

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-2872-2020 (O&M)

Date of Decision: 23.08.2021

The New India Assurance Company Limited

....Appellant

VS

Meenakshi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rajesh Kumar Sharma, Advocate
for the appellant

Mr. M.S. Rana, Advocate
for respondents No.1 to 4

Mr. Arun Luthra, Advocate
for respondents No.5 and 6

SUDHIR MITTAL, J.

A motorcycle accident took place on 08.08.2018 in the area of Gohana-Rohtak Highway. The motorcycle, being driven by Sunil son of Suresh collided with a Tractor-trolley resulting in his death. One Manoj son of Jagdish was also riding the motorcycle. He also lost his life and two separate claim petitions were preferred. The claim petition filed on account of death of Manoj son of Jagdish, has already been decided and no appeal has been filed against the award in the said case. The claim petition on account of death of Sunil son of Suresh has been decided by the instant Award dated 18.02.2020 and total compensation of Rs.17,83,600/- has been awarded payable with interest at the rate of 6 % per annum from the date of the petition till payment.

The present appeal has been preferred by the Insurance company. The only point raised and argued on its behalf is that rash and negligent driving by the driver of the tractor-trolley was not proved by the claimants and, thus, the Tribunal was in error in awarding compensation. In support of his case, learned counsel for

the appellant has placed reliance upon Oriental Insurance Company Limited vs. Meena Variyal and others, 2007 (2) RCR (Civil) 698 and Ram Karan vs. Zile Singh, 2001 (3) RCR (Civil) 582.

Learned counsel for respondents No.1 to 4 (claimants) has resisted the appeal by arguing that the issue regarding rash and negligent driving is to be proved on the basis of the evidence on record, examined on the touch-stone of preponderance of probabilities. Applying this standard of proof, the Tribunal has correctly held that the driver of the tractor-trolley was guilty of rash and negligent driving and, thus, the Award does not deserve to be interfered with. Learned counsel has placed reliance upon Sunita and others vs. Rajasthan State Road Transport Corporation and another, 2019 (2) RCR (Civil) 209 and Anita Sharma and others vs. The New India Assurance Company Limited and another, 2021 (1) RCR (Civil) 200 as well as United India Insurance Company Limited vs. Hardeep Kaur and others, 2020 (1) RCR (Civil) 491.

Learned counsel for respondents No.5 and 6 (driver and owner of the vehicle) has supported the claimants.

The learned Tribunal has found the driver of the tractor-trolley guilty of rash and negligent driving by observing as follows:-

“17. In the case in hand, FIR (Ex. P4) was lodged by HC Sonu, who in the FIR stated that while he was on duty to protect Kawarias, Respondent No.1 who was driving the tractor-trolley applied the brakes of the tractor all of a sudden. As a result of this, the motorcycle of the deceased rammed into the tractor-trolley which resulted in to the death of Manoj and Sunil. Further as per FIR HC Sonu, who was on duty shifted the deceased to the hospital, where they died. It is the duty of every police official to report about the commission of offence. I am of the considered view that there is no force in the contention of counsel for insurance company that since no eye-witness has been examined, the case should be dismissed. In the case in hand,

the FIR was lodged by HC Sonu. The statement of a police official, who was acting in discharge of his official duty is a good piece of evidence. There is no doubt in my mind that the accident took place in the manner reported by HC Sonu in the FIR. Moreover, the deceased were shifted to PGIMS, Rohtak by HC Sonu. Considering the totality of the circumstances, I am of the considered view that the deceased died on account of the injuries suffered by them in the accident. Accordingly, I find this issue in favour of the Claimants.”

From the above paragraph, it is evident that Head Constable Sonu was on duty to protect *Kawarias* in the area of Gohana-Rohtak Highway. He saw the tractor-trolley being followed by the motorcycle on which the deceased persons were riding. The driver of the tractor-trolley suddenly applied brakes resulting in the accident leading to death of the riders. He then shifted the deceased to the hospital and got lodged FIR Exhibit P-4.

Thus, the only evidence on record regarding rash and negligent driving is the FIR Exhibit P-4, the contents of which are indicated in the aforementioned paragraph of the Award. The question thus is whether the Tribunal was justified in concluding that the driver of the offending tractor-trolley acted rashly and negligently?

In the case of *Sunita (supra)*, the Supreme Court was considering a case where a motorcycle was involved in a collision with a bus and the driver of the motorcycle lost his life. However, the pillion survived but was not examined by the claimants. The Supreme Court held as follows:-

"25. The Tribunal's reliance upon FIR 247/2011 (Exh. 1) and charge-sheet (Exh. 2) also cannot be faulted as these documents indicate the complicity of respondent No.2. The FIR and charge-sheet, coupled with the other evidence on record, inarguably establishes the occurrence of the fatal accident and also point towards the negligence of the respondent No.2 in causing the said accident.

Even if the final outcome of the criminal proceedings against respondent No.2 is unknown, the same would make no difference atleast for the purposes of deciding the claim petition under the Act. This Court in Mangla Ram (supra), noted that the nature of proof required to establish culpability under criminal law is far higher than the standard required under the law of torts to create liability.

xx xx xx xx xx xx xx

*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 analyse 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."*

The principle that accident claims have to be decided on the basis of preponderance of probabilities has been reiterated in Anita Sharma (supra) as follows:-

"22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt.

*One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in **Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646**, wherein this Court reiterated that:*

*“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (**Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101]**)”.*

In view of the above law, it is evident that while deciding the issue of rashness and negligence, the Tribunal is required to evaluate the evidence on record by following the principle of preponderance of probabilities. It is not required to pick-holes in the evidence produced. The Tribunal has relied upon the FIR Exhibit P-4 got registered by a Police official acting in the discharge of his official duty. The said Police official had no axe to grind in this case. He was deployed on duty to protect *Kawarias* when he witnessed the death of the motorcycle riders, who were *Kawarias*. He faithfully disclosed the incident in the FIR and there is no reason to disbelieve the contents of the FIR.

There is no dispute with the proposition that rashness and negligence on the part of the driver is to be proved by the claimants and to this extent counsel for the appellant is justified in relying upon Meena Variyal (*supra*). This, however, does not conclude the case in favour of the appellant as the claimants have succeeded in proving rashness and negligence of the driver of the offending

vehicle. Reliance on Ram Karan (supra) is misconceived as the finding of a Single Judge of this Court in the said judgment that framing of a criminal charge is not sufficient to prove negligence is contrary to the Supreme Court Judgment in Sunita (supra).

It may also be noted that no appeal has been filed against the award passed in the claim filed on account of death of Manoj son of Jagdish. The said claim petition was also filed under Section 166 of the Motor Vehicles Act, 1988. The appellant has not challenged the finding of rash and negligent driving in that case and having accepted the finding, is estopped by its own conduct from challenging the same in this appeal.

In view of the above reasons, the appeal has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

23.08.2021
Poonam Negi

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No