

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 2593 of 2012 (O&M)
Date of Decision : 25.04.2019

Sunita Devi and others

.....Appellants

Versus

Satpal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Ms. Ashna Gill, Advocate with
Mr. Akash Singla, Advocate, Amicus Curiae.
for the appellants.

Ms. Vandana Malhotra, Advocate
for respondent no. 3-Insurance Company.

Surinder Gupta, J.

This is appeal against award dated 04.02.2012 passed by Motor Accident Claims Tribunal, Panipat (later referred to as ‘the Tribunal’), whereby claim petition filed by claimants-appellants was dismissed with the observation that claimants have failed to prove that death of Brij Bhushan (later referred to as ‘the deceased’) was caused in a motor vehicle accident with truck bearing registration no. HR-45A-2638 (later referred to as ‘the offending vehicle’) due to its rash and negligent driving by respondent no. 1-Satpal.

2. Facts of the case, as detailed in para 24 of the claim petition, are reproduced as follows:-

“That on 29.01.2009 at about 11.00 a.m., deceased Brij Bhushan had started from his shop in Sithana on his motorcycle bearing registration no. HR-31-7317, CD-100, Hero Honda to Panipat and when he reached in the area of Singhpura on his motorcycle a truck bearing registration no. HR-45A-2638 being

driven by its driver at a fast speed rashly and negligently came from behind and dashed against the motorcycle as a result of which Brij Bhushan died at the spot. On the statement of Krishan Lal son of Amar Singh resident of Sithana, case FIR No. 28 dated 29.1.2009 u/s 279 and 304A IPC was registered in Police Station Matlauda, District Panipat. The contents of the same may please be read and treated as part and parcel of this claim petition. The present accident took place due to rash and negligent act of driving of the truck bearing registration no. HR-45A-2638 by its driver respondent no. 1, who was the sole author of the accident.”

3. Reply to claim petition was separately filed by all the respondents. In separate reply filed by respondents no. 1 and 2, accident with the offending vehicle was denied. It was, however, averred that the offending vehicle was insured with respondent no. 3 and in case any liability to pay amount of compensation is made out, insurer of the offending vehicle is liable to pay the same.

4. Respondent no. 3, insurer of the offending vehicle, also denied the alleged accident *inter alia* pleading that no such information was received by it. FIR was registered against unknown vehicle and unknown driver on 29.01.2009 and after investigation local police presented untraced report. Thereafter, the offending vehicle was planted and respondent no. 1 was arrested on 22.12.2009 only to get the compensation. It was in fact a hit and run case and claimants are not entitled to any compensation.

5. Pleadings of parties led to framing of the issues by the Tribunal, as follows:-

1. Whether the accident in question resulting into death of Brij Bhushan took place due to rash and negligent driving of vehicle no. HR-45A-2638 by respondent no. 1? OPP
2. If issue no. 1 is proved, to what amount of compensation the claimants are entitled to receive and from whom? OPP
3. Whether the claimants have no *locus standi* to file the present petition? OPR
4. Whether respondent no. 1 was holding a valid and effective driving licence at the time of accident, if so, its effect? OPR 3.
5. Relief.
6. In support of their case, claimants examined Sunita Devi as PW-1, Raj Kumar as PW-2, Amit Kalyan as PW-3 and Vishwajyoti, Sr. Asstt. Income Tax Office, Ward No. 4, Panipat as PW-4.
7. The Tribunal while holding that the accident is not proved to have taken place with the offending vehicle took note of following facts:-
 - (i) Statement of PW-2 Raj Kumar was recorded 8 months after the accident i.e. on 28.09.2009. After the accident he had not accompanied the deceased to the hospital. Number of the offending vehicle was allegedly noted by him on a piece of paper but he never approached the police during these eight months. He was taken to police station by son of the deceased with whom he had no relation.

- (ii) FIR No. 28 dated 29.01.2009 was registered on the statement of Krishan Lal, who had not been examined.
- (iii) The police initially filed untraced report but later on after reinvestigation statements of Pawan Kumar son of Daya Nand and Raj Kumar (PW-2) were recorded on 28.09.2009 and they had deposed to the police that they were afraid of police action/proceedings, as such, did not approach it.

8. The Tribunal discarded this assertion of PW-2 Raj Kumar with the observations as follows:-

“7.His so called assertion of being ‘afraid’ of police proceedings/action, cannot be viewed, to have been erased, from his mind and psyche, even after eight months. In opinion of this Court, he has been branded by the claimants as so called eye-witness to the accident, whereas, in reality it appears to the satisfaction of the court that he was not an eye-witness. Had, he witnessed the accident to happen, and seeing Brij Bhushan, breathing his last at the spot and that too before him, he could have easily raised huge hue and cry, in order to attract the attention of other passersby/commuters on the road. All possible attempts could have been made, in order to nab the erring driver at the spot. The other commuters on the road, too, might have been possessed of means of conveyance. The erring driver could have been chased and nabbed. There are no such overt acts

visible from the statement of PW-2 Raj Kumar son of Jagdish. This witness could have sent intimation, in writing about the happening of accident, to the higher police authorities by adopting any effective mode of communication. He had not taken Brij Bhushan, who was in a seriously injured condition. As a person of normal prudence, he could have attempted to take Brij Bhushan to the hospital, so that the medical experts could attempt, (may be valiantly), in order to save the life of Brij Bhushan.....”

9. The Tribunal was of the opinion that it was a case of hit and run, which has been converted into a case of accident with the offending vehicle due to its rash and negligent driving by respondent no. 1.

10. Learned counsel for appellants submits that appellants have produced the best evidence available with them to prove that death of Brij Bhushan was caused due to rash and negligent driving of the offending vehicle by its driver. The Tribunal has scrutinized the evidence as if a criminal case was to be decided. Admittedly, police has presented the challan, may be with delay, but this corroborates version of PW-2 Raj Kumar that the accident was caused by respondent no. 1 due to rash and negligent driving of the offending vehicle.

11. FIR in this case was registered on the statement of Krishan Lal. Perusal of final report shows that on receipt of information regarding the accident, ASI Krishan Kumar reached the spot where motorcycle and dead body of the deceased were lying. A number of persons have assembled at the spot, out of whom, Krishan Lal got his statement recorded, wherein he

stated that he was going on his motorcycle towards Panipat. On the way he found gathering of people and dead body of Brij Bhushan lying there. Right leg of the deceased was on the motorcycle and his head had been crushed by some unidentified vehicle. On the basis of this statement, FIR No. 28 dated 29.01.2009 was registered at Police Station Matlauda, Panipat. The police could not trace the vehicle, which caused the accident and submitted untraced report on 13.04.2009. Thereafter son of the deceased-Brij Bhushan intimated that he through his own investigation had come to know that the accident was caused by truck no. HR-45A-2368. Order for further investigation was passed by senior officer. Statements of eye-witnesses were recorded and respondent no. 1 was arrested on 22.12.2009. The police took the offending vehicle in possession and presented challan in Court. PW-2 Raj Kumar, who appeared as eye-witness stated in his statement that on 29.01.2009 at about 09.30 a.m. he alongwith Pawan Kumar son of Daya Nand was going towards Panipat Refinery, when they witnessed that the offending vehicle came from behind and struck against and rammed over motorcycle of the deceased. At the time of accident, offending vehicle was being driven by its driver at a very fast speed and he escaped from the spot alongwith the vehicle. Though, this witness has not stated that the accident was caused due to rash and negligent driving of driver of the offending vehicle but his testimony that the offending vehicle was being driven at a fast speed and hit the motorcycle from behind is sufficient to draw this inference. Statement of this witness was recorded eight months after the accident. The question, which arises for consideration, is the credibility of this witness, who is resident of Panipat and was in Panipat even after 29.01.2009. He was taken to Police Station by Devinder, son of the

contact. This witness has no relation with the deceased. He has categorically stated that he did not inform the police about the accident or even accompanied the deceased to hospital. This witness was on motorcycle. If his statement be believed that he had reached the spot immediately after the accident, in normal course a person halts to see the impact of accident, but this witness appears to have not stopped his motorcycle to see the place of accident or even to see the injuries suffered by deceased. In his examination-in-chief, he has stated as follows:-

“That on 29.01.2009 at about 09.30 a.m., I alongwith Pawan Kumar son of Sh. Daya Nand caste Ror, resident of Hari Singh Colony, Panipat were going towards Refinery in connection with our personal work and in the meanwhile we saw that a truck no. HR-45A-2638 came from behind and struck against the motorcycle bearing no. HR-31-7317 and rammed over the motorcyclist leaving him dead at the spot which was being driven by its driver at a fast speed without giving horn and due to this accident the driver of the motorcyclist breathed his last at the spot and the driver of the truck made good his escape from the spot alongwith the truck. The above said accident took place in our presence.....I had only witnessed that the motorcycle in (of) which the accident took place had fallen on the road but thereafter I did not see that motorcycle and I cannot tell how much damage was caused to the motorcycle.....”

12. The Tribunal, while analyzing testimony of this witness, appears to have committed no error while disbelieving the same with the

observation that his act and conduct does not inspire confidence. Even if this witness had not accompanied the deceased to hospital, there was every reason for him to intimate the police about the accident. He could also disclose as to how he came in contact with son of the deceased after eight months of incident, who took him to police station alongwith other eye-witness, namely, Pawan Kumar. His going to police station after eight months of the accident smack of his collusion with claimants and gave reason to Tribunal to discard his testimony.

13. Learned counsel for appellants has relied on observations of Apex Court in case of **Parmeshwari vs. Amir Chand and others, 2011 (11) SCC 635**, wherein it was observed that in a road accident claim, the strict principles of proof in a criminal case are not attracted. There is no dispute with the above principle of law as laid down by Apex Court but facts are to be examined in each case on the strength of evidence on file. In this case, if the evidence is examined even by applying the above principle, claimants have not been able to prove that the accident was caused by respondent no. 1 due to his rash and negligent driving of offending vehicle.

14. Learned counsel for appellants has also placed reliance on observations in cases of **Bajaj Allianz General Insurance Co. Ltd. vs. Smt. Suman Devi and others, 2015 (45) RCR (Civil) 294**, **Reliance General Insurance Co. Ltd. vs. Smt. Mem Wati and others, 2015 (36) RCR (Civil) 717**, and **Ramphal vs. Baljit Singh, 2014 (7) RCR (Civil) 185**.

15. In above referred cases, coordinate Benches of this Court have held that delay in registration of FIR is not a reason to discard the plea of claimants about the accident. In this case there is no such delay in recording the FIR but claimants have not been successful in proving that the offending

vehicle caused the accident.

16. As a sequel of my above discussion, I find no reason to interfere with findings of Tribunal on issue no. 1 and the same are affirmed.

17. This appeal has no merit and the same is dismissed.

April 25, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No