

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

FAO No.6221 of 2011

Date of Decision : 29.07.2022

Usha Devi and others

.....Appellants

versus

Manak Chand and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gurpreet Jayia, Advocate for
Mr. Jagdish Manchanda, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate
for respondent No.3/Insurance Company.

PANKAJ JAIN, J. (ORAL)

Claimants are in appeal against the Award dated 28th April, 2010 passed by the Motor Accident Claims Tribunal, Faridabad (for short, 'the Tribunal') whereby the petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') has been dismissed.

2. As per the claim petition, on 4th of January, 2008 Car belonging to deceased Rakesh Singh broke down. He called his friends. While they were checking the car, a JCB Machine (Truck) bearing registration No.HR-38L-7746 driven by respondent No.2 in a very careless, reckless and negligent manner rammed into all of them. They sustained multiple/grievous injuries. The deceased was referred to Safderjang Hospital, Delhi, where he succumbed to the injuries on 18th January, 2008. FIR No.05 dated 4th January, 2008 was registered

under Sections 279, 337 and 338 IPC at Police Station Sector-29, DLF, Gurgaon against respondent No.2.

3. On the basis of the pleadings of the parties, the Tribunal framed the following issues :-

- “1. Whether Rakesh Singh had died in vehicular accident caused on account of rash and negligent driving of vehicle No.HR-38L-7746 by driver respondent No.2 if so its effect? OPP.*
- 2. If issue no.1 is proved, whether petitioners are entitled to compensation. If so to what amount and from whom? OPP*
- 3. Relief.”*

4. While recording finding on Issue No.1, Ld. Tribunal held that :-

“...10. There is no evidence led by the claimants to prove that Rakesh Singh had died in a vehicular accident caused on account of rash and negligent driving of vehicle No.HR-38L-7746 by respondent no.2. It was for the claimants to examine eye witness of the accident to prove this issue but they failed to do so. FIR is not a substantive piece of evidence. So, this issue is decided against the claimants and in favour of the respondents.

11. Though, in view of findings of this Tribunal on issue no.1, findings on other issues are not called for. However, to avoid remand of the case, in case of reversal of findings on the first issue by the Hon'ble Appellate Court and to approach the issue holistically and wholesomely, it is appropriate to discuss the other issues as well.”

5. Ld. Counsel for the appellants submits that the Tribunal erred in shutting the door to a cogent piece of evidence in the form of FIR and refused to look into the same. He submits that despite there being evidence on record, the finding has been erroneously recorded against the appellants. Thus, the Tribunal erred by ignoring the relevant piece of evidence.

6. Per contra, Ld. Counsel for respondent No.3/Insurance Company submits that it is trite that the claimants are required to prove negligence to claim compensation under Section 166 of the Act independently of the FIR which may have been registered *qua* the accident.

7. I have heard Ld. Counsel for the parties and with their able assistance have gone through the records of the case.

8. There is no dispute w.r.t. the proposition of law being argued by Ld. Counsel for respondent No.3. However, the question that would arise in this appeal is :-

“Whether Tribunal can discard FIR holding that the same is not a substantive piece of evidence ? ”

9. In the proceedings under the Act, test is not 'beyond reasonable doubt' but 'preponderance of probabilities'. The precedent relied upon by Mr. Subhash Goyal, Advocate i.e., New India Assurance Co. Ltd. vs. Harsh Mishra and others, 2016 ACJ 2669 also holds as under -

“21. To sum up, in view of the law laid down in Oriental Insurance Co. Ltd. v. Meena Variyal, 2007 ACJ 1284 (SC), Minu B. Mehta v. Balkrishna Ramchandra Nayan, 1977 ACJ

118 (SC) and Surender Kumar Arora v. Dr. Manoj Bisla, 2012 ACJ 1305 (SC), there is no manner of doubt that negligence is required to be proved by the person claiming compensation under the Act and that negligence is required to be proved on the touchstone of preponderance of probabilities.”

Further, reference can be made to law laid down by this Court in the case of **Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109** wherein it was held that -

“8.There is no denial that Radhey Shyam, respondent was being tried on account of rash and negligent driving by the Additional Chief Judicial Magistrate in a case State v. Radhey Shyam. Thus, it is prima facie safe to conclude that the accident occurred on account of rash and negligent driving of Radhey Shyam respondent in which the claimant suffered injuries...”.

10. The test being preponderance of probabilities, in the considered opinion of this Court, the Tribunal was under obligation to assess the evidence on record i.e. the contents of FIR which was tendered in evidence by the claimants. However, the Tribunal wrongly rejected the same outrightly. It needs to be noticed that claimant No.1 appeared as PW-1. The claimant tendered into evidence copy of the FIR (Exhibit P-5), Death Report (Exhibit P-6). Copy of admission and discharge record was also placed on record as Mark ‘A’. Respondents No.1 and 2 did not step into the witness-box to deny the accident or to dispute negligence on part of the offending vehicle. Defence of respondent No.3 was struck off vide

order dated 30th of March, 2009. From the records of the case, it is discernible that list of witnesses on behalf of the respondent No.3 was filed on 25th February, 2010 whereby file of Criminal Case titled as 'State vs. Mubarik' arising out of FIR No.5 dated 4th January, 2008 registered for the offences punishable under Sections 279/337/338/304-A IPC was summoned. It can be inferred that respondent No.2 faced criminal trial in the FIR which was proved on record as Exhibit P-5. There being overwhelming evidence on record, the Tribunal ought to have analyzed the same to return a reasoned finding. Thus, the finding recorded by the Tribunal cannot be sustained.

11. As a sequel of the discussion held herein above, the award passed by the Tribunal is set aside. The matter is remanded back to the Tribunal to decide the claim petition afresh.

12. Owing to the fact that the claimants in destitute are in litigation since 2008, Tribunal is directed to decide the claim petition expeditiously, preferably within a period of six months from the date of receipt of certified copy of this order.

13. Parties are directed to appear before the District Judge, Faridabad on 15th of September, 2022. On their appearance, Ld. District Judge shall allocate the matter to the Court of competent jurisdiction.

July 29, 2022

Dpr

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No