

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

304

FAO No. 246 of 2021 (O & M)

Date of decision : 14.10.2022

Oriental Insurance Company Limited, Abohar

.....Appellant

Vs.

Krishna Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Harsh Aggarwal, Advocate, for the appellant

Mr. A.S. Sekhon, Advocate, for respondents No.1 to 3

TRIBHUVAN DAHIYA, J. (Oral)

CM No.2823-CII of 2021:

This is an application for condonation of 163 days delay in filing the present appeal.

Notice of the application was issued on 20.7.2021, but no reply has been filed to date.

For the reasons mentioned in the application, the same is allowed. Delay of 163 days in filing the present appeal stands condoned.

CM No.2824-CII of 2021:

This is an application seeking permission to prove on record the judgment dated 1.10.2019 (Annexure A-1) by way of additional evidence.

Notice in the application

Mr. A.S. Sekhon, Advocate, accepts notice on behalf of respondents no.1 to 3.

For the reasons stated in the application, the same is allowed.

Judgment dated 1.10.2019 (Annexure A-1) passed by the Judicial Magistrate Ist Class, Abohar, is taken on record.

FAO No. 246 of 2021 (O & M):

1. The appellant/Insurance company has come in appeal against the award passed by the Motor Accident Claims Tribunal, Faridkot dated 14.10.2019, whereby compensation has been awarded to respondents no.1 to 3/claimants on account of death of Subhash Chander in a motor vehicular accident.

2. The only issue raised by learned counsel for the appellant is, it is a case of collusion between the claimants and driver and owner of the offending vehicle/respondents no.4 and 5. The factum of accident involving the offending vehicle cannot be said to have been established on record, since the only eye witness, PW-2, Hira Lal, who is stated to have witnessed the accident in question, cannot be believed. This witness when appearing before the Court of Judicial Magistrate Ist Class, Abohar, in case *State v. Sanjay Singh*, arising out of FIR No. 50 dated 30.7.2018 under Sections 304-A, 279 and 427 IPC, Police Station Sadar Abohar, pertaining to the accident in question, deposed that on the date of accident he was not present on the spot. He did not know what happened in the case. The accused Angrej Singh/driver/respondent no.4 was acquitted of the alleged offences vide judgment dated 1.10.2019 (Annexure A-1). In support of the submission learned counsel has placed reliance upon judgment of this Court in *United India Insurance Company Limited v. Kamla Devi and others*; 2010 (4) PLR 235. He further submits that the appellant Insurance company was not a party to the criminal trial leading to passing of the judgment of acquittal. As the judgment came to its knowledge subsequently after passing of award, it could not be brought on the Tribunal's record.

3. *Per contra*, learned counsel for the respondents has submitted that the award in question was passed on 14.10.2019, and the judgment (Annexure A-1) acquitting respondent no.4/driver of the offences alleged was rendered on 1.10.2019. Therefore, the same should have been brought on record of the Tribunal, and the eye witness, PW-2, should have been confronted with the statements made by him in the criminal trial. Not having been done so, the appellant is not entitled to take benefit of the judgment of acquittal in the instant appeal, long after passing of the award.

4. The Tribunal framed the following issue regarding rash and negligent driving of the offending vehicle by respondent no. 4:

1. Whether Subhash Chander died due to the accident, which took place on 30.7.2018, due to the rash and negligent driving of motor vehicle bearing registration No. PB-22K-5544, by respondent no.1 Angrej Singh? OPA

5. While returning finding on Issue No.1 in favour of respondents no.1 to 3/claimants, the Tribunal referred to the testimony of eye witness Hira Lal, PW-2, who deposed that the deceased was going on duty to Government Senior Secondary School, Pakki Tibbi, District Sri Muktsar Sahib, on 30.7.2018 on his motor cycle bearing No. PB-15C-1909. He along with his nephew Vikram was following the deceased on motor cycle. The offending vehicle came at high speed and hit the motor cycle the deceased was driving. The offending vehicle, a private bus bearing No. PB-22K-5544, was being driven by respondent no.4/driver rashly and negligently on high speed. The deceased suffered multiple head injuries and died on the spot. His motor cycle was damaged badly. The entire accident was witnessed by PW-2. Post mortem of the dead body was conducted at Civil Hospital; the report was placed on record

as Ex.P2. FIR No. 50 dated 30.7.2018 under Sections 304A, 279 and 427 IPC (Ex.P1) was registered on his statement. It was also established that criminal trial was going on. After examining the evidence, the Tribunal held that the accident in question occurred due to rash and negligent driving of bus bearing No. PB-22K-5544 by respondent no.4/driver. It was witnessed by Hira Lal, PW-2, and his nephew Vikram, who was following the deceased on their own motor cycle.

6. A perusal of the statement of eye-witness, Hira Lal/PW-2 before the Tribunal establishes that the factum of acquittal of respondent No.4/driver in criminal trial, vide judgment dated 1.10.2019, was not put to him. He was not confronted with the contradictory testimony, said to have given by him in the criminal trial, and deprived of the opportunity to explain as to why the said statement was made. Therefore, no adverse inference can be drawn against the eye-witness. There is no other evidence or material on record to doubt the testimony of this eye-witness. The preponderance of evidence adduced establishes the factum of accident as well as negligence of respondent no.4 in driving the offending vehicle.

7. Reliance placed by learned counsel for the appellant on a judgment of this Court in *United India Insurance Company Limited vs. Kamla Devi and others*, 2010 (4) PLR 235 to discard the testimony of the eye-witness, is misplaced. In that case, the eye-witness was confronted with his contradictory statement before the criminal Court, and on account of no satisfactory explanation having been given by the said witness, it was held that the statement was not worthy of acceptance. Such a situation does not arise in the instant case as the eye-witness (PW-2) was not confronted with his testimony in

criminal trial.

8. Further, law on this aspect has been settled by the Supreme Court in *Sunita and others vs. Rajasthan State Road Transport Corporation and another*, (2020) 13 SCC 486, that in a motor accident claim case, once the foundational fact, i.e., the actual occurrence of the accident has been established, the Tribunal's role after that would be to calculate the quantum of just compensation if accident had taken place due to negligence of the driver. While deciding the cases, the standard of proof to be borne in mind must be of 'preponderance of probability'. The relevant part of para No.25 of the judgment reads as under:

25. 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 case.

9. Consequently, the finding recorded by the Tribunal on issue No.1 cannot be impeached, since it is based upon preponderance of probabilities. Therefore, the appeal fails and is hereby dismissed. No costs.

(TRIBHUVAN DAHIYA)
JUDGE

14.10.2022
Ashwani

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No