

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

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| 1. | FAO No. 2353 of 2012(O&M)
Date of Decision: March 06 , 2019. |
| Surjit Singh | APPELLANT(s) |
| Versus | |
| Binder Kaur and others | RESPONDENT (s) |
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| 2. | FAO No. 1474 of 2012(O&M). |
| Surjit Singh | APPELLANT(s) |
| Versus | |
| Sukhjiti Kaur and others | RESPONDENT (s) |
| | |
| 3. | FAO No. 1102 of 2012(O&M). |
| Sukhjiti Kaur and others | APPELLANT(s) |
| Versus | |
| Binder Singh and another | RESPONDENT (s) |

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Ashok Kumar Khunger, Advocate
for the appellant in FAO No.2353 and 1474 of 2012.

Mr. Ashish Gupta, Advocate
for the appellants in FAO No.1102 of 2012
for respondent No.1 in FAO No.2353 of 2012 and
for respondents No.1 to 4 in FAO No.1474 of 2012.

Mr. N.K.Manchanda, Advocate
for respondent No.2 in FAO No.2353 of 2012.

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 judgment shall dispose of FAO No. 2353 of 2012 (Surjit Singh v. Binder Kaur and others) and FAO No. 1474 of 2012 (Surjit Singh v. Sukhjot Kaur and others) filed by the owner of the offending vehicle challenging his liability to pay compensation to the claimants vide impugned awards dated 02.01.2012 and 04.11.2011 passed by the learned Motor Accident Claims Tribunal, Faridkot (hereinafter referred to as, the 'Tribunal') as well as FAO No.1102 of 2012 (Sukhjot Kaur and others v. Binder Singh and another) filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal vide impugned award dated 04.11.2011. All the appeals are taken up for hearing together as they emanate from the motor vehicle accident which took place on 29.10.2010.

Brief facts which are necessary for the adjudication of the case are that, three claim petitions under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') were filed in respect to a motor vehicle accident which took place on 29.10.2010. Two different petitions were filed on account of death of Jaswinder Singh son of Nek Singh i.e., MACT No.45 dated 07.12.2010 titled as 'Binder Kaur and another v. Binder Singh and others' and MACT No.25 dated 02.04.2011 titled as 'Sukhdeep Kaur and others v. Binder Singh and others'. Binder Kaur as well as Sukhdeep Kaur claimed themselves to be the widows of deceased-Jaswinder Singh.

MACT No.46 dated 07.12.2010 was filed by Sukhjot Kaur and others claiming to be the legal representatives of deceased-Baljit Singh.

It was pleaded in all the claim petitions that Jaswinder Singh alongwith Baljit Singh (both deceased) were going from village Hari on 29.10.2010 at about 6.30 p.m. after meeting Kuldip Singh, a brother of Baljit Singh. Baljit Singh (deceased) was riding the motorcycle whereas Jaswinder Singh was pillion rider. They were about one kilometer of village Koharwala, that the offending tractor trolley bearing registration No.PB-03-A-1923 was lying parked on the wrong side of the road without any light or an indicator. There was nothing on the spot to indicate the presence of the stationary vehicle due to which the motorcycle struck against the rear of the tractor-trolley. As a result thereof, Baljit Singh died at the spot and Jaswinder Singh was taken to Guru Gobind Singh Medical College and Hospital, Faridkot from where he was referred to PGI, Chandigarh. He ultimately succumbed to his injuries. FIR No.135 dated 29.10.2010 under Sections 304A/337/283 IPC was registered at Police Station Sadar Kotkapura. Post-mortem of the dead bodies was conducted. It was pleaded that the accident in question took place due to the rash and negligent act of the driver of the tractor-trolley, who had parked the same on the wrong side of the road. As mentioned above, two claim petitions were filed claiming compensation on account of death of Jaswinder Singh. MACT No.45 of 2010 was filed by Binder Kaur, who claimed to be the widow of Jaswinder Singh, and Nek Singh (claimant No.2 in the said petition), the father of deceased-Jaswinder Singh. MACT No.25 of 2011 was filed by Sukhdeep Kaur alongwith Rajwinder Singh and Rajinder Singh claiming to be the widow and minor children of Jaswinder Singh. MACT No.46 of 2010 was filed by Sukhjot Kaur – widow, Rajan Singh and Balwinder Singh – minor children and Mohinder Kaur – mother of the deceased-

Baljit Singh.

Claim petitions were resisted by the respondents. Respondents No.1 and 2 i.e., driver and owner of the offending vehicle, filed joint written statement clearly stating that the case has been foisted upon them. It was denied that any accident, as pleaded, ever took place with the offending vehicle. The tractor trolley, it was stated, had developed a snag and was parked in the fields. The driver of the tractor trolley had gone to a nearby village to arrange for a mechanic to tow away the offending tractor trolley. It is categorically stated that a false case has been registered in connivance with the police authorities. Claim petitions filed by the two sets of claimants projecting themselves to be the legal representatives of deceased-Jaswinder Singh were consolidated on 28.07.2011.

Replication was filed in MACT No.45 dated 07.12.2010 and the following issues were framed in MACT No.45 dated 07.12.2010 and MACT No.25 of 02.04.2011 by the learned Tribunal:-

1. Whether deceased Jaswinder Singh died in a motor vehicle accident that took place on 29.10.2010 around 6.30 a.m. in the area of village Kohar Wala, Tehsil and District Faridkot on account of rash and negligent driving of Tractor bearing registration No.PB-03A-1923 by its driver respondent No.1 Binder Singh? OPA
2. Whether the claimants are entitled to compensation, if so, who to what extent and amount and as to from whom of the respondents? OPA
3. Relief.

An identical stand was taken by the respondents in MACT No.46 of 2010 and the following issues were framed in the said claim petition:-

1. Whether deceased Baljit Singh died in a motor vehicle accident that took place on 29.10.2010 around 6.30 a.m. in the area of village Kohar Wala, Tehsil and District Faridkot on account of rash and negligent driving of Tractor bearing registration No.PB-03A-1923 by its driver respondent No.1 Binder Singh? OPA
2. Whether the claimants are entitled to compensation, if so, to what extent and amount and as to from whom of the respondents? OPA
3. Relief.

MACT No.45 of 2010 and MACT No.25 of 2011 (qua the LRs of deceased-Jaswinder Singh) were decided on 02.01.2012 and MACT No.46 of 2010 was decided on 04.11.2011 by the learned Tribunal. In both the impugned awards dated 02.01.2012 and 04.11.2011, the learned Tribunal held that the accident in question was caused due to the rash and negligent act of the driver of the tractor trolley and the motorcyclist was also guilty of contributory negligence. It was observed that FIR (Ex.A02) was admittedly registered against the driver of the tractor trolley. This fact stood admitted by the driver. Moreover, the offending tractor trolley was released on Superdari to its owner, which itself is suggestive and corroborative of the claimants' averments that the accident in question took place due to the rash and negligent act of the offending tractor trolley.

In respect to the claim petitions filed by two sets of persons claiming to be the LRs of deceased-Jaswinder Singh, learned Tribunal vide award dated 02.01.2012 held the claimants – Binder Kaur and Nek Singh entitled to compensation of ₹4,93,000/- with interest at the rate of 8%. MACT No.25 of 2011

filed by Sukhdeep Kaur and others was dismissed subject to the finding of the civil court in respect to their legal status qua deceased-Jaswinder Singh.

Compensation of ₹4,93,000/- was awarded to Sukhjit Kaur and others i.e., the LRs of deceased-Baljit Singh in MACT No.46 dated 07.12.2010 vide award dated 04.11.2011 passed by the learned Tribunal.

Aggrieved therefrom, FAO No.2353 of 2012 and FAO No.1474 of 2012 have been filed by the owner of the offending vehicle challenging awards dated 02.01.2010 and 04.11.2011 passed by the learned Tribunal. FAO No.1102 of 2012 has been preferred by Sukhjit Kaur and others i.e., the LRs of deceased-Baljit Singh seeking enhancement of the compensation awarded to them.

Execution of the impugned award was stayed at the time of admission of FAO No.2353 of 2012 on 11.02.2013.

Learned counsel for the appellant-owner of the offending vehicle submits that the learned Tribunal has not appreciated the evidence on record, which clearly shows that the offending tractor trolley has been wrongly involved in the matter. The accident in question never took place with the tractor trolley, in question. In fact, the said tractor trolley had developed a mechanical defect and the driver parked the same in the fields near the spot of the alleged accident and he went to get a mechanic from a nearby village. When he returned, the driver discovered that the tractor trolley was not present at the spot where he had left it. Inquiries were made by him and it was revealed that the tractor trolley was taken to the Police Station Sadar, Kotkapura. The offending vehicle was falsely involved in the matter only with a view to obtain compensation. It is contended that the propounder of the FIR in this case was closely associated with the police

authorities as it is mentioned in the FIR itself that he was performing general duty as a volunteer at Police Station City, Kotkapura. Learned counsel for the appellant-owner further refers to the statement of RW2 Harjinder Singh, the photographer, as well as the photographs which are available on the record on both the cases. It is further submitted that the matter was duly inquired into by the Deputy Superintendent of Police and he recommended cancellation of the FIR, vide report dated 28.03.2011 (Ex.R4) available in the record of the case of MACT No.25 of 02.04.2011. It is thus prayed that both the appeals be allowed and the appellant-owner be absolved of the liability to pay the compensation to the claimants.

Learned counsel for the respondents, per contra, refute the abovesaid arguments and submit that submission of the cancellation report by the Deputy Superintendent of Police is of no avail to the owner of the offending vehicle for the reason that the final report/challan was nevertheless presented against the accused-driver and as per their information, the proceedings are still pending against the accused. Therefore, registration of the FIR is proof of the involvement of the offending vehicle, especially for the purposes of the present proceedings as it is merely on the basis of the preponderance of probabilities that the involvement of the offending vehicle is to be proved by the claimants. There is no mechanical report regarding the offending vehicle, in question, to substantiate the claim of the appellant-owner that the tractor trolley was beset by any mechanical fault.

Learned counsel for the claimants Sukhjit Kaur and another i.e., the legal representatives of the deceased Baljit Singh further submits that while dismissing the appeal filed by the owner of the offending vehicle, the claimants appeal should be allowed and compensation awarded by the learned Tribunal

should be enhanced.

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

A perusal of the record reveals that FIR No.135 was registered at Police Station Sadar Kotkapura on 29.10.2010 in respect to the accident, on a statement of AW1 Kuldip Singh son of Gurcharan Singh (in MACT No.46 of 2010), who was admittedly working as a Volunteer in Punjab Home Guards, Police Station City Kotkapura. Ex.R3 (in the record of Sukhjit Kaur's case) is representation dated 30.10.2010 submitted by Binder Singh – the driver of the offending tractor trolley to the Inspector General of Police, Bathinda seeking a fair and proper investigation in the matter. It is clearly mentioned therein that the tractor trolley on its developing a snag was parked by him away from road in the fields. He had gone to get a mechanic and when he returned, the tractor trolley was not found in the spot. Inquiries were made and it came to light that the tractor trolley had been taken to the police station and was falsely involved in the accident. Ex.R4, in the same proceedings, is report dated 28.03.2011 submitted by the Deputy Superintendent of Police, Kotkapura recommending cancellation of the FIR in question. It is mentioned therein that the offending tractor trolley was not involved in the accident in question. It was lying parked in the fields nearby and the motorcyclists had been hit by some unidentified vehicle. Cancellation of the FIR was recommended.

Photographs taken by RW3 Harjinder Singh, specifically Ex.R5 to R7, have been perused. Learned counsel for the respondents is unable to deny that the said tractor trolley is clearly reflected to be parked in the fields. This is

clearly in contradiction of the stand taken by the claimants that the tractor trolley was lying parked on the metalled road on its wrong side. RW2 Harjinder Singh in his statement (in MACT No. 45 of 2010) specifically stated that when he took the photographs, the offending vehicle i.e., the tractor trolley was standing in the adjoining fields at a distance of about 20-25 feet. He denied the suggestion that the offending tractor trolley was parked on the road and that he intentionally clicked the photographs in such a manner as to help the accused persons. In this view of the matter, the factum of continuance of the criminal proceedings against the driver, while ignoring the recommendation of cancellation of the report or release of the vehicle on Superdari to its owner, is not relevant for the purpose of these proceedings. It bears reiteration that the sole factum of the tractor trolley proved to be stationed in the fields belies the claim set up by the claimants. It is not the case of the claimants that the tractor trolley was subsequently moved to the fields after the occurrence of the accident. The evidence on record does not substantiate their claim that the tractor trolley was lying parked on the metalled road on its wrong side. This sole fact demolishes the entire case of the claimants.

Doubtlessly, in proceedings under the Act the claimants have to prove their case on the touchstone of preponderance of probabilities. In a given case, mere registration of an FIR is sufficient to accept the occurrence of the accident. However, in the present case, the glaring facts as mentioned above, render registration of the FIR or release of the vehicle to its owner, insufficient to prove the claimants' case even on the touchstone of preponderance of the probabilities. The evidence on record lends credence to the defence set up by the owner and driver. It is relevant to note that in the representation (Ex.R3) which was submitted on the very next day of the accident on 30.10.2010, by the driver of

the tractor trolley, reveals the stand of the owner and driver at the very initial stage itself. Therefore, finding of the learned Tribunal in the claim petitions that the accident took place due to the rash and negligent act of the driver of tractor trolley bearing registration No.PB-03-A-1923 is not substantiated by evidence on record and is not sustainable. It is accordingly set aside.

As a necessary corollary, it is held that the claimants are not entitled to compensation from the owner and driver of the tractor-trolley bearing registration No.PB-03-A-1923 as the accident in question is not proved to have taken place due to the rash and negligent act of the driver of the tractor trolley.

In view of the discussion as above, question of enhancement of the compensation as prayed for by the appellants in FAO No.1102 of 2012 calls for no adjudication.

No other arguments have been raised.

Accordingly, FAO Nos.2353 and 1474 of 2012 are allowed and FAO No.1102 of 2012 is dismissed with no order as to costs.

March 06 , 2019.
'om'

(LISA GILL)
JUDGE

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