

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

**FAO No.427 of 2006 (O&M)
Date of Decision: 28.02.2019**

Lajwanti and othersAppellants/claimants

Versus

Rajinder Kumar and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Argued by: Mr. K.S. Dhanora, Advocate
for the appellants.

None for respondents No.1 and 2.

Mr. Harsh Aggarwal, Advocate and
Mr. Aseem Aggarwal, Advocate
for respondent No.3.

ARUN KUMAR TYAGI, J.

1. The appellants/claimants have filed the present appeal against the award dated 23.11.2005 passed by the Motor Accidents Claims Tribunal, Fast Track Court, Kurukshetra (for short 'the Tribunal') in **MACT Case No.264 of 2005 titled as Lajwanti and others Vs. Rajinder Kumar and others**, whereby claim petition filed by the claimants under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') for award of compensation on account of death of Jai Ram due to injuries suffered in motor vehicular accident, which took place on 22.01.2004, was dismissed.

2. The claimants-Lajwanti-widow, Desh Raj, Rajesh Kumar and Lalit Kumar minor sons and Neelam Rani-minor

daughter of Jai Ram filed the above said claim petition on the averments that on 22.01.2004 at about 5:30 p.m. deceased Jai Ram was going from Village Kheri Shishgran towards Pehowa on his vikky. When he reached near Octroi Post on Kaithal Road, Police Station, Pehowa, truck bearing registration No.HR-05-2484, owned by respondent No.2 and insured with respondent No.3, came from the side of Octroi Post driven by respondent No.1 rashly and negligently on the wrong side of the road and struck against the vikky of Jai Ram due to which he fell down and suffered injuries resulting in his death. FIR No.84 dated 06.03.2004 was registered under Sections 279 and 304-A of the Indian Penal Code, 1860 (for short 'the IPC') against respondent No.1 in Police Station Pehowa, District Kurukshetra regarding the accident.

3. The claimants further averred in the petition that the deceased was aged about 35 years and was earning ₹12,000/- per month by working as plumber and doing dairy business. The claimants being legal heirs dependent on the deceased are entitled to award of compensation for his death. The claimants accordingly sought award of compensation of ₹20,00,000/- with costs and interest against the respondents No.1 to 3.

4. The petition was contested by the respondents. In their joint written statement, respondents No.1 and 2 pleaded that no accident took place with their truck and false FIR was registered against respondent No.1 under political pressure of the claimants. In its written statement, respondent No.3 took

objections as to respondent No.1 not having valid and effective driving licence and breach of terms and conditions of the insurance policy by respondent No.2. Respondent No.3 also denied the accident and its liability to pay compensation.

5. Issues were framed and the parties were given opportunity to produce their evidence. On consideration of the evidence produced by the parties and submissions made by the learned counsel for the parties, the Tribunal held that the involvement of the truck in the accident was not proved and accordingly dismissed the claim petition.

6. Feeling aggrieved, the appellants/claimants have filed the present appeal.

7. I have heard the learned counsel for the parties and gone through the record.

8. Mr. K.S. Dhanora, Learned counsel for the appellants has argued that to prove their claim, the claimants examined Hira Singh, eye witness as PW-4, who testified that Jai Ram suffered injuries in the accident caused by rash and negligent driving of the truck by respondent No.1 and also explained the delay in registration of the FIR having occurred due to efforts made by respondents No.1 and 2 for compromise of the matter. The claimants also examined Dr. Sudershan Chugh as PW-3, who produced the record and testified that on 22.01.2004, Jai Ram was brought to their hospital in unconscious state while bleeding from the nose and possibility of Jai Ram having died due to injuries suffered in road side accident could not be ruled out. Nand Lal, Criminal

Ahlmad of the Court examined as PW-2 produced the record of Criminal Case No.141/1 of 2004 titled as State Vs. Rajinder Kumar which established that on investigation, police found that Jai Ram died due to injuries suffered in the accident caused by rash and negligent driving of the truck by respondent No.1 and filed report under Section 173 (2) of the Cr.P.C. against respondent No.1 who was facing trial. The claimants produced cogent and reliable oral and documentary evidence, which has been wrongly ignored by the Tribunal. The Tribunal did not properly appreciate the evidence produced on record and wrongly dismissed the claim petition. The findings of the Tribunal, being against facts and law, are perverse and liable to be set aside. Therefore, the appeal may be allowed, the impugned award may be set aside and by allowing the claim petition just and adequate compensation may be awarded to the claimants.

9. On the other hand, Mr. Harsh Aggarwal and Mr. Aseem Aggarwal, learned counsel for respondent No.3 have argued that the onus of proving that Jai Ram died due to injuries suffered in accident caused by rash and negligent driving of the truck 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. The claimants have examined Hira Singh as PW-4, but he was not present at the time of alleged accident and his testimony is unworthy of credit and has been rightly discarded by the Tribunal. PW-3 Dr. Sudershan Chugh has admitted that the deceased was having overdose of alcohol and died due to cardiac

respiratory arrest. There was undue and unreasonable delay in lodging of the FIR with the police and the claimants got the FIR registered and filed the claim petition in collusion with respondents No.1 and 2. 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 appeal is liable to be dismissed.

10. It is now well settled that proof of negligence 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.

11. The onus of proving negligence on the part of the driver of the offending vehicle lies on the claimants. While in criminal cases negligence has to be proved beyond reasonable doubt, in Civil Cases/motor accidents claim cases the negligence has to be proved on preponderance of probabilities.

12. To prove their case, the claimants examined Hira Singh, brother of the deceased Jai Ram, alleged to have witnessed the accident as PW-4, Nand Lal, Criminal Ahlmad as PW-2 and Dr. Sudarshan Chugh who treated the deceased as PW-3 and produced copy of FIR EX.P-1, copy of application submitted by Hira Singh to Dy. S.P., Pehowa EX.P-2, Medical Certificate EX.P-3, Death Certificate EX.P-4, notice to join investigation EX.P-5 and statement of Hira Singh EX.P-6.

13. PW4 Hira Singh has testified that on 22.01.2004 at about 5:30 p.m. his brother Jai Ram was going on his vikky whereas he was going on his motorcycle from Pehowa to village Kheri

Shishgran. When they reached near Octroi Post, Kaithal Road, Pehowa, a truck bearing registration No.HR-05-2484 came from Kaithal side and hit the vikky from opposite side due to which his brother Jai Ram fell down from his vikky and started bleeding from his nose and ears. The driver of the truck was driving his truck rashly and negligently. The truck driver stopped the truck for a little while and after seeing the accident, he ran away with his truck. He recognized the driver whose name was Rajinder Kumar, which he came to know later on. He put his brother in a rickshaw and sent him to Mission Hospital, Pehowa. His father, his uncle Rattan Lal and Sarpanch Sunil Kumar came to Mission Hospital, Pehowa, where the owner of the truck assured his father and uncle that they should not take any legal action and whatever help could be possible he could provide them. However, his brother Jai Ram died next morning at 5:00 a.m. They did not allow to get the post mortem of the dead body of his brother conducted. Respondents No.1 and 2 did not provide any financial help on which they went to police station but the police did not take any action. Panchayats were convened in the village and after that they went to Dy. S.P., Pehowa and after enquiry he got the case registered against the driver of the truck.

14. However, in the present case the testimony of PW-4 Hira Singh as to his presence on the spot at the time of the accident is belied by other evidence on record. Admittedly the accident took place at 5:30 p.m. on 22.01.2004 but as per medical certificate Ex.P-3 proved by Dr. Sudarshan Chugh, the deceased was taken to Mission Hospital, which was just about 3 kms. away from the place

of accident, at 10:00 p.m. with unexplained delay of 4½ hours. PW-3 Dr. Sudershan Chugh has testified that the deceased was brought to Mission Hospital by his other brother Satpal. PW4 Hira Singh has also admitted that he put his brother in a rickshaw and sent him to Mission Hospital, Pehowa. Had PW-4 Hira Singh been present at the time of accident then he would have himself taken his injured brother Jai Ram to the hospital immediately without any delay. The claimants have not examined Sat Pal to explain the circumstances under which he took injured Jai Ram to the Mission Hospital. The fact that injured Jai Ram was taken to the Mission Hospital by his other brother Sat Pal and not by PW-4 Hira Singh is consistent only with the fact of PW-4 Hira Singh not being present on the spot at the time of the accident. Since PW-4 Hira Singh is not proved to be present on the spot at the time of the accident his testimony as to when, by whom and how the accident was caused cannot be relied upon.

15. Besides, the evidence produced by the claimants is also contradictory in material aspects of the case. PW-4 Hira Singh has stated that he put his brother in rickshaw and sent him to the Mission Hospital, Pehowa all alone but in his cross-examination PW-4 Hira Singh has stated that he had accompanied his brother to the Mission Hospital, Pehowa. PW-4 Hira Singh has further stated that he informed the attending doctor about the accident having been caused by the truck and he had also disclosed to them about number of the truck. This testimony of PW-4 Hira Singh is belied by the testimony of PW-3 Dr. Sudershan Chugh who has stated that Satpal brother of the patient had brought him to the hospital and had

told them that the patient was lying on the road side. PW-4 Hira Singh has contradicted the testimony of PW-3 Dr. Sudershan Chugh by stating that his brother Satpal came to the Mission Hospital, Pehowa after death of Jai Ram on the next day after he came to know about the same. The claimants have not examined Satpal despite availability without any plausible explanation which warrants drawing of adverse inference. In the facts and circumstances of the case these material inconsistencies/discrepancies adversely affect credibility of the testimony of PW-4 Hira Singh and the same being intrinsically untrustworthy cannot be relied upon.

16. It would be most important to note in the present case that PW4 Hira Singh has testified that he knew few persons who had seen the accident. However, the claimants have not examined any one of them to substantiate their claim with the consequence that with the discard of testimony of PW-4 Hira Singh for the above stated reasons, there is no evidence worth the name to prove that deceased Jai Ram died due to injuries suffered in accident caused by rash and negligent driving of the truck bearing registration No.HR-05-2484 by respondent No. 1.

17. Even otherwise, the medical evidence produced by the claimants does not support their case. PW-3 Dr. Sudershan Chugh has stated that on 22.01.2004, the deceased was brought to their hospital in unconscious state. There was bleeding from his nose. No external mark of injury was there. There was smell of alcohol was coming from breath of the patient. PW-3 Dr. Sudershan Chugh has further stated that provisional diagnosis was over dose of alcohol and head injury. However, PW-3 Dr. Sudershan Chugh has admitted

in his cross-examination that the patient had died due to cardiac arrest. PW-3 Dr. Sudershan Chugh has also admitted that there is no indication in his record to show that the deceased had met with a roadside accident. PW-3 Dr. Sudershan Chugh has explained in his cross-examination that since there was bleeding from nose so he had stated that possibility of sustaining this head injury in road side accident could not be ruled out. PW-3 Dr. Sudershan Chugh has also clarified in his cross-examination that the deceased might have died due to fall from the bicycle also as he was over drunk and could sustain head injury. PW-4 Hira Singh has admitted that no post mortem examination was got conducted on the dead body of Jai Ram. Since, no post-mortem examination was got conducted on the dead body of the deceased to ascertain the cause of his death, the deceased could not be said to have died due to injuries suffered by him in the roadside accident.

18. Further more, in the present case there was delay of 45 days in lodging of the FIR with the police. Admittedly, no history of suffering of injuries by the deceased in roadside accident was recorded and no medical rukka was sent to the police by the attending doctor. Even though PW-4 Hira Singh has deposed that the delay occurred due to talks/assurance of compromise by the owner of the truck in the presence of his father, his uncle Rattan Lal and Sarpanch Sunil Kumar but the claimants did not examine them. Consequently, the delay in lodging of FIR has not been satisfactorily explained. Delay of about 45 days in lodging of the FIR is suggestive of the same having been lodged with deliberation, concoction and

manipulation in collusion with respondents No.1 and 2 which fact also warrants rejection of the claim.

19. No doubt by testimony of PW-2 Nand Lal Criminal Ahlmad, who produced record of criminal case No.141/1 of 2004, titled State Vs. Rajinder Kumar it is proved that the police filed report under section 173 Cr.P.C. against the respondent No.1 who was facing trial on charges under sections 279 and 304-A of the IPC. However in **Rita Sharma and others Vs. Pan Chand and others 1997-3 PLR 187 (Punjab & Haryana High Court)** it was held that the question of negligence in a motor accident claim case has to be determined on the basis of evidence led by the parties and 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. In **Ram Karan Vs. Zile Singh 2001(3) RCR (Civil) 582 (Punjab and Haryana High Court)** it was held that the onus of proving negligence lies on the claimants and they have to discharge it before the Tribunal. Mere registration of FIR, framing of charge and even judgment of conviction or acquittal of criminal court is not binding on the tribunal. In view of the above quoted judicial precedents mere registration of FIR and prosecution of the respondent No.1 for commission of offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860 is not sufficient to prove that the accident was caused by rash and negligent driving of truck bearing registration No.HR-05-2484 by respondent No.1.

20. It is also pertinent to observe that in the present case, respondent No. 1 appeared in the witness box as RW 1 and stated

that in January 2004 he was driver on truck No.HR-05-2484 under owner Raghbir Singh and he never caused any accident by the said truck during his employment under the above said owner. The veracity of testimony of RW-1 Rajinder Kumar could not be shattered by the claimants by his cross-examination and the same deserves to be relied and acted upon.

21. In these facts and circumstances of the case the claimants have miserably failed to discharge the onus of proof lying on them and have miserably failed to prove that Jai Ram died due to injuries suffered in the accident caused by rash and negligent driving of the truck by respondent No.1. The 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 cannot be said to be contrary to the facts, evidence on record and law on the subject and being well reasoned and not perverse, do not call for any interference. Therefore, the impugned award is not liable to be set aside and the appeal, being devoid of any merit, is liable to be dismissed.

22. In view of the above discussion, the appeal is dismissed leaving the parties to bear their own costs.

(ARUN KUMAR TYAGI)
JUDGE

28.02.2019
Vinay

Whether Speaking/reasoned
Whether Reportable

Yes/No
Yes/No