

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

FAO-516 -2009 (O&M)

Reserved on: 12.09.2022

Date of Decision: 27.09.2022

Rachna Devi and others	<i>Versus</i>	 Appellants
Jagdish Chand and others		 Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Rajbir Singh, Advocate for the appellants.
Mr. B.S. Rana, Advocate for respondents No.1 and 2.
Mr. Banni Thomas, Advocate
for respondent No.3-Insurance Company.

HARKESH MANUJA, J.

Present appeal has been filed against the award dated 31.10.2008 passed by learned Motor Accident Claims Tribunal, (Adhoc) Fast Track Court, Gurdaspur, (for short 'Tribunal'), whereby the claim petition filed by the claimants/appellants stood dismissed.

The facts, in brief, are that on 27.07.2003, deceased Ram Parkash was going from Pathankot to Mamoon Cantt. on Scooter No.PB-54-5984 as a pillion rider being driven by L/Naik Joginder Singh. Around 7.00 pm, when they reached near Nirankari Bhawan, Near Chakki Bridge, Pathankot, one Mini Truck bearing No.HP-37-0396, driven by respondent No.2 came from the opposite direction and dashed their scooter in which Joginder Singh as well as deceased-Ram Parkash suffered injuries. Later, Ram Parkash succumbed to the injuries on 10.08.2003.

Pleading the aforesaid facts, the claimants/ appellants approached the learned Tribunal for award of compensation of the tune of Rs.20 lacs alleging rash and negligent driving of respondent No.2

On the other hand, the version of respondents is that before the offending vehicle hit the scooter, the same slipped on the road and both the riders fell down and got themselves injured and therefore, there was no negligence on the part of respondent No.2 and accordingly the claim petition was liable to be dismissed.

Vide impugned award dated 31.01.2008, learned Tribunal dismissed the claim petition of the appellants as it found that no one was at fault and it could not be proved that the injuries were caused due to the rash and negligent driving of offending vehicle being driven by respondent No.2.

Hence, the present appeal.

Learned counsel for the appellants argues that the learned Tribunal has committed an error while passing the impugned award by placing reliance upon the translated statement of Ashok Kumar alone which was reproduced in the award and on the basis of which DDR dated 09.08.2003 was registered. He further argues that even the testimony of AW2 –Joginder Singh who happens to be an eye-witness and driver of the vehicle has not been taken into consideration who has been very categorical that the accident happened due to the rash and negligent driving of offending vehicle being driven by respondent No.2.

On the other hand, learned counsel for the respondents argues that learned Tribunal rightly held that the accident in question was never caused due to rash and negligent driving of offending vehicle and for the same, he relied upon the DDR, Ex.A5 coupled with the delay in its registration.

Having heard learned counsel for the parties and gone through the paper-book as well as the lower Court records, I am of the considered view that in the facts and circumstances of the present case the learned Tribunal has not been able to appreciate the evidence available on record in its proper perspective. Learned Tribunal while deciding the matter has relied upon the translated version of the DDR which has been reproduced in the award itself and to consider the arguments raised by learned counsel for the appellants in proper perspective, the same is again reproduced hereunder:-

“He is working as Supplier in the military. On 27.02.2003 (sic 27.08.2003), he was going on his Hero Honda motor-cycle to CIA Pathankot in connection with some personal work. Two persons were also going ahead on scooter bearing No.PB-54-5984 towards Mamoon side. When those young man reached Nirankari Bhawan, then suddenly the scooter driven by them slipped and due to this, scooter fell down. In the meantime, truck No.HP-37-0396 came from the opposite side. Both the said injured were taken in the truck to the hospital. One person told his name as Ram Parkash No.167183 Hav. Unit No.107 Engineering Regiment. The

second person told his name as Joginder Singh No.1883903 L/Naik 107 in Engineering Regiment. Both the said injured received injuries due to slip of the scooter being driving by them. No other person is at fault in this regard.”

Learned counsel for the claimants/ appellants pointed out that in the original version of DDR (Punjabi) dated 09.08.2003, it is specifically mentioned that *“In the meantime, truck No.HP-37-0396 came from the opposite side **and hit the scooter**”*. However, in the translated version reproduced hereinabove, the words *“**and hit the scooter**”* are missing. In view of the above, I am of the considered opinion that by leaving out these words which are very crucial in the present context, learned Tribunal has misread the evidence and its award is based on incomplete reading of the records.

Further the award has been passed by solely relying upon the version of DDR. Even the statement of AW2 Joginder Singh who was an eye-witness, has not been considered.

In the present case, the claim petition has been dismissed by the learned Tribunal on the ground that the appellants/ claimants failed to prove that the accident in question took place on account of rash and negligent driving of respondent No.2. The learned Tribunal has not so seriously doubted the factum of death of Ram Parkash in the accident dated 27.07.2003. However, the learned Tribunal has gone wrong while disbelieving the claimants as regards the issue of rash and negligent driving of respondent No.2 on various counts which may be thus, shortly stated – that there was delay in

registration of FIR; the accident in the present case took place on 27.07.2003 whereas the FIR was got recorded on 09.08.2003; employer of deceased did not get the FIR registered immediately; and non-production of Ashok Kumar i.e. the author of DDR as well as the ownership documents of scooter No.PB-54-5984, driven by Joginder Singh taken to be fatal to the case of the claimants.

In this regard, a perusal of record as well as the facts and circumstances, reflect a total converse position. Few most relevant circumstances and the documents available on record, which missed the notice of the learned Tribunal and could have changed the course of reasoning are as follows:-

- i) Perusal of Ex.A1, which is a communication dated 27.07.2003 from the Military Hospital to the SHO, Police Station, Chakki Pull, Division No.2, Gurdaspur, shows that the factum road accident involving Ram Parkash was immediately conveyed on behalf of the employer of the deceased to the concerned Police Station and as such there was no delay in providing information to the police and rather it was the police authorities which did not recorded FIR promptly.
- ii) The accident in this case took place on 27.07.2003 and since then, Ram Parkash remained hospitalized and underwent surgeries as well; however, he unfortunately expired on 10.08.2003, as such DDR

recorded on 09.08.2003 cannot be said to be belated as the primary concern of the family was to save the injured; rather than reporting the matter to the police.

- iii) The non-appearance of Ashok Kumar, who happened to be author of DDR Ex.A5, cannot be held to be fatal in the present case. Since beginning, the case set up by the appellants was that the deceased was travelling with one Joginder on his Scooter. The said eye-witness, namely, Joginder appeared as AW2 and duly supported the factum of accident involving the negligence of respondent No.2. Therefore, the learned Tribunal committed an error while pressing for quantity of evidence of evidence; rather than quality.
- iv) Non-production of ownership documents of Scooter by AW2-Joginder cannot be held to be a decisive factor in the present case. AW2-Joginder very categorically stated in his cross-examination that the Scooter was owned by him. He however, deposed that he was not in possession of any document in this regard. Neither any suggestion was put to Joginder to the effect that he was not the owner of aforesaid Scooter; nor even he was put a suggestion that he in collusion with the claimants

was deposing falsely about involvement of his scooter and also as regards the rash and negligent driving of the offending vehicle. In the absence thereof, the learned Tribunal committed an error while dismissing the claim petition.

- v) AW2-Joginder Singh in his examination-in-chief gives a complete description of the accident and rash & negligent driving of the offending vehicle in the following manner:-

“....One Mini Truck No.HP-37-0396 which was being driven by its Driver i.e. respondent No.2 on a very high speed without blowing its horn rashly and negligently came from opposite side and dashed his above said vehicle by coming on the extremely wrong side of the road into the deceased and resultantly, I as well as the above said Ram Parkash, both fell down on the road and sustained serious multiple injuries on us, as a result of which the deceased Ram Parkash died on 10.08.2003 during his treatment.....”

A perusal of cross-examination of AW2 shows that the aforesaid portion of his examination-in-chief was never rebutted by putting him any suggestion to the contrary and thus, amounts to be an admission regarding the manner in which the accident took place as described by him in his cross-examination.

vi) However, more than that, once it came on record through DDR Ex.A5 that the offending vehicle hit the scooter and it was raining on the fateful day, it was almost necessary for the Driver of the offending vehicle, i.e. respondent No.2 to have appeared and rebutted the averments of rash and negligent driving against him. The non-appearance of respondent No.2 as a witness also shows that he had no courage to present himself for cross-examination and thus, the learned Tribunal was required to draw even an adverse inference against him on the point of rash and negligent driving.

A cumulative perusal of the aforesaid facts and the careful examination of the evidence available on record undoubtedly establish that the accident in the present case took place on account of rash and negligent driving of respondent No.2. The learned Tribunal fell into an error of law while insisting upon proof with mathematical certainty regarding the accident in question. The learned Tribunal even ignored the principle of law expounded by the Hon'ble Supreme Court in case titled as **Anita Sharma Vs. New India Assurance Company Limited**, 2021 (1) RCR (Civil) 200, to the effect that the standard of proof in motor accident claim compensation cases has to be on the touch-stone of preponderance of probabilities and not on the basis of proof beyond reasonable

doubt. For reference, relevant portion from para 22 is extracted hereunder:-

“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.”

In view of the discussion made hereinabove and a cumulative as well as careful perusal of the entire evidence shows that the learned Tribunal was not justified in dismissing the claim petition filed at the instance of appellants by holding that the accident did not take place on account of rash and negligent driving of respondent No.2.

Accordingly, the impugned award dated 31.10.2008 passed by learned Tribunal, is hereby set aside by holding that the accident in question dated 27.07.2003 took place on account of rash and negligent driving of respondent No.2. In view thereof, the matter is remanded back to the learned Tribunal for determination of the quantum of compensation to be awarded in favour of claimants/appellants.

Disposed of in the aforesaid terms.

Since this matter is decided in presence of counsel for the parties, therefore, they are directed to appear before the learned Tribunal on 11.10.2022 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 27.07.2003, in this case.

Pending miscellaneous application(s) if any, shall also stand disposed of.

September 27, 2022
sanjay

(HARKESH MANUJA)
JUDGE

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