

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

FAO No.2312-2007

Date of Decision: 10.05.2019

Salochana Sharma and others

....Appellants

Versus

Dharam Chand and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr. Sagar Aggarwal, Advocate for
Mr. Ashit Malik, Advocate for the appellants.

Mr. Suvir Dewan, Advocate for
respondent No.3-Insurance Company.

ARUN KUMAR TYAGI, J.

1. The claimants-widow, son and daughter of deceased-Yashpal Sharma have filed the present appeal against the award dated 14.02.2007 passed by the learned Motor Accidents Claims Tribunal, Chandigarh (for short 'the Tribunal') in **MACT Case No.9 of 2005 titled as Salochana Sharma and others Vs. Dharam Chand and others**, whereby claim petition filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') for award of compensation on account of death of Yashpal Sharma due to injuries suffered in motor vehicle accident, which took place on 15.07.2004, was dismissed.

2. The above-said claim petition was filed on the averments that on 15.07.2004 deceased-Yashpal Sharma was returning to his residence from his clinic on his scooter bearing registration No.HRT-

9689. He stopped for a while by the side of the road for looking towards the employees of Electricity Department who were attending to the transformer. In the meantime, Tata Canter bearing registration No.HR-37-7493, owned by respondent No.2 and insured with respondent No.3, came driven by respondent No.1 in a rash and negligent manner and hit the scooter of Yashpal Sharma due to which Yashpal Sharma sustained multiple injuries. Yashpal Sharma was shifted to the hospital where he succumbed to the injuries on 17.07.2004. FIR No.130 dated 16.07.2004 was registered regarding the accident under Sections 279, 336, 337, 304-A and 427 of the Indian Penal Code, 1860 (for short 'the IPC') in Police Station Chandimandir.

3. While pleading that the deceased was aged about 40 years and was earning ₹20,000/- per month at the time of his death by practicing as doctor and claiming themselves to be legal heirs dependent on the deceased the claimants accordingly sought award of compensation with costs and interest at the rate of 24% per annum against the respondents No.1 to 3 jointly and severally.

4. Notice of the petition was issued to the respondents. Respondents No.1 and 2 did not appear despite service of notice and suffered themselves to be proceeded against ex-parte.

5. In its written statement, respondent No.3 took preliminary objections as to want of cause of action, mis-joinder and non-joinder of parties, respondent No.1 not having valid and effective driving licence and breach of terms and conditions of the insurance policy by

respondent No.2. While controverting the material averments made in the petition respondent No.3 denied its liability to pay compensation.

6. The Tribunal framed issues and recorded evidence produced by the parties. On perusal of the material on record and consideration of the submissions made by the learned Counsel for the parties, the Tribunal held that the involvement of the Tata Canter bearing registration No.HR37-7493 in the accident was not proved and accordingly dismissed the claim petition.

7. Feeling aggrieved, the claimants have filed the present appeal.

8. I have heard the learned Counsel for the appellants and learned Counsel for respondent No.3-Insurance Company and gone through the record.

9. Learned Counsel for the appellants has argued that to prove the accident the claimants examined Devinder Singh, who had witnessed the accident, as PW-3 who testified that the accident was caused due to rash and negligent driving of canter No.HR-37-7493 by respondent No.1. The Tribunal has resorted to hair-splitting technicalities and disbelieved the cogent and reliable statement of PW-3. Respondent No.2-owner of the canter made statement during investigation to the Investigating Officer of the criminal case that he had employed respondent No.1 as driver on his canter and that on 15.07.2004 respondent No.1 had telephonically informed him about having caused the accident in question. The respondent-driver was facing trial for causing the accident. In catena of judgments, it has

been held by this Court that where driver of a vehicle is facing trial for causing accident, it is prima facie safe to conclude that the accident took place due to his negligence. The driver and owner of the offending vehicle did not appear before the Tribunal and the Tribunal ought to have drawn adverse inference against them. In support of his arguments learned Counsel for the appellants has placed reliance on the observations made in **New India Assurance Co. Ltd. Vs. Bimla Devi and others 2006 (3) R.C.R.(Civil) (Punjab & Haryana High Court) 682** and **Uttar Pradesh State Road Transport Corporation Vs. Baby Sakshi Yadav and others : 2008(4) TAC (Delhi High Court) 627.**

10. Learned Counsel for the appellants has further argued that from the documentary and oral evidence produced, it is proved that Yashpal Sharma died due to rash and negligent driving of the canter by respondent No.1. The findings of the Tribunal are perverse and deserve to be reversed. Therefore, the impugned award may be set aside and claim petition may be allowed with costs and interest.

11. On the other hand, learned Counsel for respondent No.3- Insurance Company has argued that the onus of proving that Yashpal Sharma died due to injuries suffered in accident caused by rash and negligent driving of the canter by respondent No.1 was on the claimants. Mere registration of FIR and framing of charge against respondent No.1 was not by itself sufficient to prove rashness and negligence on the part of respondent No.1 and the claimants were required to prove the same by producing cogent and reliable evidence.

In the FIR particulars regarding number of offending vehicle and name of driver were not mentioned. The claimants have examined Devinder Singh PW-3 who was alleged to have witnessed the accident but he was not present at the time of accident and is a planted witness and has been rightly disbelieved by the Tribunal. The findings of the Tribunal are based on proper appreciation of the evidence and are not perverse and do not call for any interference. The claim petition was rightly dismissed and the impugned award is not liable to be set aside. Therefore, the appeal may be dismissed.

12. It is now well settled that proof of negligence on the part of driver or owner is necessary before the owner or the insurer of a motor vehicle can be held to be liable for payment of compensation in a motor vehicle accident claim case under Section 166 of the M.V. Act, 1988. (see **Reshma Kumari and Others Vs. Madan Mohan and another, 2013 (2) RCR (Civil) (Supreme Court) 660**).

13. While in criminal cases negligence has to be proved beyond reasonable doubt, in civil/motor accidents claim cases the negligence has to be proved on preponderance of probabilities. (See **Bimla Devi and others Vs. Himachal Road Transport Corporation and others 2009 (3) RCR (Civil) (Supreme Court) 805** and **Parmeshwari Devi Vs. Amir Chand and others 2011 (2) RCR (Civil) (Supreme Court)153**).

14. The normal rule is that the onus of proving negligence on the part of the driver of the offending vehicle lies on the claimants. (see **Geeta Rani Gupta Vs. Delhi Transport Corporation, 1993 (2) TAC**

(Delhi High Court) 93; Ranchhodbhai Somabhai Vs. Babubhai Bhailabhai, 1982 AIR (Gujarat High Court) 308 and Oriental Insurance Co. Ltd. Vs. Smt. Gauri Devi and others, 2007 (3) PLJR (Patna High Court) 217).

15. However, the normal rule results in 'hardship' to the claimant in some cases where the true cause of the accident is not known to him but is solely within the knowledge of the driver who caused it and the claimant can prove the accident but cannot prove how it happened to establish negligence on the part of the driver. In such cases where the accident speaks for itself the hardship is avoided by applying the principle of *res ipsa loquitur* so that it is sufficient for the claimant to prove the accident and nothing more. It will then be for the driver to establish that the accident happened due to some other cause than his own negligence. (see **Pushpabai Parshottam Udeshi v. M/S Ranjit Ginning & Pressing Co. Pvt. Ltd., AIR 1977 SC 1735.**)

16. The question of negligence in a motor accident claim case has to be determined on the basis of direct or circumstantial evidence led by the parties and mere registration or non-registration of criminal case of negligence against a party to accident is of no consequence nor it can be taken to be conclusive evidence of negligence. Even judgment of conviction or acquittal passed by the criminal court is not binding on the tribunal. (See **Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) (Punjab and Haryana High Court) 582 and Kiran Rani and others Vs. PEPSU Road Transport Corporation and others,**

VOL.CXLV (2007-1) the Punjab Law Reporter (Punjab and Haryana High Court) 507).

17. In **N.K.V. Bros, (P) Ltd, Vs. M. Karumai Ammal and others, AIR 1980 SC 1354** Hon'ble Supreme Court observed that Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes.

18. However, several instances of making of fake claims in various districts in different parts of the country for compensation on account of accidental deaths caused by unknown vehicle by implicating unrelated vehicle, in collusion with owner and driver thereof have come to the notice of Hon'ble Supreme Court and various High Courts. Reference in this regard may be made to **United India Insurance Co. Ltd. Vs. Rajendra Singh and others 2000 (2) PLR (Supreme Court) 787** and **Divisional Manager, United India Insurance Co. Ltd. Vs. Basappa 2012 (33) RCR (Civil) (Karnataka High Court) 660**. Reference in this regard may also be made to order dated 05.01.2017 passed by Hon'ble Supreme Court in **SLP (C) 23628 of 2016 titled Safiq Ahmad Vs. ICICI Lambard General Insurance Co. Ltd. and others** whereby notice was issued to all the High Courts through Registrars so as to ascertain from MACTs such doubtful cases

which prima facie may require investigation and to prevent filing of such fabricated cases.

19. It follows that in motor accidents claim cases under Section 166 of the M.V. Act the question of negligence on the part of the driver or owner has to be determined on the basis of the evidence produced by the parties which may be direct or circumstantial or both. Such evidence has to be tested by the yardstick of probabilities and its intrinsic worth. While applying the principles of law propounded in judicial precedents referred to above in sifting the evidence produced by the parties, the Tribunal has also the duty to guard against fraudulent acts of unscrupulous litigants of implicating an unrelated vehicle in collusion with owner and driver for claiming compensation from the insurance company for the unfortunate incidents of accidental death caused by an unknown vehicle.

20. In the present case initially FIR No.130 dated 16.07.2004 copy Ex.P-3 was registered regarding the accident at the instance of Amit Kumar under Sections 279, 336, 337 and 427 of the IPC in Police Station Chandimandir. On death of Yashpal Sharma Section 304-A of the IPC was added. It appears that on completion of investigation report under Section 173(2) of the Code of Criminal Procedure, 1973 was also filed against respondent No.1. However, mere registration of FIR and prosecution of the respondent No.1 for commission of offences punishable under Sections 279 and 304-A of the IPC was not by itself sufficient to prove that the accident was caused by rash and negligent driving of canter bearing registration No.HR-37-7493 by

respondent No.1 and the question is required to be decided on the basis of the evidence produced by the parties.

21. On appreciation of the evidence produced by the parties, the Tribunal held that the claimants had not been able to establish on file that the deceased-Yashpal suffered fatal injuries on his person in a road side vehicular accident which has occurred on account of rash and negligent driving of the offending vehicle by respondent No.1. The question which arises is as to whether the findings of the Tribunal are based on proper appreciation of the evidence or not.

22. To prove their case, the claimants examined Salochna Sharma as PW-1, Deepak Sharma as PW-2 and Devinder Singh as PW-3. PW-1 Salochna Sharma, who deposed in support of the claim, did not admittedly witness the accident. PW-2 Deepak Sharma proved registration certificate of the deceased issued by the Council of Homeopathic System of Medicines, Himachal Pradesh. PW-3 Devinder Singh is stated to have witness the accident and he has testified that on 15.07.2004 the offending canter bearing registration No.HR-37-7493 driven by respondent No.1 in rash and negligent manner came from the side of Ramgarh and hit Yashpal Sharma, who was standing on the other side of the road and sustained multiple injuries. PW-3 Devinder has further testified that Yashpal Sharma was taken to hospital by him and others. Amit Kumar was also with them. On the lights of Zirakpur-Panchkula Road he saw the canter standing. As the condition of Yashpal Sharma was serious they could not stop there. The accident was caused due to rash and negligent driving of

the canter by its driver Dharam Chand. On 04.11.2004 he filed his affidavit before the police regarding the accident.

23. It may be observed here that in FIR Ex.P3, registered at the instance of Amit Kumar on 16.07.2004 at 12.40 a.m. in Police Station Chandimandir regarding the accident which took place on 15.07.2004 at about 10.30 p.m., the first informant Amit Kumar had only mentioned that some unknown canter had hit Yashpal Sharma and the particulars as to number of the canter and name of the driver were not mentioned in the FIR. Even the presence of Devinder Singh at the time of the accident as the person who witnessed the accident, chased the offending canter or transported the injured to the Hospital was not mentioned in the FIR.

24. The number of the canter and name of the driver were mentioned for the first time in affidavit dated 04.11.2004 submitted before the police by PW-3 Devinder Singh. Admittedly, PW-3 Devinder Singh did not give any statement to the police on the day of the accident and did not mention the number of the canter and name of the driver for more than three months and the police never came to him to record his statement though he remained present on his shop throughout after the accident before submission of affidavit on 04.11.2004 to the police. The explanation given regarding delay in submission of the affidavit and examination of PW-3 Devinder Singh by the Investigating Officer has to be looked into. In his affidavit dated 04.11.2004 PW-3 Devinder Singh mentioned that due to death of Yashpal Sharma and some other incident he could not go to the

police. In his statement made to the Investigating Officer PW-3 Devinder Singh had mentioned that on 16.07.2004, the very next day of accident, he had gone to Poanta Sahib in connection with some dispute with regard to his landed property and stayed there for two or three months. However, this version given by PW-3 Devinder Singh in his statement to the police is contradicted by his statement made before the Tribunal as PW-3 wherein at the time of his cross examination he stated that after the accident he remained present throughout at his shop.

25. Further, in his statement before the Tribunal PW-3 Devinder Singh stated that after the accident he followed the canter and noted its number when it stopped on the next red light and he disclosed its number to Kesar Singh and Amit Kumar who accompanied him and that he visited the house of the deceased third day after his death and also informed the number of offending vehicle to the relatives of the deceased but his testimony is not supported by his affidavit dated 04.11.2004 where he did not mention about Kesar Singh and Amit Kumar having accompanied him when he noted the number of the offending canter and about having visited the house of the deceased third day after his death and having informed the number of offending vehicle to the relatives of the deceased. His testimony as to having visited the house of the deceased third day after his death and having informed the number of offending vehicle to the relatives of the deceased is contradicted by his statement made to the police that on the very next day of accident he had gone to Poanta

Sahib in connection with some dispute with regard to his landed property and stayed there for two or three months and that after coming back from there he told Madan Lal, brother-in-law of the deceased about the number of the canter.

26. The claimants did not examine Amit Kumar, Kesar Singh and Madan Lal brother-in-law of the deceased to corroborate testimony of PW-3 Devinder Singh as to chasing of the canter and informing them about number of the offending canter and name of its driver. The fact that they did not disclose number of the offending canter and name of the driver to the police for the long period of more than three months gives rise to the inference that PW-3 Devinder Singh did not mention the same to them and is lying in this regard which fact also adversely affects the veracity of testimony of PW-3 Devinder Singh as to having chased the canter and discovered the number of the offending canter and name of the driver immediately after the accident.

27. The delay in submission of affidavit dated 04.11.2004 and recording of statement of PW-3 Devinder Singh by the Investigating Officer and conduct of Amit Kumar, Kesar Singh, Madan Lal brother-in-law of the deceased, PW-3 Devinder Singh as well as of the Investigating Officer in this regard gives rise to the inference that PW-3 Devinder Singh was not present at the time of the accident; he did not witness as to how and by whom the accident was caused; he did not have any knowledge as to number of the offending vehicle and name of its driver and he was introduced and planted as witness after more

than three months of the accident solely for the purpose of enabling the claimants to claim compensation from the Insurance Company by falsely implicating, in collusion with respondent No.1-driver and respondent No.2-owner, the canter bearing registration No. No.HR37-7493 as the offending vehicle and respondent No.1 as the driver for having caused the accident by rash and negligent driving thereof.

28. Even otherwise, even if the above-referred evidence justifying the inference of PW-3 Devinder Singh being planted witness be ignored and he be held to have witness the accident, even then his testimony is self-contradictory and intrinsically untrustworthy. The accident took place on 15.07.2004 at about 10.30 p.m. when the electricity had gone out. Admittedly PW-3 Devinder Singh could not see the number of the canter and the driver at the time of the accident. PW-3 Devinder Singh has stated to have chased and seen the canter at the light point but admittedly he did not stop the canter and question the driver. Even if it be believed that PW-3 Devinder Singh could note down the number of the canter at the light point, how the driver of the canter was seen by him on the light point in the night is not explained. In his examination-in-chief PW-3 Devinder Singh stated that Yashpal Sharma was taken to hospital by him and others. Amit Kumar was also with them. On the lights of Zirakpur-Panchkula Road he saw the canter standing. As the condition of Yashpal Sharma was serious they could not stop there. In his examination-in-chief PW-3 Devinder Singh did not specifically mention about presence of Kesar Singh when they took the deceased to the hospital and as per his deposition in examination-

in-chief he noted the number of the canter at the light point when they were taking the deceased to the hospital. This testimony of PW-3 Devinder Singh is contradicted by his statement made during his cross examination that after hitting the deceased the canter driver had fled from the spot. When Kesar Singh chased him he was sitting as pillion rider in his car No.6282 till light point where the truck was stationary. He noted the number of the said vehicle. He along-with Kesar Singh returned to the spot and removed the injured to the Hospital. As per this deposition in his cross-examination Amit Kumar was not present with them at the time of chasing of the canter and they took the deceased to the hospital after returning to the spot from the light point where he noted the number of the canter. These material contradictions as to time of taking of the injured Yashpal Sharma to Hospital and presence of Amit Kumar and Kesar Singh at the time of chasing of the canter adversely affect the veracity of his testimony as to identification of the offending vehicle and also the driver thereof and render the same wholly unreliable.

29. In these facts and circumstances of the case, the testimony of PW-3 Devinder Singh was not worthy of any credit and was rightly disbelieved by the Tribunal. The claimants did not produce any other oral or documentary evidence to prove causing of the accident by canter bearing registration No.HR-37-7493 and due to rash and negligent driving thereof by respondent No.1.

30. No doubt, in the present case, respondents No.1 and 2 did not contest the petition and suffered themselves to be proceeded

against ex-parte. However, in the factual backdrop of the case which is suggestive of collusion between the claimants and respondents No.1 and 2, no adverse inference of having caused the accident as pleaded by the claimants could be drawn against respondents No.1 and 2 due to their non-appearance.

31. At the time of arguments learned Counsel for the appellants referred to statement of respondent No.2-owner of the canter made during investigation to the Investigating Officer of the criminal case wherein respondent No.2 stated that he had employed respondent No.1 as driver on his canter and that on 15.07.2004 respondent No.1 had telephonically informed him about having caused the accident in question. However, respondent No.2 is not stated to have made such statement before the Criminal Court. Alleged admission of respondent No.2 in his unsigned statement made to the Investigating Officer during investigation of the criminal case under Section 161 of the Cr.P.C., which is not of any evidentiary value, cannot be relied upon as sufficient proof of Yashpal Sharma having died due to injuries suffered in accident caused by rash and negligent driving of the canter by respondent No.1.

32. Consequently, the claimants have miserably failed to discharge the onus of proof lying on them and have miserably failed to prove that Yashpal Sharma died due to injuries suffered in the accident caused by rash and negligent driving of the canter by respondent No.1 and the observations in **New India Assurance Co. Ltd. Vs. Bimla Devi and others 2006 (3) R.C.R.(Civil) (Punjab &**

Haryana High Court) 682 and Uttar Pradesh State Road Transport Corporation Vs. Baby Sakshi Yadav and others : 2008(4) TAC (Delhi High Court) 627 relied upon by learned Counsel for the appellants are not of any help to the claimants..

33. The well reasoned findings of the Tribunal on issue No.1 are based on sound understanding of the facts and proper appreciation of the evidence produced on record and not being contrary to the facts, evidence on record and law on the subject, cannot be said to be perverse and do not, therefore, call for any interference. Consequently, the impugned award is not liable to be set aside and the appeal, being devoid of any merit, is liable to be dismissed.

34. Accordingly, the appeal is dismissed leaving the parties to bear their own costs.

(ARUN KUMAR TYAGI)
JUDGE

10.05.2019
Kothiyal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No