

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

FAO No.45 of 2018 (O&M)

Date of Decision: January 10, 2018

National Insurance Company Ltd.

...Appellant

Versus

Sarbjit Kaur and others

...Respondents

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

Present: Mr.Sandeep Suri, Advocate for
the appellant.

HARINDER SINGH SIDHU, J.

This appeal has been filed by the National Insurance Company against the award of the Motor Accident Claims Tribunal, Shaheed Bhagat Singh Nagar (for short 'the Tribunal'), whereby, compensation of Rs.5.55 lacs has been awarded to the respondent Sarbjit Kaur, mother of Baljinder Singh (19 years) who lost his life in a vehicular accident, which took place near the bus stop Behram on 23.3.2016.

The primary contention of learned counsel for the appellant is that the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act') which provides for payment of compensation according to structured formula attached to Second Schedule of the Act, but compensation has been assessed as would be payable in a petition under Section 166 of the Act. He argued that the petition being one under Section 163-A the multiplier should have been 16 and no future prospects could have been granted while assessing the compensation.

I have heard learned counsel for the appellant and gone through the paper-book.

No doubt, the title of the claim petition is “Claim petition under under Section 163-A of the Motor Vehicles Act”, but in the body of the petition, it was alleged that the accident had been caused due to rash and negligent driving of the offending truck bearing Reg.No.PB-07K-0197 by respondent No.2 Ram Singh. The said allegations were also responded by the appellant – Insurance Company, as recorded by the Tribunal as under:-

“4. Respondent No.3 insurance company, by way of its separately filed written statement has submitted that Ram Singh driver of Truck No.PB-07K-0197 was not holding a valid and effective driving licence at the time of alleged accident and that the offending truck was not having route permit, fitness certificate and insurance policy at the time of alleged accident. It was further submitted that deceased Baljinder Singh had no driving license or valid registration certificate and insurance policy to drive the motorcycle. It was further submitted that the driver Ram Singh has been acquitted in case FIR No.11 dated 24.3.2016 under Sections 279, 304-A and 427 IPC, PS Behram, by the court of Sh.Tanveer Singh, JMIC, SBS Nagar, vide judgment dated 15.10.2016. Accordingly, a prayer was made for dismissal of the claim petition.”

The written statement filed on behalf of the appellant – insurer makes it apparent that it was well aware about the nature of the litigation. Further, it was on the basis of the pleadings of the parties that the Tribunal framed the issues, including the specific one regarding negligence as under:-

“1. Whether Baljinder Singh son of Sukhdev Singh died in a road side accident took place on 23.03.2016 due to the rash and negligent driving of Ram Singh respondent No.1? OPP”

Thereafter, evidence was led on behalf of the claimant on the

and aforesaid issue besides others to discharge her onus, including examination

of PW2 Harpreet Singh, an eye-witness of the accident and production of record of the criminal proceedings against the driver of the offending vehicle. The appellant – insurer had the opportunity of cross-examining the witnesses and to rebut the documentary evidence. Thus, the claim petition was tried as a petition under Section 166 of the Act. Accordingly, the contention of the appellant – insurer that the Tribunal has wrongly awarded compensation under Section 166 of the Act is devoid of any merit.

To prove the issue of negligence, PW-2 Harpreet Singh, who was an eye witness of the accident tendered his affidavit stating that he along with his friend was following the motorcycle bearing No.PB-46 T-9827, which was being driven by his brother Baljinder Singh (deceased) with Ranjodh Singh as a pillion rider. The motorcycle was on its way from Anandpur Sahib to Tarn Taran. He further stated that at about 11.00 am, when they were little ahead of bus stand Behram, a truck bearing registration No.PB-07-K-0197 came from the side of Phagwara at a very high speed and in a rash and negligent manner, which hit the motorcycle of Baljinder Singh, as a result of which Baljinder Singh and Ranjodh Singh suffered multiple and grievous injuries. Both were taken to Civil Hospital, Banga, where Baljinder Singh was declared dead. On the statement of Harpreet Singh, FIR No.11 dated 24.03.2016, under Section 279, 304-A and 427 IPC, PS Behram was registered against respondent No.1. He asserted that the accident had occurred due to the rash and negligent driving of the truck by respondent No.1. The Ld. Tribunal has also noticed that respondent No.1 Ram Singh during his cross examination at the hands of the counsel for the complainant admitted that after the accident he had run away from the spot leaving his truck there and he was arrested by the police on the next day, thereby also pointing to his involvement in the accident. The other witness

for the respondents RW-2 Rakesh Chand admitted in cross examination that

he was not a witness to the accident. Hence, his statement was rightly not relied on by the Tribunal.

There appears to be no infirmity in the finding of the Tribunal regarding negligence on the part of respondent No.1.

The argument of the Ld. Counsel for the appellant that findings of negligence cannot sustain as respondent No.1 had been acquitted in the criminal case and the complainant Harpreet Singh did not support the prosecution case before the trial Court 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 Accidents 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 who had deposed before the Tribunal had turned hostile during the course of 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.”

Thus, there is no merit in the appeal and the same is dismissed.

January 10, 2018
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No