

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

FAO-400-2010(O&M)

Date of decision:-8.1.2019

Smt.Shikha Batra and others

...Appellants

Versus

Shyam Beer and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Yogesh Goyal, Advocate
for the appellants.

Mr.Ravinder Arora, Advocate
for the respondent No.3 – Insurance Company.

H.S. MADAAN, J.

CM-11291-CII-2016

This is an application for fixing the case for actual date of hearing.

With the consent of the parties, let the main appeal be heard today itself.

CM-25779-CII-2016

Heard.

Application is allowed, as prayed for and Annexure A-1 is taken on record, subject to all just exceptions.

FAO-400-2010(O&M)

Petitioners – Smt.Shikha Batra – wife, Masters Vaibhav and

Anupam – minor sons and Sh.Ram Kishan Shahi – father of Sh.Vijender Batra, an unfortunate victim of a road side accident, had brought a claim petition under Section 166 of the Motor Vehicles Act, 1988 against respondents i.e. Shyam Beer – driver, Avtar Singh – owner, The New India Insurance Company Ltd. – insurer of truck bearing registration No.RJ-02G-4715 (hereinafter referred to as the offending truck) claiming compensation to the tune of Rs.30 lacs on account of death of Vijender Batra in a mishap involving the offending truck.

According to the claimants, on 23.4.2004, Sh.Vijender Batra and Sh.Rakesh Jain were travelling in car No.HR-35D-0082 going from Gwalior to Sonapat; that the car was being driven by Sh.Rakesh Jain at a normal speed using proper care and caution; when the car reached near village Dholgarh, Police Station City, Palwal, Faridabad and the time was about 6:30 a.m., the offending truck hit the car in question, resultantly the car was pushed away towards road side ditches and struck against a tree; that both the occupants of the car died at the spot. According to the petitioners/claimants, the accident had taken place due to rash and negligent driving of the offending truck by respondent No.1 – Shyam Beer. The matter was reported to the police and an FIR No.353 dated 23.4.2004 for the offences under Sections 279 and 304-A IPC was registered at Police Station City, Palwal. According to the petitioners, Sh.Vijender Batra, who perished in the accident was aged about 44 years and was earning Rs.15,000/- per month while working as a Director in a private limited distillery and in addition to that working as 'A' class contractor and that the petitioners/claimants were dependent upon

earnings of the deceased.

It may be mentioned here that legal heirs of Sh.Rakesh Jain, the other deceased had also brought a claim petition titled 'Smt.Anita Jain and others Versus Shyam Beer and others' having No.60 of 12.5.2005. Both the petitions were tried together having arisen out of the same accident.

Notice of the claim petitions was given to respondents. Respondents No.1 and 2 did not appear despite service, as such were proceeded against ex parte on 6.6.2006.

Respondent No.3 had put in appearance offering a contest taking up a stand that no accident as alleged had taken place involving the offending truck and this truck as well as respondent No.1 have been falsely involved in the criminal case in connivance with the local police and a wrong claim petitions in that regard have been filed; that the accident had taken place due to fault of the car driver; that the car was not road-worthy; that the tyre of the car had burst, resultantly it hit against a tree; that the claimants were not dependent upon earnings of the deceased. According to the answering respondent, offending truck was insured with it for the period from 27.5.2003 to 26.5.2004. An objection was taken that the truck driver was not holding a valid and effective driving licence at the time of the accident. In the end, the insurance company prayed for dismissal of the claim petition.

On the pleadings of the parties, following issues were framed:-

1. Whether deceased Vijender Batra and Rakesh Jain died in a motor

vehicular accident, which took place due to rash and negligent driving of truck No.RJ-2G-4715 by respondent No.1, owned by respondent No.2 and insured with respondent No.3, as alleged? OPP.

2. If issue No.1 is proved, whether the petitioners are entitled to compensation, if so, how much and from whom? OPP.
3. Whether respondent No.1 was not holding a valid and effective driving licence at the time of accident, if so, its effect? OPR-3.
4. Relief.

Both the parties led evidence in support of their respective claims.

After hearing arguments, the Tribunal decided issues No.1 and 2 against the claimants, issue No.3 against respondent No.3, resultantly dismissed the claim petitions.

This award left the petitioners/claimants Smt.Shikha Batra and others in MAV Petition No.20 of 2005 aggrieved and they have preferred an appeal against the said award, notice of which was given to respondents. Only respondent No.3 had appeared to offer a contest.

I have heard learned counsel for the parties besides going through the record and I find that the impugned award is not sustainable and is liable to be set aside.

The findings of the Tribunal on issue No.1 are obviously erroneous based upon wrong interpretation of law and misappraisal of evidence. Learned Tribunal proceeded to decide the issue as if it was dealing with a criminal case and not a petition for compensation under

Section 166 of the Motor Vehicles Act. The standard of proof in a criminal case is very strict since life and liberty of a person is involved, as such the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt and as per principles of criminal jurisprudence prevalent in our country, hundreds of guilty persons may go scot-free but even one innocent should not be punished. While dealing with cases of civil nature, the yardstick to be used is preponderance of probabilities.

Furthermore, Section 166 of the Motor Vehicles Act is a piece of welfare legislation. It was enacted to provide prompt compensation to persons, who sustained injury or owner of the property damaged or to legal representatives of person, who gets killed in a road side accident. Hyper technical approach is not to be adopted while adjudicating such type of petitions. The Tribunal in this case has obviously done so, which has resulted in miscarriage of justice. The claimants had successfully proved that respondent No.1 was author of the accident by his rash and negligent driving of the offending truck, as a result of which Vijender Batra and Rakesh Jain had lost their lives. The claimants had adduced oral as well as documentary evidence in that regard. The oral evidence comprised statement on oath of PW4 Satbir Singh – complainant in the criminal case, PW5 Ashok Kumar, an eye-witness and PW3 Tejpal Singh, Ahlmad in the Court of Sub Divisional Judicial Magistrate, Palwal. An FIR No.353 dated 23.4.2004 for the offences under Sections 279 and 304-A IPC was registered at Police Station City, Palwal and as is clear from the testimony of PW3 Tejpal

Singh, Ahlmad in the Court of SDJM, Palwal, Shyam Beer – respondent No.1 had been sent up to face trial for the offences under Sections 279 and 304-A IPC. The registration of FIR *prima facie* goes to show the rashness and negligence on the part of the driver of the offending truck, though registration of FIR by itself does not establish the rashness and negligence conclusively. PW4 Satbir Singh – complainant in the criminal case though denied having seen the accident or lodging the report with the police stating that his name has been recorded by the police as complainant but then there was a possibility of this witness having been won over by the accused – truck driver and for the said reason he denied having seen the accident or lodging the report with the police. There is nothing on record that the claimants were so influential that they could make the police register a wrong FIR citing a person as an eye-witness, who as a matter of fact had not seen the accident. The signatures/thumb impressions of a person, who sets the criminal machinery into motion regarding commission of a cognizable offence are obtained by the police. How the particulars of Satbir Singh came to be known to the police officer and how his signatures appear on the FIR has not been explained satisfactorily by PW4 Satbir Singh.

Learned counsel for the appellants/claimants has placed on file copy of statement of Satbir Singh recorded by the Tribunal as PW4. In his examination-in-chief, he had stated as under:

“On 23.5.2004 again and said on 23.4.2004 at about 7/7:15 a.m. I came out of my house for Railway Station, for going to my duties at Faridabad. When I reached on G.T. Road

towards Mathura to Delhi side, there I saw that a police vehicle was there and an accident has already been taken place. Some other persons were also present there. I heard on spot that a tanker had hit the car and caused the accident. Car was in ditch by the side of the road in the trees. Two persons were in the car and were died. Police was enquired from me that I am local resident or not. They told me that they had conducted spot inspection and I was asked to sign the police papers. I signed two papers which were blank. I had not seen the accident nor I lodged the report with the police. My name has been falsely recorded by the police as complainant. Certified copy of FIR is Ex.P8, which was not recorded on my statement.

A perusal of his statement goes to show that he had hostile tendencies and plea of his signatures having been obtained by police on blank papers does not inspire confidence. From his statement, it can be made out that the car was lying in ditches of the road side and two occupants of the car had died due to the accident. Now the question is can an eye-witness of an accident, who turns hostile hold the system to dictate the terms to the Court/Tribunal, the answer has to be in negative. The Court/Tribunal is to scrutinize the statement of such a witness in light of the facts and circumstances of the case and then to separate truth from the falsehood. Therefore, statement of this witness though is not fully supportive of case of claimants but it does lend support to their case on several material points. The Tribunal was obviously wrong in observing

that evidence of Satbir Singh is of no help to the claimants as mentioned in para No.13 of the Award. The claimants had examined another witness of the accident namely PW5 Ashok Kumar, who had supported their case on material aspects. His testimony was rejected by the Tribunal for unconvincing reasons. Merely for the reason that Ashok Kumar was not cited as an eye-witness in the FIR was no reason to discard his deposition. The whole approach of the Tribunal in finding reasons to disbelieve his deposition to say the least has been wrong and uncalled for. The evidence adduced by the claimants had gone unrebutted. The respondent No.1 – driver of the offending truck had not dared to put in appearance before the Tribunal and to deny that he was at fault in happening of the accident. Similarly, respondent No.2 – owner of the truck had not come forward to state that the truck belonging to him had not caused the accident. There is no statement of respondent No.1 in rebuttal denying the accident or stating that he had not caused the same by his rash and negligent driving. This issue ought to have been decided in favour of the claimants and against respondents but was wrongly decided against the claimants, ultimately leading to dismissal of the claim petition. Finding on issue No.1 is not maintainable and is reversed deciding it in favour of the claimants and against the respondents. The Tribunal had not given any specific finding on issue No.2 and had simply skipped it stating that since issue No.1 is not proved, it has to be necessarily held that the claimants are not entitled to compensation. The detailed finding in that regard ought to have been given. The Award passed is not legally sustainable and is bound to be set aside by way of acceptance of the appeal.

Accordingly, the appeal is accepted. The Award under appeal is set aside and the case is remanded to the Tribunal with a direction to decide the claim petition afresh after hearing learned counsel for the parties. The claimants and respondent No.3 have already led evidence with respondents No.1 and 2 being ex parte. The Tribunal would fix a short date for arguments and then proceed to decide the case within one month from the date of receipt of copy of this order. The parties through their counsel are directed to appear before the Tribunal on 25.1.2019.

Since the record of this case is reported to have been burnt in a fire incident, the Tribunal may proceed to decide the case on the basis of record available before it.

8.1.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No