

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

FAO-4758-2009(O&M)

Reserved on: 20.09.2022

Pronounced on: October 10, 2022

Pushpa Devi

...Appellant

Versus

Deepak Gulati and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjay Jain, Advocate, for the appellant.

Mr. Sohrab Dhanda, Advocate, for

Mr. A.S. Manaise, Advocate, for respondent no. 2.

HARKESH MANUJA, J.

1. By way of present appeal, challenge has been made to an award dated 25.05.2009 passed by Learned Motor Vehicle Claim Tribunal, Ambala (hereinafter referred to as "the Tribunal"), whereby the claim petition filed at the instance of appellant-injured has been dismissed for want of proof of accident.
2. Brief facts leading to the present appeal are that on 18.07.2008, the appellant along with her co-student had gone to Government School, Saha, for attending a function. While returning on three-wheeler, at about 02:00 PM when she alighted at Samalhri Chowk, Mithapur, a car bearing registration No. UP-11-Q-9985 came from behind and hit against her. As a result thereof, the appellant got injured. On account of injuries suffered in the aforesaid accident, the appellant filed claim petition praying for an award of a sum of Rs.4,00,000/- as compensation along with interest, alleging rash and negligent driving of respondent No. 1.

3. On the other hand, respondent No.1 i.e. owner/ Driver as well as respondent No.2-Insurance Company filed their separate written statements, denying the factum of accident. It may be pointed out here that as respondent No.1-Driver was later proceeded against ex-parte, an application filed under Section 170 of the Motor Vehicles Act, 1988, for short 'the Act, at the instance of respondent No.2-Insurance Company was allowed. Vide impugned award dated 25.05.2009, the learned Tribunal dismissed the claim petition, holding that the accident in question was not proved as it was a case of hit and run.
4. In the present appeal, it has been contended on behalf of the appellant that the learned Tribunal fell into an error while dismissing the claim petition by holding that the present was a case of hit and run. Learned counsel further submits that there has been misreading of the statements made by PW1-Dr. Satish Kumar and the appellant herself who appeared as PW5. In view thereof, learned counsel for the appellant submits that the accident in question had been duly proved on record along with negligence on the part of respondent No.1.
5. On the other hand, learned counsel for respondents submit that the learned Tribunal has passed the award after appreciating the entire evidence available on records and also by considering the delay on the part of the appellant in registration of the FIR which itself raises suspicion about the accident and thus, pray that the award does not warrant any interference.
6. I have heard learned counsel for the parties and gone through the record. The learned Tribunal recorded its finding against the appellant

upon the ground which may be shortly stated; that there was delay in registration of FIR regarding the accident; the presence of Sandeep i.e. PW6 was doubted by the learned Tribunal; as it was not the police which traced the offending vehicle during investigation and rather, the same was informed by the appellant/injured and that as per the statement made by Dr.Satish Kumar, PW1, he was initially informed by the parents/ relatives of the appellant/ injured at the time of her initial examination that it was a hit and run case.

7. On a careful perusal of the facts and the evidence available on record, I am unable to accept the reasoning recorded by learned Tribunal. In fact, the learned Tribunal fell into an error of law while appreciating the evidence, having lost sight of the fact that the present case pertains to a claim petition under the Motor Vehicles Act which is a beneficial legislation and as such the hyper-technical approach as regards the rigour of proof of cause of action cannot be made applicable as that required in civil suits. It has now been settled by the Hon'ble Supreme Court that in case of Motor Accident Claims Tribunal, the evidence has to be evaluated on the principles of preponderance of probabilities and rather than proof beyond doubt. In a case of road accident, the claimants cannot be called upon to establish an accident by proving it with mathematical certainty. Of course, collusion between the claimant and the owner/ Driver is one of the exceptions to the afore-stated principle, though the same is missing in the present case. My aforesaid view is derived from the judgment rendered by the Hon'ble Supreme Court in **Anita Sharma and others Vs. The New India Assurance Co. Ltd. and another**, 2021 (1) RCR (Civil) 200 and para 22 thereof, reads as under:-

*“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*⁴ wherein this Court reiterated that:*

*“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]***)*

(emphasis supplied)”

8. Now, coming to the evidence as well as the findings recorded by the learned Tribunal in the present case, I find that the learned Tribunal has based its findings on a misreading of evidence. While recording that instant case was of hit & run accident, the learned Tribunal has failed to appreciate the statement of PW1 in toto. Relevant portion of cross-examination of PW1 is reproduced hereunder:-

“....As it was non-MLC case, no ruqa was sent to the police on 18.07.2008. On initial examination, it was told by the patient and his relations that it was hit and run

case. Even type of vehicle was not known to the patient and his relations on the first date. The patient came on 21.07.2008 for preparation of MLR stating that now they have come to know the number of offending vehicle.....”

From a careful examination of the aforesaid statement, it can be reasonably traced out that initially the injured as well as his parents/ relatives did not know about the details of the offending vehicle, however, having made an effort, later they found the particulars and informed the police immediately. In this case, the learned Tribunal failed to appreciate that the evidence has to be viewed collectively. In fact, the statement of a witness has to be read as a whole and reliance upon one line here and there in isolation would not serve the ends of justice.

9. In fact, PW1 Dr.Satish Kumar, PW5- the claimant and PW6-Sandeep as well, have remained consistent throughout in their statements as regards having come to know about the details of the offending vehicle later. Despite having done lengthy cross-examination upon the appellant as well as PW1-Dr. Satish Kumar, respondent No.2- Insurance Company has not been able to impeach their statements. Further, even the delay in registration of FIR has been duly explained by PW1 in his statement which has also been corroborated by the statement of PW5 i.e. the appellant. A perusal of complete statement of Dr.SatishKumar, PW1 shows that initially, on the date of accident, the appellant and her family were not having information about the details of the offending vehicle, however, as soon as they were able to collect the same, due information was immediately provided to the police authorities, accordingly FIR No. 84 dated 22.07.2008 was

registered at Police Station Saha, thus, the delay could not have been taken to be fatal to the case of appellant.

10. The learned Tribunal has also gone wrong while recording that as the offending vehicle in the present case was not traced out by the police during investigation, it raises doubt about the authenticity of its involvement. Mere fact that the particulars about the offending vehicle was traced out by the appellant/ claimant and her family members/relatives within a reasonable period of the date of accident in question by making their strenuous efforts, the same cannot be brushed aside in the absence of any proof of collusion between the appellant /claimant and respondent No.1 which is totally missing in the present case. Though, no doubt, based on its prima facie opinion, the learned Tribunal granted permission in favour of respondent No.2 in exercise of powers under Section 170 of the Act, however, no one appeared on its behalf to establish their plea of collusion. Respondent No.2-Insurance Company never even tried to summon/ call upon respondent No.1 so as to cross-examine him as regards any such plea of collusion. Respondent No.2-Insurance Company, having raised the plea of collusion in its application under Section 170 of the Act, was required to discharge its burden to establish the same, in the facts and circumstances of the present case, but it failed to produce even a single witness in this regard, accordingly, an adverse inference was required to be drawn against it.
11. As regards the rash and negligent driving of the offending vehicle by respondent No.1, I may refer to the statement of PW5-Pushpa Devi i.e. the appellant herein. Relevant portion thereof is reproduced hereunder:-

“....In the meanwhile, a car came from behind and hit me. The car was being driving by its Driver at a very high speed. I suffered fracture of right leg and got serious injuries on my left shoulder and back. The said car was bearing registration No.UP-11-Q-9985.....”

The aforesaid portion of the statement made by the appellant in her examination-in-chief which relates to rash and negligent driving of respondent No.1 has nowhere been controverted by respondent No.2-Insurnace Company in the cross-examination. Not even a suggestion has been put to the appellant contradicting the same. More than that, even respondent No.1 never appeared as a witness to rebut it. Accordingly, in the facts and circumstances of the present case, it has been established that the accident took place on account of rash and negligent driving of respondent No.1.

12. I shall be failing in my duty in case I do not deal with the judgment dated 23.09.2013 passed in Criminal case No. 186-1 titled **State Vs. Deepak Gulati** arising out of the present FIR No. 84 dated 22.08.2008 under Sections 279, 337 and 338 of IPC, Police Station Saha, which though, is not part of the record, yet has been brought to my notice by learned counsel for respondent No.2 so as to contend that respondent No.1-herein already stands acquitted of the charges framed against him regarding the same accident. Needless to mention here again, that the standard of proof in the accident claim cases and the criminal trial is pole apart. As already submitted in the preceding part, the standard of proof in Motor Accident Claims Tribunal cases is one of preponderance of probabilities; rather than

beyond reasonable doubt being the benchmark under the criminal trial.

13. In view of the discussion made hereinabove, I am of the considered view that the accident in question wherein the appellant/ claimant got herself injured took place on 18.07.2008, involving the offending vehicle being driven by respondent No.1, in a rash and negligent manner.
14. Accordingly, the impugned award dated 25.05.2009 passed by learned Tribunal, is hereby set aside and for determination of the quantum of compensation to be awarded in favour of claimant/ appellant, based on the evidence available on record.
15. Disposed of in the aforesaid terms.
16. Since this matter is decided in presence of counsel for the parties, therefore, they are directed to appear before the learned Tribunal on 27.10.2022 and it would be appreciated in case the claim petition is decided within a period of three months thereafter, considering the date of accident to be 18.07.2008, in this case.
17. Pending miscellaneous application(s) if any, shall also stand disposed of.

October 10, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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