

216(1/2)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. FAO No.6869 of 2016
Date of Decision: 15.01.2019

Raghubir Singh @ Sabhi
Appellant
Versus

Raj Rani and others
Respondents

2. FAO No.676 of 2017

Raghubir Singh @ Sabhi
Appellant
Versus

Charanjit Kaur and others
Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Bhanu Pratap Singh, Advocate
for the appellant
[in FAO No.6869 of 2016 & FAO No.676 of 2017].

Mr. N.S. Gill, Advocate for
Mr. Munish Gupta, Advocate
for respondents No.1 to 3 [in FAO No.6869 of 2016].

None for respondents [in FAO No.676 of 2017].

AVNEESH JHINGAN, J (Oral):

The owner-cum-driver of Tractor Trolley bearing
registration No. PB-07AC-2139 [hereinafter referred to as 'offending
vehicle'] has assailed the awards dated 24.05.2016 passed by the
Motor Accident Claims Tribunal, Hoshiarpur [for brevity 'the Tribunal']

in MACT Case No.45 and 46 of 2014 by filing two appeals. The grievances raised in both the appeals are that the offending vehicle was not involved in the accident and the appellant has been wrongly held liable to pay the compensation. Since both the appeals arise from the same accident and common facts are involved, these are being disposed of by a common order.

The facts emanating from the record are that on 05.11.2014, Raman Kumar (deceased) alongwith Davinder Singh was returning from Hoshiarpur, on motorcycle bearing registration No. PB-07AE-5176, after meeting his sister, who was admitted in Civil Hospital, Hoshiarpur. Raman Kumar was driving the motorcycle. At about 07:00 P.M., when he reached near village Bure Jattan, the motorcycle was hit by a rashly and negligently driven offending vehicle. The offending vehicle was being driven by Raghbir Singh whereas Lakhwinder Singh was sitting on the mud-guard of the offending vehicle. As a result of the impact, both Raman Kumar and Davinder Singh sustained grievous injuries and died at the spot. Even Lakhwinder Singh, who was sitting on the mud-guard of the offending vehicle sustained injuries. FIR No.129, dated 05.11.2014 was registered on the statement of Harjinder Singh, brother of Davinder Singh.

Two claim petitions were filed by the legal heirs of Raman Kumar and Davinder Singh under Section 166 of the Motor Vehicles Act, 1988 [for brevity 'the Act']. The Tribunal after considering the

facts and appreciating the evidence adduced held that the accident was caused due to the rash and negligent driving of the offending vehicle. The Tribunal awarded compensation in both the claim petitions to the legal heirs of both the deceased. The owner-cum-driver of the offending vehicle was held liable to pay the compensation. Being aggrieved of the liability to pay the compensation, the owner-cum-driver has filed the present appeals.

Heard learned counsel for the parties, perused the paper book and the record.

Learned counsel for the appellant contends that the Tribunal erred in holding that the accident was caused due to the rash and negligent driving of the offending vehicle. There was no admission by Lakhwinder Singh in his cross-examination to the effect that he sustained injuries in an accident involving the offending vehicle. He further contends that the FIR was registered against an unknown vehicle, yet claim petitions were instituted against the offending vehicle. He further relies upon the fact that eye-witness Joginder Singh has referred the offending vehicle as '*gaddi*' and not as 'Trolley' in his cross examination. His grievance is that claimants failed to prove involvement of the offending vehicle as well as the fact that the accident took place due to the rash and negligent driving of the offending vehicle and the Tribunal erred in holding that the offending vehicle was the Tractor.

Learned counsel for the respondents argues that

Joginder singh was eye-witness to the accident and with his deposition, involvement as well as the rash & negligent driving of the offending vehicle was proved.

The claim petitions were filed under Section 166 of the Act. The twin conditions required to be proved by the claimants to succeed under Section 166 of the Act are :-

- (i) *involvement of the offending vehicle; and*
- (ii) *the accident was caused due to the rash & negligent driving of the offending vehicle.*

The law is well settled that the burden to prove in the proceedings under the Act is not as strict as in the criminal proceedings. The matter is to be decided on principles of probabilities. Reliance in this regard is placed on the decision of the Supreme Court in case of **Parmeshwari Vs. Amir Chand and others, 2011 AIR (SC) 1504**, wherein, it was held as under:

*“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 Vs. Himachal Road Transport Corporation and others [(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."

Before dealing with the facts of the present case, it would be pertinent to mention here that learned counsel for the appellant was not able to dispute the following facts:-

- (i) *that he is owner of the offending vehicle as well as Esteem Car, which finds mention in the evidence;*
- (ii) *that Lakhwinder Singh and the appellant are well known to each other and belong to the same village;*
- (iii) *that the claimants in both the cases were not known to the appellant and belong to different village; and*
- (iv) *that even the eye-witness Joginder Singh was also from different village than that of the appellant and was not known to the appellant.*

In the present case, there is an eye-witness to the accident i.e. Joginder Singh who deposed as AW-2 before the Tribunal. He belong to village Babak, Police Station Tanda, District Hoshiarpur. In his affidavit filed, he has given a detailed description of occurrence of the accident to the effect that the deceased's motorcycle was struck by a rashly and negligently driven offending vehicle and Lakhwinder Singh was sitting on the mud-guard of the offending vehicle. He was cross-examined. He withstood the cross-

examination. The only issue raised by learned counsel for the appellant is that the eye-witness referred the offending vehicle as '*gaddi*'. The said reference to the offending vehicle as '*gaddi*' is just a loose usage of the term and it nowhere affects the credibility of the evidence of the eye-witness. At this stage, it would be important to mention that he states in his deposition that he took the two dead bodies to the hospital. On the other hand, the appellant has not produced any evidence to rebut the fact that Joginder Singh was not an eye-witness. Moreover, once it is proved that he was not from appellant's village, there was no occasion for him to give the registration number of offending vehicle owned by the appellant without noting it from the spot of accident.

The reliance of the appellant on deposition of Lakhwinder Singh who stated that the accident was caused by an unknown Car which first hit the motorcycle of the deceased about 100-150 meters ahead of him, does not inspire confidence. It is not disputed by the appellant that Lakhwinder Singh is known to the appellant and he belongs to the same village. The accident took place at about 07:00-07:30 p.m. in the month of November and as per statement of Lakhwinder Singh, he was 100-150 meters away from the spot where the deceased was hit, yet at that time he could see the unknown car clearly and thereafter that unknown vehicle hit him.

There is another aspect to the fact that at that time the appellant passed from the spot and only took Lakhwinder Singh to

the hospital. No doubt, in his cross-examination, Lakhwinder Singh has only stated that he received injuries in the accident. He nowhere stated that he received injuries in the accident involving the offending vehicle. The reasoning given by the Tribunal for deciding the issue of liability against the appellant by stating that Lakhwinder Singh admitted involvement of the offending vehicle cannot be sustained, but the fact remains that the deposition of Lakwhinder Singh alone cannot be relied upon to brush aside the deposition of eye-witness who has detailed the occurrence of accident in his deposition and stated that Lakhwinder Singh was sitting on the mud-guard of the offending vehicle.

From the perusal of the affidavit of Lakhwinder Singh, it is forthcoming that it has been drafted in such a manner that nothing has been mentioned as to how Lakhwinder Singh was travelling at the time of accident when he was returning from Hoshiarpur to village Mundian Jattan. The said fact has been intentionally withheld to support the story of the appellant. The reliance on fact that FIR was registered against unknown vehicle does not enhance case of the appellant, as it is evident from the reading of FIR itself that Harjinder Singh was not present on the spot of the accident. He received a telephonic message that his brother has lost his life in a road-side accident, on said basis, FIR was registered. The non mentioning of registration number of offending vehicle does not affect the finding recorded by the Tribunal that the offending vehicle

was involved in the accident and the accident was caused due to the rash and negligent driving of the offending vehicle.

The findings recorded by the Tribunal holding that the appellant is liable to pay the compensation are upheld and for the reasons mentioned hereinabove, both the appeals are dismissed.

January 15th, 2019

pankaj baweja

[AVNEESH JHINGAN]
JUDGE

1. Whether speaking/reasoned

:

Yes/ No
2. Whether reportable

:

Yes/ No