

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4467-2008(O&M)
Date of Order: 22.09.2021

UMA JAIN AND ORS.

..Appellants

Versus

SANDEEP AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANILKSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Nitin Jain, Advocate
for the appellants.

Mr. J.S. Malik, Advocate
for respondent No.1 and 2.

Mr. D.K. Dogra, Advocate
for respondent No.3.

ANIL KSHETARPAL, J.

The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

Through this appeal, the claimants pray for setting aside the award passed by Motor Accident Claims Tribunal, Panipat (hereinafter referred to as “the Tribunal”) while dismissing the claim petition filed under Section 166 and 140 of the Motor Vehicles Act, 1988. The Tribunal has held that the claimants have failed to prove that the accident in question took place in the manner as suggested by the claimants that is due to rash and negligent driving of motorcycle bearing registration No.HR-60-7277.

The accident in question took place on 23.05.2005, at about 06:30 p.m. in which late Sh. Deepak Jain son of Sh. Prem Chand Jain lost his precious life. As per the statement of Om Prakash Jain, he witnessed the

accident. He is the first informant and author of the FIR. As per his statement, when he reached in front of *Gaushala* on G.T. Road, Panipat, he saw that a motorcycle had hit a scooter and due to the aforesaid reason, both of them i.e. scooterist and motorcyclist fell down and suffered injuries. Sh. Om Prakash Jain stopped his car and when he reached near the injured, he found out that his uncle's son Deepak Jain is lying unconscious. The blood was oozing out of his head and nearby Sandeep along with the motorcycle bearing registration No.HR-06-4910, was also lying on the ground in a unconscious condition. With the help of the public, he moved both the injured to Sardana Hospital where the doctor refused to give both of them any treatment and as a consequence, both of them were taken to the Civil Hospital, Panipat. Where Sh. Deepak Jain was declared brought dead, by the doctor at the Civil Hospital, whereas, Sandeep was admitted for treatment.

On the statement of Sh. Om Prakash Jain, an FIR was registered against Sandeep. On a careful perusal of the statement of Sh. Om Prakash Jain, it is evident that he signed the statement and the Investigating Officer recorded the aforesaid statement at 10:45 p.m. at the place of the accident. Subsequently, in the final report, the Police changed its stand and submitted final report alleging that a motorcycle bearing registration No.HR-60-7277 was involved in the aforesaid accident. The Tribunal after appreciating the evidence of Om Prakash Jain and Assistant Sub-Inspector Ashok Kumar held that motorcycle bearing registration No.HR-60-7277 has been transposed by the Police in collusion with the claimants.

It is important to note that the original record and the paper book of the appeal were burnt in an unforeseen fire accident. Hence, with the able assistance of the counsels, the paper book and the record has been

generated again. Learned counsels have provided the photocopy of the aforesaid record.

The learned Senior counsel appearing for the claimants contends that once respondent No.1 and 2 while filing joint written statement, admitted that the driver was driving a motorcycle bearing the registration No.HR-60-7277, there was no occasion for the Court to dismiss the claim petition. He further submitted that Om Prakash Jain has deposed in the Court that Sandeep while rashly and negligently driving the motorcycle bearing registration No.HR-60-7277, had caused the accident, therefore, the Court erred in failing to believe the case of the claimants. He further submitted that the Insurance Company had only evasively denied the involvement of motorcycle bearing registration No.HR-60-7277. Learned counsel while referring to the deposition of Sandeep contends that Sandeep does not claim that he was driving motorcycle bearing registration No.HR-06-4910 at the time of accident. While relying upon the judgment passed by the Supreme Court in **Sunita and others Vs. Rajasthan State Road Transport Corporation and others (2020) 13 SCC 486**, the learned counsel appearing for the claimants contends that nature of proof required to establish culpability under criminal law cannot be applied before the Tribunal. He submit that in a claim petition, the claimants are required to prove their case on the touchstone of preponderance of the evidence. While relying upon the judgment passed in **National Insurance Company Limited Vs. Gurbachan Singh and others 2007(5) RCR (Civil) 660**, learned counsel contends that the claim petition cannot be dismissed only because wrong registration number has been recorded in the FIR.

Heard the learned counsel representing the parties and with

their able assistance perused the paper book and the record.

On careful perusal of the signed statement of Sh. Om Prakash Jain, it is evident that he has specifically stated that Sandeep while driving motorcycle bearing registration No.HR-06-4910, has caused the accident and he along with his motorcycle is lying on the ground. This statement was given by Sh. Om Prakash Jain at 10:45 p.m. at the place of accident. In the Police proceeding, the Investigating Officer Ashok Kumar has written that Sh. Om Prakash Jain has got recorded his statement which has been read over and explained and after admitting its correctness, he has signed the same. The signatures of Ashok Kumar are also at 10:45 p.m. on 23.05.2005. On the basis of the aforesaid statement, the FIR was registered. At that time, there was no dispute of the fact that motorcycle bearing registration No.HR-06-4910, was parked at the spot along with the scooter driven by the deceased late Sh. Deepak Jain. However, the Police vide a recovery memo dated 21.06.2005, has tried to prove that motorcycle bearing registration No.HR-60-7277, had caused the accident which occurred on 23.05.2005. The aforesaid recovery memo is on the statement of Sandeep. The motorcycle bearing registration No.HR-60-7277 is owned by Sandeep's grand-father. From the perusal of the final report prepared by the Police, it becomes clear that no reason has been recorded as to how a different motorcycle has been sought to be implicated in the accident.

On a careful reading of the statement of the Om Prakash Jain, it becomes clear that he admits that in his presence the Police came from the Police Post, HUDA Chowki, Panipat at the place of accident. He further stated that the Police recorded his statement at the place of the accident. However, after one sentence he changed his stand and stated that his

statement was probably recorded at the Police Post. He admits that he had noted down registration number of the vehicle and while getting the FIR registered he gave the vehicle numbers to the Police. He further admits that the motorcycle as well as scooter were lying at the spot when the Police came there and he had signed his statement after going through the same. He further stated that the Police had taken into possession both the vehicles i.e. Motorcycle and scooter. Similarly, Ashok Kumar, Assistant Sub-Inspector appeared as RW-2 and stated that when he reached at the place of accident at 10:45 p.m. on 23.05.2005, the scooter was lying but no motorcycle or any truck was available at the spot of the accident. He stated that in the investigation it was found that the motorcycle bearing registration No.HR-06-4910 was not involved in the accident and that motorcycle bearing registration No.HR-60-7277 was associated with the accident. Thus, there is a clear effort by the Police to change the motorcycle involved in the accident. There can be an error with regard to the one digit, however, in the present case, the entire registration number has been replaced. There is no similarity between registration No.HR-06-4910 and HR-60-7277.

Despite a pointed question from the Bench, learned Senior counsel representing the appellants failed to draw the attention of the Court towards the evidence to prove that motorcycle bearing registration plate No.HR-60-7277 suffered any damage in the alleged accident. Additionally, the claimants have not led any evidence to prove that Sandeep was admitted in the Civil Hospital at the same time along with late Sh. Deepak Jain.

The deposition of Om Prakash Jain does not inspire confidence.

Similarly, no reason is on the horizon as to why the motorcycle bearing

registration No.HR-60-7277 was taken into the possession by the Police after a period of 29 days particularly when it has come in evidence that Sandeep was discharged from the Hospital after a few days. Moreover, on a careful reading of the final report submitted by the Police, it becomes crystal clear that the Police failed to record any reason for transposing the motorcycle. The claimants have also not produced any evidence or Daily Diary Report to prove that the motorcycle was stealthily taken away from the place of accident. The Investigating Officer Ashok Kumar has only stated that motorcycle was not found at the spot, however, he has failed to corroborate the same from the Daily Diary Report. On the one hand, Om Prakash Jain has stated that the motorcycle and scooter were taken in possession by the Police from the spot on the day of accident. Whereas, now the claimants want the Court to believe that the motorcycle was recovered from the spot of the accident on 21.06.2005.

In view of the aforesaid discussion, it is not possible to accept that the Police noted down a wrong registration number of a motorcycle or Sh. Om Prakash Jain had disclosed a wrong registration number of the vehicle. It may be noted here that when Om Prakash Jain while appearing in the evidence has stated that he has noted down the registration number of the motorcycle as HR-60-7277. Thus, it is not the case of Sh. Om Prakash Jain that he had informed the Police about a wrong registration number of the vehicle.

In these circumstances, let us analyse the arguments of learned Senior counsel. No doubt, respondent No.1 and 2 did not dispute the involvement of motorcycle bearing registration No.HR-60-7277, however, the Court cannot turn a blind eye to the facts which are patent on the record.

In the FIR, which was recorded on the basis of signed statement of Om Prakash Jain, vehicle bearing registration No.HR-06-4910 driven by Sandeep is alleged to be involved in the accident. Furthermore, how and in what manner the motorcycle number was transposed has not been explained either by the claimants or by the Police. Suspicion of the Court gets strength from the fact that the vehicle bearing registration No.HR-60-7277 is taken into possession nearly after a period of one month from the date of accident. The aforesaid substituted vehicle is owned by Sandeep's grand-father. In such circumstances, the Presiding Judge of the Tribunal has correctly appreciated the evidence and found that efforts have been made to replace the motorcycle.

This Bench has carefully read the judgment passed by the Hon'ble Supreme Court in the case of ***Sunita (supra)***. In the aforesaid case, while discussing the case law the Court held that in a claim petition the claimants are not required to prove the involvement of the offending vehicle beyond the shadow of reasonable doubt. No doubt, nature of proof required to establish culpability under criminal law is far higher than the standard required under Tort law to create liability. However, the claimants are required to prove its case on preponderance of probability. In the present case, the claimants have failed to discharge the aforesaid onus. No doubt, a precious life has been lost. However on that basis only, the claim petition cannot be allowed, particularly when the conduct of the Police and the alleged eye-witness creates a strong suspicion.

This Court has also carefully read the judgment passed in ***National Insurance Company Limited (supra)***. In the aforesaid case, the Tribunal believed on the statement of the claimants by recording cogent

reasons. The Division bench refused to interfere only on the ground that there was a delay in registration of the FIR or a wrong registration number of the vehicle was recorded particularly when Gurbachan Singh has duly explained the delay in lodging the FIR because he was busy in the treatment of his father who died after 40 days of the accident. In the present case, Sh. Deepak Jain died on reaching Civil Hospital. The FIR was registered on the same day while recording the statement of Sh. Om Prakash Jain at the place of accident. Hence, the aforesaid judgment has no application.

For the reasons recorded above, there is no merit in the appeal.

Hence, dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

22nd September, 2021

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No