reveals that the very approach of the learned Tribunal is misplaced. Instead of analyzing the testimonies of A.W. 2 Satish and Mahaveer, the learned Tribunal is influenced by the fact that those witnesses who were produced as an eye-witness have turned hostile during the course of criminal proceedings itself. It is also more influenced by the testimony of NAW 2 Satish. It is, indeed, trite to state that while the finding of a Civil Court is binding on the Criminal Court, the finding of a Criminal Court could not and should not influence the decision of the Tribunal. The Tribunal is supposed to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the Criminal Court. In this view of the matter, the award is hereby quashed and set aside and the case is remanded back to the concerned Tribunal. The learned Tribunal is directed to decide this case within a period of three months from the date of receipt of certified copy of this judgment.”

Tribunal that the accident was caused due to rash and negligent driving of the offending vehicle.

No other argument was raised.

Appeal dismissed.

August 30, 2018

(**HARINDER SINGH SIDHU**)
JUDGE

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No