

FAO-3844-2011(O&M) and
FAO-3845-2011(O&M)

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

(1) FAO-3844-2011(O&M)

New India Assurance Company

...Appellant

Versus

Smt.Salochna Devi and others

...Respondents

(2) FAO-3845-2011(O&M)

New India Assurance Company

...Appellant

Versus

Smt.Babli and others

...Respondents

Date of Decision:-3.5.2019

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.R.C. Gupta, Advocate
for the appellant – insurance company.

H.S. MADAAN, J.

By this order, I shall dispose of two FAOs i.e. FAO-3844-2011(O&M) and FAO-3845-2011(O&M) filed on behalf of appellant – New India Assurance Company, which have arisen out of the same accident.

Briefly stated, facts of the case are that on 8.5.2009 Chander Pal along with his wife Smt.Salochna Devi was going from Yamuna Nagar to village Satpura, District Saharanpur on a motorcycle bearing

registration No.UA-07L-9259; the motorcycle was being driven by Biram Singh @ Birham Pal on correct side of the road at a moderate speed; at about 5:30 a.m., when they reached within the area of village Mandouli, District Yamuna Nagar, then a tractor Massey Ferguson attached with a trolley bearing No.HR-01W/6539 (hereinafter referred to as the offending vehicle) loaded with logs of popular trees being driven by Daler Singh – respondent No.1 in a rash and negligent manner came from opposite direction and while going on wrong side of the road hit against the motorcycle of Biram Singh @ Birham Pal, as a result all the three riders along with motorcycle fell down; the riders suffered multiple injuries; Biram Singh @ Birham Pal and Chander Pal died at the spot, whereas Salochna Devi injured was taken to hospital; the matter was reported to the police and a formal FIR in that regard was registered.

The legal representatives of deceased Chander Pal namely Smt.Salochna Devi - wife aged about 29 years and Sh.Data Ram – father aged about 55 years had brought a claim petition bearing MACT Case No.26T/12.12.09/18.5.2010 under Section 166 of the Motor Vehicles Act against respondents i.e. Daler Singh – driver, Gopal Singh – owner and New India Assurance Company - insurer of the offending vehicle, claiming compensation to the tune of Rs.10 lacs along with interest on account of death of Chander Pal in a motor vehicular accident.

The legal representatives of deceased Sh.Biram Singh @ Birham Pal namely Smt.Babli - wife aged about 31 years, Master Akashy aged about 7 years – minor son, Baby Shivani aged about 6 years – minor daughter, Master Nitin aged about 4 years – minor son, Master Anshul

aged about 2 years – minor son, Baby Laxmi aged about 1 year – minor daughter and Sh.Dharam Pal aged about 60 years had also brought a claim petition bearing MACT Case No.27T/12.12.09/18.5.2010 under Section 166 of the Motor Vehicles Act against the abovesaid respondents.

On getting notice, the respondents appeared and contested the claim petitions and prayed for dismissal of the claim petitions.

After contest, the claim petitions were allowed by Motor Accidents Claims Tribunal, Patiala and separate awards dated 18.4.2011 were passed. In MACT Case No.26T/12.12.09/18.5.2010 filed on behalf of legal representatives of Chander Pal, compensation of Rs.5,23,800/- was awarded to the claimants payable by respondent No.3 within two months from the date of award, failing which, the claimants would be entitled to interest @ 9% per annum from the date of the claim petition till realization of the compensation amount. Whereas in MACT Case No.27T/12.12.09/18.5.2010 filed on behalf of legal representatives of Biram Singh @ Birham Pal, compensation of Rs.6,29,400/- was awarded to the claimants payable by respondent No.3 within two months from the date of award, failing which, the claimants would be entitled to interest @ 9% per annum from the date of the claim petition till realization of the compensation amount.

The insurance company being dissatisfied with both the Awards have filed separate appeals before this Court.

Notice of the appeals was issued to the driver and owner. However, there was no representation on their behalf.

I have heard learned counsel for the appellant – insurance

company besides going through the record.

The first and foremost argument advanced by learned counsel for the appellant – insurance company was that involvement of tractor trolley in question in the accident was not established, rather it was roped in later on, on account of collusion between the claimants and respondents No.1 and 2. He has contended that the accident had taken place on 8.5.2009; FIR was registered on that very day but no vehicle number and the name of driver was given and it was on 23.6.2009 i.e. after 45 days of the accident, the registration number of the tractor and name of its driver were disclosed, which renders the whole matter doubtful pointing out towards false implication and the Tribunal was not justified in accepting the claim petition. In support of his contention, he has referred to a few judgments i.e. Anguri Devi and others Versus Lakhvinder Singh alias Lakha and others, 2017(3) PLR 86, Anita and others Versus Narender Singh and others, 2013(28) RCR(Civil) 587 and Magma HDI General Insurance Co. Ltd. Versus Mukesh Devi and others, 2018(1) PLR 720 by the Co-ordinate Benches of this Court. However, I do not find myself in agreement with learned counsel for the appellant.

Learned Tribunal decided issue No.1 in both claim petitions in a proper manner. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature,

the yardstick to be used is preponderance of probabilities.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who got killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions.

The claimants by bringing enough cogent and convincing evidence both oral as well as documentary were successful in establishing respondent No.1 – Daler Singh was author of the accident by his rash and negligent driving of the offending vehicle resulting in deaths of Chander Pal and Biram Singh @ Birham Pal. PW3 Naresh Kumar in his affidavit Ex.PW3/A fully supported the case of claimants as given in the claim petitions categorically stating that the accident in question had taken place due to rash and negligent driving of tractor trolley in question by respondent No.1. PW4 Sawan Kumar also provided eye-witness account supporting the prosecution story on material aspects. Although both these PWs were cross-examined at length on behalf of the accused but they stuck to their guns and could not be shattered on material contents. A few minor contradictions and variations in their statements do not go to the root of matter since those are bound to occur due to difference in power of perception, observation and retention of events in various persons and so also due to lapse of memory due to passage of time etc. The fact cannot be lost sight of that different persons have got variable memorization of the events. Merely because a witness slipped at a few places regarding the

minute details does not go to put a question mark over his credibility and truthfulness. These minor variations and contradictions rather go to show that the witnesses have deposed in a natural and truthful manner unlike tutored witnesses who depose in a parrot like manner. I find presence at the spot of both the witnesses to be likely and probable and account given by both of them to be worthy of reliance. It was PW3 Naresh Kumar, who had set the criminal machinery in motion by reporting the matter to the police. It would have been so if he was present at the spot and seen the accident. Merely because he had not mentioned the registration number of the tractor trolley and name of its driver in the FIR does not go to put a question mark over his credibility. The witness had categorically stated that he along with Sukhpal became busy in looking after the injured, in the meanwhile the driver of the tractor trolley ran away. Of course, the first priority for Naresh Kumar and other persons present there was to attend to the injured and to provide medical aid to them rather than leaving them unattended and got busy in inquiring about the name of the tractor trolley driver and noting registration number of the tractor trolley in question. Quite often by happening of such accident even the spectators get shocked and the natural human reaction is to rush to the help of the injured without thought of noting the name of driver of the offending vehicle and registration number of the offending vehicle being inquired into and noted on priority coming to mind of such persons. After registration of the FIR, the matter was investigated. Respondent No.1 was booked in causing accident. He was challaned and even charge has been framed against him. All these facts fortify the case of the claimants.

Furthermore, FIR is not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the same. It is only during investigation of the case that police can come to know about the culprit and criminal, who had committed the crime. Merely for the reason that accused is not named in the FIR does not result in causing any dent in the prosecution story.

Furthermore, in rebuttal respondent No.1 – Daler Singh did not appear in the Court to state on oath that he was not author of the accident by his rash and negligent driving of the offending vehicle. Similarly, respondent No.2 – Gopal Singh did not get his statement recorded to state that the offending vehicle belonging to him and driven by respondent No.1 had not caused any accident. Therefore, the evidence adduced by the claimants has gone un rebutted.

As regards the authorities, referred to by learned counsel for the appellant – insurance company, those do not find application to the present case due to different facts and circumstances and the context in which such observations had been made.

One more argument put forward by learned counsel for the appellant - insurance company was that it was a case of triple riding and the motorcycle driver also contributed to the accident by his rash and negligent driving. However, I find that no such plea has been taken by the respondents in their written statements. The law is well settled that a fact should be first pleaded and then proved and any evidence led beyond the

pleadings is not worth the paper on which it is written. Respondents No.1 and 2 have flatly denied the accident and they have not taken any plea of contributory negligence. Similarly, respondent No.3 – insurance company has flatly denied involvement of tractor trolley in question in the mishap and no plea of contributory negligence is there. No evidence in that regard has been led by the respondents. From the record, it clearly comes out that the accident took place due to rash and negligent driving of offending vehicle by respondent No.1 and the driver of the ill-fated motorcycle was not guilty of any wrongful driving.

Finding no merit in the appeals, the same stand dismissed accordingly.

3.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No