

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

FAO No. 5297 of 2008

Date of Decision: January 08 , 2019.

Monika and others APPELLANT (s)

Versus

Parshotam Babbar and others RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Vikas Chatrath, Advocate and
Ms. Arti Rani, Advocate
for the appellants.

Mr. Navin Kapur, Advocate
for respondent No.3 – Insurance Company.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This appeal has been preferred by the claimants challenging award dated 04.02.2008 passed by the learned Motor Accident Claims Tribunal, Amritsar (hereinafter referred to as, the 'Tribunal') whereby claim petition filed by the claimants under Sections 163A/166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') has been dismissed.

The claimants filed a petition under Sections 163A and 166 of the Act seeking compensation on account of death of Rajiv Kumar, who lost his life

due to injuries received by him in a motor vehicle accident which took place on 12.10.2006. As per the averments in the claim petition, Rajiv Kumar (deceased) was returning to his village Fatehgarh Churian in car No.DL-3C-AF-4888 driven by respondent No.1-Parshotam Babbar. When they reached near Soni Palace, a stray dog suddenly came in front of the car. Respondent No.1 could not control the same, as the car was being driven at a very high speed. As a result thereof, the car fell into a Nala (culvert). Rajiv Kumar succumbed to the injuries at the spot. Other occupants of the car also received injuries. It is alleged that the police authorities did not register any FIR. DDR No.13 dated 12.10.2006 was entered. Compensation to the tune of ₹15,00,000/- alongwith interest at the rate of 18% per annum was prayed for by the claimants, who are children, widow and mother of the deceased.

It is noticed that claim under Section 163A of the Act was specifically given up by the claimants and claim petition pursued under Section 166 of the Act as is recorded vide order dated 27.02.2007 passed by the learned Tribunal.

Claim petition was resisted by the respondents. Joint written statement was filed by respondents No.1 and 2 while pleading that it was deceased – Rajiv Kumar, who himself was driving the car in question. He lost control over the car in question as a stray dog came in front of the car, therefore, the accident had occurred. Thus, there was no question of any negligence on the part of respondent No.1. Separate written statement was filed by respondent No.3 resisting the claim petition. Dismissal of the claim petition was prayed for.

From pleadings of the parties, the following issues were framed by

the learned Tribunal:-

1. Whether Parshotam Babbar, respondent No.1, caused the death of Rajiv Kumar son of Satish Kumar by driving of motor vehicle Tata Indica car, bearing registration No.DL3C-AF-4888, negligently? OPA
2. Whether the applicants are the legal representatives of Rajiv Kumar, deceased? OPA
3. Whether the application is bad for mis-joinder of necessary parties? OPR
4. Whether the application has been filed by applicants in collusion with respondents Nos.1 and 2? If so, to what effect? OPR(3)
5. Whether there was no valid route permit of the offending vehicle, if so, to what effect? OPR(3)
6. How much compensation, the applicants are entitled to recover and from which of the respondents? OPA

Learned Tribunal after considering the evidence on record concluded that the claimants failed to prove that the accident took place due to the rash and negligent driving by respondent No.1. Sum of ₹50,000/- was however awarded on the principle of no fault liability. Aggrieved therefrom, claimants have filed the present appeal.

Learned counsel for the appellants submits that evidence on record proves that the accident was caused due to the rash and negligent driving of the offending vehicle by respondent No.1 – Parshotam Babbar. It is submitted that mere fact that in DDR No.13 dated 12.10.2006 it is stated by Satish Kumar, father of the deceased that the accident in question took place due to a stray dog coming in front of the car and nobody was at fault, cannot be held to non-suit the

claimants in the present proceedings. Satish Kumar while appearing as AW1 before the learned Tribunal testified that the accident took place in his presence and the offending car was being driven in a rash and negligent manner by respondent No.1 – Parshotam Babbar. When a stray dog came in front of the car, respondent No.1 could not control the car due to which the accident had taken place and Rajiv Kumar received fatal injuries. Learned counsel for the appellants relies upon the judgment of this Court in Narpal and another v. Kanta Devi and others, 199292) PLR 85. It is submitted that the claimants/appellants are entitled to compensation of ₹25,43,728/- as detailed hereunder:-

Income	Rs.11973/-
Future Prospects	40% = 11973 x 40% = 4,789
Total	16767
Age	32
Multiplier	16
Dependency	3/4 = 16762 x 12 x 3/4 = 24,13,728
Conventional Head	15,000
Loss of estate	40,000
Funeral Expenses	15,000
Loss of love and affection	1,00,000/-
Total	Rs.25,43,728/-

It is thus prayed that this appeal be allowed and the impugned award dated 04.02.2008 passed by the learned Tribunal be set aside. Consequently, petition filed by the claimants be allowed, just and fair compensation as above be awarded to the claimants.

Learned counsel for respondent No.3 refutes the abovesaid averments while submitting that a well reasoned and logical award has been passed by the learned Tribunal which calls for no interference by this Court. It is

thus prayed that impugned award passed by the learned Tribunal be upheld.

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

Perusal of the record reveals that DDR No.13 dated 12.10.2006 (Ex.A4) was entered on the basis of a statement of Satish Kumar i.e., the father of deceased – Rajiv Kumar. Satish Kumar testified before the learned Tribunal as PW1. As per DDR No.13 dated 12.10.2006, Satish Kumar stated that his son alongwith respondent No.1 – Parshotam Babbar and Roshan Masih had gone to Amritsar at about 5/6 p.m. on 11.10.2006. At about 11/12 midnight, Satish Kumar claimed to be present near the place of occurrence while taking a walk. It was stated that a stray dog suddenly came in front of the car due to which Parshotam Babbar who was driving the vehicle, lost control thereof and the car fell into a Nala (culvert) near the gate of Soni Palace. It is further stated that the accident took place in an effort to save a stray dog which came suddenly in front of the vehicle and none was at fault. Satish Kumar did not wish to take any action against anyone in this regard. Proceedings under Section 174 Cr.P.C. were conducted by the police authorities.

While appearing before the learned Tribunal as AW1, Satish Kumar in his affidavit (Ex.A1) stated as under:-

“That on 12.10.2006 the deceased Rajiv Kumar alongwith respondent No.1 and one Roshan Masih were coming in one Tata Indica car bearing Registration No.DL-3C-AF-4885 which was being driven by respondent No.1 Parshotam Babbar and Rajiv Kumar and Roshan Masih were the occupants of the said car and when they reached near Soni Palace at Police Station Jhander, Distt. Amritsar suddenly a stray dog came in front of the car and as a car

was being driven by the respondent No.1 at a very high speed rashly and negligently, he could not control over the car and car fell into the NALA due to which deceased Rajiv Kumar received serious injuries on his head and he died at the spot. The other occupants of the car also received injuries on their person. Rajiv Kumar died in road accident due to rash and negligent driving of the respondent no.1. That I saw this occurrence as I was doing walk at that time. Due to death of my son in road accident was not in my state of mind and police obtained my signatures and in connivance with the respondents no.1 and 2 did not register FIR but only register a DDR No.13 dated 12.10.2006 in order to help the driver and owner of the car and only conducted the proceedings under Section 174 Cr.P.C. The deceased was taken by us to our home whereas respondent no.1 and Roshan Masih were got admitted in the hospital.”

In cross-examination, AW1 Satish Kumar submits that the accident took place at about 11.30 p.m., but he could not tell the registration number of the car. It was stated that he telephoned his wife who came to the spot after half an hour. Rajiv Kumar died at the spot, but he was not taken out from the car by him. Paradoxically, it is stated by AW1 Satish Kumar that when he saw his son, he was lying outside the car and he did not know who had taken him out from the car. He further stated that he was ten minutes away from the spot of the accident. AW1 Satish Kumar denied the suggestion that his son was driving the car due to which he received head injuries. It is admitted by AW1 Satish Kumar that he never filed any complaint against respondent No.1 in respect to the rash and negligent driving of the offending vehicle by him neither did he filed any complaint/ representation before the higher police officials regarding non-registration of the FIR in this case. Deceased, it is stated, had no enmity with the

police officials.

The statement of AW1 Satish Kumar does not prove the case of the claimants as is vehemently urged by learned counsel for the appellants. It is admitted that when AW1 reached at the spot, his son was lying outside the car. It is further stated by him that he was ten minutes away from the spot at the time of the accident. It is highly improbable that in case the accident had taken place in front of Satish Kumar, he would not have made any effort to extricate his son from the car or would not even know who removed him therefrom. Therefore, his testimony to the effect that the accident in question took place due to the rash and negligent driving of the offending vehicle by respondent No.1-Parshotam Babbar has rightly not been relied upon by the learned Tribunal. RW1 Parshotam Babbar stated that the vehicle was, in fact, being driven by Rajiv Kumar (deceased) at a moderate speed. When the car came near Soni Palace, Fatehgarh Churian, a stray dog suddenly came in front of the car and Rajiv Kumar could not control the car, which fell into the Nala (culvert). Rajiv Kumar received fatal injuries on his head which struck on the steering wheel of the car. Perusal of the post-mortem report (Ex.A3) reveals the injuries on the right parietal of scalp. Multiple fractures on the right parietal region of the scalp and skull are recorded. There is no evidence on record to show that any representation was ever made by the claimants or Satish Kumar against the police officials for non-registration of the FIR in respect to the accident. Doubtlessly in proceedings under the Act, claimants have to prove their case on the touchstone of preponderance of probabilities and not beyond reasonable doubt. However, the evidence on record in the present case is woefully insufficient to prove the case of the claimants on

the touchstone of preponderance of probabilities.

There is no quarrel with the argument raised by learned counsel for the appellants that statements recorded under Section 161 Cr.P.C. are not to be treated as a substantive piece of evidence. However as noticed earlier, there is no evidence on record to prove that the statement of Satish Kumar, on the basis of which DDR (Ex.A4) was recorded, was tainted and recorded by the police authorities on their own as sought to be pleaded. AW1 Satish Kumar in his affidavit (Ex.A1) has stated that he was not in a proper state of mind and police officials obtained his signatures in connivance with respondents No.1 and 2. However, there is no evidence to substantiate such a plea. AW1 Satish Kumar in his cross-examination categorically admitted that he never filed any complaint to the higher police officials nor raised any objection to the proceedings under Section 174 Cr.P.C. At this stage, it is pertinent to note that third occupant of the ill-fated vehicle Roshan Masih has not been examined. Though this fact in itself would not be sufficient to non-suit the claimant, but the same assumes significance in the peculiar facts and circumstances of the case. Judgment of this Court in Narpal's case (supra) is not applicable in the facts and circumstances of the present case as the deceased in the said case was driving a motorcycle. It is observed in Narpal's case (supra) that the factum of four persons riding on a motorcycle alongwith six empty drums of milk on it, many not in itself be enough to hold that the deceased alone was responsible in causing the accident. The deceased in the said case was held guilty of contributory negligence. Thus, the learned Tribunal has rightly dismissed the claim petition.

Learned counsel for the appellants is unable to point out any

illegality, infirmity or perversity in the impugned award dated 04.02.2008 passed by the Motor Accident Claims Tribunal, Amritsar.

Finding of the learned Tribunal on this issue being in accordance with the evidence on record is thus upheld. Findings of the learned Tribunal on Issues No.2 to 6 are upheld as well.

Appeal is accordingly dismissed.

However, it is directed that instead of interest at the rate of 6% per annum, appellants are entitled to interest at the rate of 9% per annum on the sum of ₹50,000/- awarded.

January 08 , 2019.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No