

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

Date of decision: 22.07.2022

1. FAO-5260-2005 (O&M)

Ved Parkash Mehta

... Appellant

Vs.

Mohinder Singh and others

... Respondents

2. FAO-5261-2005 (O&M)

Leelawanti and others

... Appellants

Vs.

Mohinder Singh and others

... Respondents

3. FAO-5262-2005 (O&M)

Sidharath

... Appellant

Vs.

Mohinder Singh and others

... Respondents

4. FAO-5263-2005 (O&M)

Anubhuti

... Appellant

Vs.

Mohinder Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. R.S. Mehta, Advocate
for the appellants (in all appeals).

Mr. Satbir Singh Gill, Advocate
for respondents No.2(i) and 2(ii).

Mr. Suman Jain, Advocate
for respondent No.3-Insurance Company.

ARVIND SINGH SANGWAN, J. (ORAL)

This order shall dispose of aforementioned four appeals, challenging the award dated 27.05.2005 passed by the Motor Accident Claims Tribunal, Hisar, vide which five claim petitions filed by the appellants-claimants were decided, by recording a finding on issue No.1 that the accident in question occurred due to rash and negligent driving of the car driven by appellant PW7 Ved Parkash Mehta and accordingly, the claim petitions were dismissed in toto, without granting any compensation to the appellants-claimants.

Lower Court record was requisitioned and the same is perused.

Learned counsel for the appellants has argued that in all the claim

petitions, in para No.24, it is set up that the accident in question took place due to rash and negligent driving of respondent No.1, who was driving Tata 407 bearing registration No.HR-39-9509 and while driving it in a rash and negligent manner at high speed, respondent No.1 struck his vehicle into Maruti car bearing registration No.HR-20D-9665 driven by appellant Ved Parkash Mehta. Learned counsel referred to written statement filed on behalf of driver and owner i.e. respondents No.1 & 2, in which it is stated that respondent No.1 was driving Tata 407 at a moderate speed on left side of the road, whereas driver of Maruti car was driving the car at high speed in rash and negligent manner and while overtaking another vehicle, struck against Tata 407. It is further stated that driver of the car Ved Parkash Mehta and his companion Subhash were under the influence of liquor and two bottles were lying in the car, which pre-supposes that they were under the influence of liquor.

In the written statement filed by respondent No.3-Insurance Company, it is stated that in fact, no accident took place with TATA 407 and it is a case of clear denial by the Insurance Company with regard to factum of accident.

Replications were filed in all the claim petitions reiterating the claim set up by the appellants-claimants.

Before referring to other evidence, it would be relevant to refer to statement of three witnesses, who were witnesses to the accident.

PW7 Ved Parkash Mehta, while appearing as a witness, deposed about the manner, in which the accident occurred. In cross-examination, this

witness was given a suggestion by learned counsel for the respondents (it is correct that Hisar-Chandigarh road is very wide enough and three vehicles can pass simultaneously). This witness was also given a suggestion that accident was caused due to his own rash and negligent driving, to which he denied. Except this suggestion that the accident occurred due to rash and negligent driving of PW7 Ved Parkash Mehta, no other cross-examination was offered to the fact that he was either under the influence of liquor or his companion Subhash was under the influence of liquor.

Another injured witness i.e. Manju Mehta wife of PW7 appeared as PW10 and she also reiterated the manner, in which the accident occurred. Only a suggestion was given to this witness that driver of TATA 407 was not at fault in causing the accident, which she denied.

PW11 Sidharath, another injured occupant of the car, deposed about the manner, in which the accident occurred. It is stated that driver of TATA 407 was driving the vehicle in rash and negligent manner and struck in the car, driven by Ved Parkash Mehta. This witness was also given a suggestion that driver of TATA 407 was not at fault in causing the accident, which he denied.

Learned counsel for the appellants further referred to statement of RW1 Mohinder Singh, driver of TATA 407, who in cross-examination stated that when he was driving his vehicle bearing registration No.HR-39-9509 on Chandigarh-Hisar road near Barwala, he noticed that a car was coming from the opposite side. Another car driven by the claimant was following that car from behind and while trying to overtake, the driver struck the same against

TATA 407. This witness further stated that car driver brought the car on extreme right side of the road. This witness also stated that driver of the car was under the influence of liquor, as two bottles of liquor were lying in the car. He further stated that after the accident, his four wheeler stopped after some distance and the car also stopped, after striking with TATA 407.

In cross-examination by learned counsel for respondent No.3, this witness stated that three vehicles cannot pass simultaneously, but three light vehicles can pass simultaneously at the place of occurrence. In further cross-examination, this witness stated that speed of TATA 407 was 42-45 kms per hour and speed of the Maruti car was around 50-55 kms per hour.

Learned counsel for the appellants on issue No.1 has argued that once respondent No.1-driver of TATA 407, in his written statement, admitted the factum of accident, in the light of statement of three claimants' witnesses, who deposed about the manner, in which the accident occurred as well as statement of RW1 Mohinder Singh, it cannot be held that accident was caused due to sole rash and negligent driving of Maruti car, as wrongly recorded by the Tribunal.

Learned counsel for appellant Anubhuti has submitted that her mother PW10 Manju Mehta deposed that her son Sidharath suffered injuries in the aforesaid motor vehicle accident, as he was also occupant of the car, driven by PW7 Ved Parkash Mehta. In the statement of PW10 Manju Mehta, it has come that apart from PW7 Ved Parkash Mehta, they all suffered number of injuries, however, no detail of medical bill with regard to injuries sustained by appellant Anubhuti or Sidharath is on record. PW11 Sidharath stated that

he sustained injuries on his right elbow and two fingers, due to which a rod was inserted in the fingers, which are not cured and there is permanent scar on the elbow. The doctor advised him to undergo '*baloon surgery of the wrist for removal of scar*', which requires expenses of Rs.40,000/- to Rs.50,000/- approximately.

It is worth noticing that Leelawanti is mother of late Subhash, Veena is widow of late Subhash, Saurabh is son of late Subhash and Sikha is daughter of late Subhash, who was also a victim in the case. It has come in the statement of PW9 Veena Kathuria that her husband Subhash Kathuria remained admitted in hospital and she spent Rs.5000-6000/- on his treatment and she did not suffer any injury. It is further stated that her husband Subhash died in another accident occurred on 02.11.2002.

Learned counsel for respondent No.3-Insurance Company on issue No.1 has submitted that as per site plan or the photographs, which were taken at the spot, it can be safely held that it is driver of the car, who caused the accident with TATA 407 by bringing it on extreme right side of the road.

In reply, learned counsel for the appellants has referred to the site plan prepared during the investigation of FIR No.99 dated 25.04.2001, registered against respondent No.1 Mohinder Singh under Sections 279, 337, 338, 427 IPC, at Police Station Barwala, wherein a site plan was prepared at the spot, in which TATA 407 is shown to be standing on the metalled road, which is contrary to the photographs shown by learned counsel for respondent No.3.

Learned counsel, on the point of contributory negligence, has

relied upon a judgment of the Hon'ble Supreme Court of India in **Mangla Ram Vs. Oriental Insurance Co. Ltd. and ors., 2018 (5) RCR (Civil) 185**, in which it is held that spot, where motor vehicle was found lying, after the accident, cannot be basis to assume that it was driven in or around that spot at the relevant time. The site plan cannot be the basis to assume that the claimant was driving the vehicle on wrong side of the road at the relevant time. Accordingly, the findings recorded by the Tribunal with regard to contributory negligence were set aside.

Learned counsel has further relied upon another judgment in **Bimla Devi and others Vs. Himachal Road Transport Corporation and others, 2009 (3) RCR (Civil) 805**, wherein the Hon'ble Supreme Court held that in order to find out whether the offending vehicle was involved in the accident or not, the Court is required to apply the principle underlying burden of proof in terms of Section 106 of the Indian Evidence Act, as strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be proved by the claimants. Para Nos.14 & 15 of this judgment read as under: -

“The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos.2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the

evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos.2 and 3.

In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

With regard to assessment of just and fair compensation, learned counsel has produced on record various documents, which are Ex.P2 to Ex.P196, Mark M-1 to Mark M-22, Mark -A to Mark-M, Mark N-1 and Mark N3, with regard the expenses incurred on medicines and tests, operations done for insertion of rod and for removal of the same subsequently and thus, total

amount incurred by the appellant, as per calculation submitted, comes to Rs.2,18,217/-, which includes expenses incurred on diet, transportation, salary paid to an attendant, amount incurred on subsequent visit to the doctor as OPD patient.

Learned counsel has further referred to statement of PW3 Dr. Ashok Arora, Orthopaedic Surgeon, Barwala Road, Hisar, who treated PW7 Ved Parkash Mehta and statement of PW4 Dr. Sunil Soni, Soni Hospital, Kaimari Road, Hisar, who gave treatment to PW11 Sidharath to prove the aforesaid bills and PW3 stated that it is a diagnosed case of operated fracture right femur with ankylosis right knee. This witness further stated that the patient was operated upon for removal of ankylosis right knee and has also given the details of the expenses incurred, which are already exhibited by the appellants.

PW5 Dr. Joginder Kapoor, Orthopaedic Surgeon, G.H. Hisar proved the disability certificate to the extent of 70% with the diagnosis post-traumatic deformity right lower limb with muscular wasting with stiff joint with shortening and as per disability certificate Ex.P148, percentage of 15% to 20% with respect to whole of the body.

After hearing learned counsel for the parties and on re-appraisal of the contents of the claim petition, written statement filed by driver of TATA 407 as well as written statement filed by the Insurance Company, wherein there is a total denial of the accident and on further re-appraisal of statements of PW7 Ved Parkash Mehta, PW10 Manju Mehta and PW11 Sidharath, who are witness to the accident as well as statement of RW1

Mohinder Singh-respondent No.1, driver of TATA 407, it is found that: -

- (a) It is case of respondent No.1-driver that when the accident took place, he was driving TATA 407 on left side of the road and while overtaking the car, PW7/appellant Ved Parkash Mehta drove his Maruti car towards extreme right side of the road and struck against TATA 407.
- (b) Further, case of respondent No.1 in the written statement is that appellant Ved Parkash Mehta and his companion Subhash were under the influence of liquor.
- (c) Accident took place at right side of the road, wherein TATA 407 was on left portion of the road and FIR No.99 dated 26.04.2001 under Sections 279, 337, 427 IPC was registered in Police Station Barwala, Hisar against RW1 Mohinder Singh.
- (d) As per the claimants, the accident was caused by driver of TATA 407 by driving the same in rash and negligent manner and at very high speed, which struck against Maruti car resulting into the accident. Further a perusal of statements of PW7, PW1- & PW11 shows that they have given description of the accident that it is driver of TATA 407 i.e. respondent No.1, who drove his vehicle in rash and negligent manner.
- (e) In cross-examination of all these witnesses, it is suggested by the respondents that Hisar-Chandigarh road is very wide enough, where three vehicles can pass simultaneously.
- (f) Further, it is suggested that the accident occurred due to rash and

negligent driving of appellant Ved Parkash Mehta and not respondent No.1 Mohinder Singh, however, no suggestion was given to any of the claimants' witness that either PW7 Ved Parkash Mehta or PW11 Sidharath were under the influence of liquor, as set up in the written statement, though it is stated in examination-in-chief of RW1 Mohinder Singh.

- (g) As per site plan prepared during the investigation Ex.P150, offending vehicle is shown to be standing on the left side of metalled road, whereas the car driven by PW7 Ved Parkash Mehta was in middle of the road and similar is the situation shown by learned counsel for the Insurance Company, which is only marked and not exhibited.
- (h) Photograph shown by learned counsel for the Insurance Company is not exhibited and was never put to any eyewitness in cross-examination.
- (i) As per Section 106 of Evidence Act, requiring burden of proving fact, especially within knowledge of any person is on such person, RW1 being driver of TATA 407 could not prove that the accident was caused due to sole negligence of PW7 Ved Parkash Mehta.

In view of the above, I find that the finding recorded by the Tribunal on issue No.1 that the accident in question took place due to sole rash and negligent driving of appellant Ved Parkash Mehta, in view of **Mangla Ram's** case (supra) and **Bimla Devi's** case (supra), is liable to be set aside, as the evidence suggests that the accident took place, though on right

side of the road, as TATA 407 was also on metalled road, when the accident took place. Therefore, it is a case of contributory negligence of both the drivers and negligence of appellant Ved Parkash Mehta and respondent No.1 Mohinder Singh is held to be 50:50 in causing the accident.

On account of permanent whole body disability of 20%, appellant Ved Parkash Mehta is entitled to Rs.40,000/- and on account of pain and suffering, Rs.30,000/- and for future loss of income, Rs.10,000/- apart from hospital charges of Rs.1,00,000/-, special diet Rs.30,000/-, transportation Rs.30,000/-, attendant charges Rs.30,000/-, loss of amenities of life Rs.30,000/-, apart from actual medical expenses of Rs.2,18,217/-

Accordingly, appellant Ved Parkash Mehta is entitled to receive 50% compensation to the tune of Rs.5,68,217/- i.e. round figure Rs.5,68,500/- along with interest @7.5% from the date of filing of the petition till its realization.

So far as appellant Anubhuti daughter of Ved Parkash Mehta is concerned, a lump-sum compensation of Rs.25,000/- along with interest @7.5% from the date of filing of the petition till its realization will be paid, as neither there was any disability nor any medical record.

So far as claimants/legal heirs of Subhash namely Leelawanti mother of late Subhash, Veena widow of late Subhash and Sikha daughter of late Subhash are concerned, a lump sum compensation of Rs.25,000/- along with interest @7.5% from the date of filing of the petition till its realization will be paid to Veena.

So far as appellant Sidharath is concerned, as per his statement, he incurred approximately Rs.50,000/- for the medical treatment and a rod was inserted in the fingers, which requires another surgery, lump-sum compensation of Rs.1.00 lacs along with interest @7.5% from the date of filing of the petition till its realization, is granted to him towards medical treatment, pain and suffering and loss of amenities of life.

It is clarified that the amount awarded to appellants Anubhuti, Veena and Sidharath will be paid full compensation amount by the respondent-Insurance Company being occupants of the car, driven by PW7 Ved Parkash Mehta, who is held to be 50% negligent in causing the accident.

A photocopy of this order be placed on the files of other connected cases.

[ARVIND SINGH SANGWAN]
JUDGE

22.07.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No