

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

Date of Decision: 10.05.2019

(i) FAO No. 1593 of 2013 (O&M)

Shero Devi and others

.....Appellants

Versus

Parshotam Lal and others

.....Respondents

(ii) FAO No. 7237 of 2013 (O&M)

Surji Devi and others

.....Appellants

Versus

Parshotam Lal and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Lalit Kumar Sharma, Advocate for
Mr. Vivek Chauhan, Advocate
for the appellants.

Mr. Arun Sharma, Advocate
for Mr. T.K. Joshi, Advocate
for insurance company.

AVNEESH JHINGAN, J.(oral)

These two appeals are filed against the award dated 15.4.2010 passed by the Motor Accident Claims Tribunal, Ambala (hereinafter referred to as 'the Tribunal'), dismissing the claim petitions bearing MACT Petition Nos. 52 and 57 of 2008.

The facts emanating from record are that on 13.6.2008 Jarnail Singh and Kartar Singh were going on a motorcycle bearing registration No.HR-07-G-6133. At about 5:30 p.m., when they reached near Segati Mor (turn) near Jansui Head on Ambala-Hissar road, a Mahindra Pick up bearing registration No.HR-37-B-8157 (for short 'the offending vehicle') struck the motorcycle and dragged it to a long distance. The motorcycle was being followed by Ram Nath and another person whose name was also Jarnail

Police Station Naggal on the statement of Ram Nath. Both the riders of motorcycle received grievous injuries and were taken to Civil Hospital, Ambala City by Ram Nath where they succumbed to the injuries. Two separate claim petitions under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') were filed by the legal representatives of Jarnail Singh and Kartar Singh. The claim petitions were dismissed as the Tribunal opined that the offending vehicle was implanted.

Heard learned counsel for the parties and perused the record.

Learned counsel for the appellants argues that Ram Nath Singh who was the eye witness proved the involvement and rash and negligent driving of the offending vehicle. To buttress his argument, he states that in the criminal proceedings the driver of the offending vehicle Parshotam Lal was convicted by Judicial Magistrate Ist Class, Ambala, vide order dated 11.12.2013.

Learned counsel for the insurer argues that the involvement of the vehicle was not proved. The same vehicle was involved in another accident as stated by the Tribunal. There were no damage to the bumper of the Car. He further states that there was variation in the statement made by the photographer with regard to time of accident and when he clicked the photographs.

In the claim petitions under Section 166 of the Act, the onus is on the claimants to prove involvement and rash and negligent driving of the offending vehicle. The onus cast is not as heavy as in the criminal proceedings. It is to be decided on the touchstone of preponderance of probabilities.

The Supreme Court in Parmeshvari v. Amir chand, 2011 AIR

"12. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in ***Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009(3) R.C.R.(Civil) 805 : 2009(4) R.A.J. 408 : 2009(2) AICJ 167 : (2009)13 SCC 530*** are very pertinent :

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

In the present case, the deceased was being followed by Ram Nath and another Jarnail Singh on their motorcycle. FIR was recorded on the statement of Ram Nath. It was Ram Nath who took the injured to the hospital. He deposed before the Tribunal as PW3, and in his deposition he clearly proved the involvement of the offending vehicle and the fact that the motor cycle was hit by the offending vehicle by coming on Kacha portion of the road. The said evidence was not rebutted by the respondents. FIR was recorded and pursuant to that charge-sheet was filed which prima-facie

proved the involvement and rash and negligent driving of the offending vehicle. In the present case apart from filing of the charge sheet, driver of the offending vehicle was convicted in the criminal proceedings. All this proves the involvement and rash and negligent driving of the offending vehicle.

The Tribunal while dismissing the claim petitions was swayed by the fact that another claim petition was filed in which the same offending vehicle was involved. This itself cannot be a ground to ignore the deposition of Ram Nath, an eye witness to the accident. The contention raised by learned counsel for the insurer that there was some contradiction in the statement of the photographer will not be fatal in the proceedings under the Act. Minor variation with regard to time of clicking of photographs will not make deposition of Ram Nath unreliable.

Since in the present case, the onus cast upon claimants was discharged, the findings recorded by the Tribunal with regard to involvement and rash and negligent driving of the offending vehicle cannot be sustained.

Both the matters are remitted back to the Tribunal to decide the issue with regard to quantum of compensation and liability to pay compensation.

Parties are directed to appear before the Tribunal on 17.7.2019.

Disposed of accordingly.

10.05.2019
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes
Yes