

**FAO No. 2992 of 2015 (O&M) and
FAO No. 2231 of 2015 (O&M)**

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO No. 2992 of 2015 (O&M)
Date of decision : 26.11.2019

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Rachhpal Singh

.....Appellant

Versus

Jaswinder Kaur and others

.....Respondents

FAO No. 2231 of 2015 (O&M)
Date of decision : 26.11.2019

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Bhajan Singh

.....Appellant

Versus

Jaswinder Kaur and others

.....Respondents

*** * * * ***

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Dhirinder Chopra, Advocate for the appellant in
FAO No. 2992 of 2015.

Mr. Jagpal Singh, Advocate for the appellant.
In FAO No. 2231 of 2015.

Mr. L.S Lakhanpal, Advocate for respondents no. 1 to 3.

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RITU BAHRI, J.

By way of this common judgment, two appeals bearing *FAO No. 2992 of 2015* titled, '*Rachhpal Singh vs. Jaswinder Kaur and others*' and *FAO No. 2231 of 2015* titled, '*Bhajan Singh versus Jaswinder Kaur and others*' shall be decided as both the appeals involve similar set of facts and circumstances and same question of law arises for determination in both these appeals. For the sake of convenience, facts are being extracted from *FAO No. 2992 of 2015* titled, '*Rachhpal Singh versus Jaswinder Kaur and others*'.

Appellant-Rachhpal Singh, the registered owner of offending car bearing registration No. PB-29F-1685 and appellant-Bhajan Singh, The driver of offending car have filed the present appeals against the award dated 16/12/2014 passed by the Motor Accident Claims Tribunal, Moga (hereinafter referred to as 'the Tribunal'), whereby while allowing a claim petition filed under Section 166 of Motor Vehicles Act, 1988 for grant of compensation on account of death of Pawan Kumar, in a motor vehicle accident which took place on 10/03/2012, appellants-respondents No. 1 and 2 (in the claim petition), were held liable to make payment of the entire compensation amount. Liability of respondents No. 1 and 2 was held to be joint and several.

The Tribunal observed that after registration of FIR No. 25 dated 10/03/2012 under Sections 304-A, 279, 427 IPC, ASI Avnit Singh was appointed as Investigating Officer. He appeared as RW-5 and stated that after registration of FIR, he recorded the statement of the Napinder Singh son of Avtar Singh on 05/05/2012, under Section 161 CR.P.C. The certified copy of statement of Napinder Singh was proved as Ex. R-5. In his

statement, Napinder Singh stated that on 09/03/2012, Bhajan Singh came to him and borrowed his car. He told that his son Jagdeep Singh had to go abroad and he had to drop his son at Amritsar airport. On 11/03/2012, Bhajan Singh came to his shop and told him that while he was coming back from Amritsar airport, in the area of village Lohara, his car met with an accident with a scooter. The scooter driver died at the spot. He further told that he left the car at the spot and ran away. He was searching for a respectable person who could produce him before the police. Further as per the recovery memo Mark-A Bhajan Singh had surrendered before the police. He had produced registration certificate of the car No. PB-29F-1685 which was in the name of Rachhpal Singh son of Harnam Singh. He surrendered his driving license No. 3998 which was verified from the DTO office. The driving license was valid up to 12/05/2015. Both the registration certificate and driving licence were taken into police possession. The driving licence was taken back from the Court by Bhajan Singh on the basis of order dated 18/10/2014 which is Mark C.

The Tribunal further observed that the offending car No. PB-29F-1685 was not insured at the time of accident. Bhajan Singh while appearing as RW-1, in his cross examination admitted that he had no enmity with the police and he never filed any complaint with the police that he had been falsely implicated in this case. The Tribunal decided the identity of driver as that of respondent no.1-Bhajan Singh. Rachhpal Singh stated that he sold the car to Harbhajan Singh. Harbhajan Singh sold the car to Jatinder Pal Singh and Jatinder Pal Singh sold the car to Napinder Singh. However, as per the registration certificate, the offending car stood in the name of Rachhpal Singh. Thus, as such, the Tribunal held that Rachhpal Singh was

the actual owner of the car at the time of the accident. Keeping in view the recovery memo and statement of Napinder Singh recorded under Section 161 CR.P.C, and moreover according to the facts as Bhajan Singh had surrendered before the police and gave his driving license and RC of the vehicle, even if the driver Bhajan Singh was acquitted by the criminal court, the finding of negligence under the Motor Vehicles Act has been rightly given in favour of the claimants.

Learned counsel for the appellant has raised following two questions while challenging the award dated 16.12.2014.

1. That before the criminal Court, the driver has since been acquitted as both the eye-witnesses had turned hostile.
2. With regard to negligence, there was no clear evidence before the MACT and the finding on issue No. 1 was wrongly returned.

He has referred judgments passed by Supreme Court in ***Surender Kumar Arora and another V/s. Dr. Manoj Bisla and others 2012(6)ALL MR 471, Kamlesh and others V/s. Attar Singh and others, 2016(1)R.C.R. (Civil) 24*** and further referred judgments passed by this Court in ***Kamal Kant V/s. Balwant Rai and others*** and ***Dhanna Singh V/s. Sonia and others, FAO No. 1009 of 2012.***

Learned counsel appearing for respondents No. 1 to 3, in the present appeals, has referred judgments passed by Supreme Court in ***Sunita and others V/s. Rajasthan State Road Transport Corporation and another 2019(2) R.C.R. (Civil) 209, Kusum Lata and others V/s. Satbir and others 2011(3) SCC 646*** and further referred judgment passed by this Court in ***The Oriental Insurance Company Limited V/s. Rajiya and others, 2019(4)***

RCR (Civil) 335.

In the judgment referred to by the counsel for the appellant in the case of ***Surender Kumr Arora and another vs. Dr. Manoj Bisla and others 2012 (6) ALL MR 471***, the petition was filed by the parents of the deceased under Section 166 and not under Section 163A. Since the entire responsibility of proving act of rash and negligent driving by driver of the offending vehicle was on claimants and as the same was not done by inducing cogent evidence, it was held by Hon'ble the Supreme Court that the courts below were justified in rejecting the claim petition. This case will not be of any help to the appellants in the present case, as the facts and circumstances involved in that case are entirely different than the present one.

Reference was made to another case in ***Kamlesh and others versus Attar Singh and others 2016 (1) RCR (Civil) 24***. In this case there was an head-on collision between car and tempo resulting in death of a person who was travelling in Tempo. Evidence showed that it was a case of composite negligence and the police registered FIR against the driver of the tempo. Claims tribunal determined compensation of Rs. 5,81,000. It was held that it would be open to the claimants to recover the entire amount from owner, driver and insurer of the driver of tempo as their liabilities were held to be joint and several with respect to the claimants. It was not a case where identity of the driver was in dispute. In this case negligence had been proved. This case also will not be of any help to the appellants in the present case.

In a case referred by counsel for respondents no. 1 to 3, ***Sunita and others vs. Rajasthan State Road Transport Corporation and another***

2019(2) RCR (Civil) 209, in paragraph 31, Hon'ble the Supreme Court observed as under:

31. Similarly, the issue of non-examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some “best” eye witness in the case but to analyze the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in Dulcina Fernandes (supra), faced a similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the

parties involved in the accident.

In the present case, after registration of the FIR, the Investigating Officer, Avnit Singh carried out the investigation and as per the Statement of Napinder Singh R-4 recorded under Section 161 Cr.P.C, it was clarified that he had given the car to Bhajan Singh. The Tribunal observed that as per the statement of Rachhpal Singh in the year 2006, he sold the car to Harbhjan Singh. Harbjajan Singh sold the car to Jatinder Pal Singh and Jatinder Pal Singh sold the car to Napinder Singh. However, since the registration certificate of the offending car stood in the name of Rachhpal Singh, he was held to be the owner of the vehicle in question by the Tribunal. This observation was made as per the ratio laid down in a judgment of this Court in the case of Naveen Kumar vs. Vijay Kumar and others^{2018 (2) RCR (Civil) 74}, wherein registered owner purported to transfer vehicle but continued to be reflected in records of registering authority as owner, it was held that he would not stand absolved of liability. It was observed that principle underlying provision is that victim of motor accident should not be left in a state of uncertainty. Claimant for compensation ought not to be burdened with following trail of successive transfers which are not registered with registering authority. Thus, following the ratio of law laid down by judgment in the case of Naveen Kumar's case (Supra) Rachhpal Singh was held to be the actual owner of the car at the time of the accident. It was held that Rachhpal Singh may claim that he sold the car but unless name of the purchaser was entered in the registration certificate, the latter could not be declared owner of the car.

In view of all that has been discussed above, there is no infirmity or illegality in the award passed by the Tribunal. Liability of the

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appellants-respondents no. 1 & 2 (in the claim petition) to make the payment of the entire compensation was rightly held to be joint and several. Hence, the present appeals are dismissed.

26.11.2019
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No