

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO No.1674 of 1992

Date of Decision : 25.08.2022

Kamlesh Kumari and Others

....Appellants

VERSUS

Charanjit Singh and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashwani Arora, Advocate for the appellants.

Mr. Neeraj Khanna, Advocate for respondent no.2.

ALKA SARIN, J. (Oral)

The present appeal has been preferred against the award dated 14.08.1992 passed by the Motor Accident Claims Tribunal, Jalandhar (hereinafter referred to as the 'Tribunal') whereby the claim petition filed by the claimants-appellants was dismissed on the ground that though the entire reliance was on the statement of PW-2 Kailash Bihari, the same did not inspire confidence and that his statement was not recorded by the police.

Learned counsel for the claimants-appellants would contend that the FIR in the present case was lodged on the same very day i.e. 19.07.1991 wherein complete details of the offending vehicle were given. It is further the contention of learned counsel for the claimants-appellants that the driver of the offending vehicle had also faced trial. Learned counsel further relies upon the judgment of the Hon'ble Supreme Court in **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [2020 (13) SCC 486]** to contend that in cases under the Motor Vehicles Act, 1988 the factum of the accident has to be proved on the preponderance of probability.

Learned counsel for respondent no.2-Insurance Company is not in a position to deny the fact that the FIR in the present case was registered on the same very day i.e. 19.07.1991 and that the driver of the offending vehicle also faced trial.

I have heard learned counsel for the parties.

In the case of **Sunita** (*supra*) it has been held as under :

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

In the case of **N.K.V. Bros (P) Ltd. Vs. M. Karumai Ammal [1980 (3) SCC 457]** the case set up was that since the criminal case in relation to the accident had ended in acquittal, hence, the claim under the Motor Vehicles Act, 1988 should also be rejected. The Supreme Court negated the said argument and held as under :

“3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes. We are emphasising this aspect because we are often distressed by transport operators getting away with it thanks to judicial laxity, despite the fact that they do not exercise sufficient disciplinary control over the drivers in the matter of careful driving. The heavy economic impact of culpable driving of public transport must bring owner and driver to their responsibility to their neighbour. Indeed, the State must seriously consider no fault liability by legislation. A second aspect which pains us is the inadequacy of the compensation or undue parsimony practised by tribunals. We must remember that judicial tribunals are State organs and Article 41 of

the Constitution lays the jurisprudential foundation for State relief against accidental disablement of citizens. There is no justification for niggardliness in compensation. A third factor which is harrowing is the enormous delay in disposal of accident cases resulting in compensation, even if awarded, being postponed by several years. The States must appoint sufficient number of tribunals and the High Courts should insist upon quick disposals so that the trauma and tragedy already sustained may not be magnified by the injustice of delayed justice. Many States are unjustly indifferent in this regard.”

In Krishan Vs. Tarawati [2011 (3) PLR 29] it was held :

“It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be

relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court.”

In **Harjinder Kaur & Ors. Vs. Pushpinder Kumar & Ors.** [2017 (4) ACC 395] this Court held that *“It is settled law that the Tribunal decides the claim cases on the basis of preponderance of probabilities and strict Rules of evidence are not applicable. It is further settled beyond any doubt that the outcome of a criminal trial is not binding on the Tribunal”*.

In the present case the factum of the accident stood duly proved, the FIR in the present case was filed on the same day and the driver also faced trial in the said case.

In view of the above and the settled law, the award passed by the Tribunal is set aside. The matter is accordingly remanded back to the Tribunal to decide the claim petition afresh on merits. Since the accident pertains to the year 1991, the Tribunal is requested to expedite the hearing of the matter.

The parties are directed to appear before the Tribunal on 09.09.2022 at 10.00 a.m. Pending applications, if any, also stand disposed off.

25.08.2022
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO