

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

FAO-2422-2012 (O&M)

Reserved on: 30.08.2022

Date of Decision: October 10, 2022

Santosh Rani and others

..... Appellants

Versus

Sanjeev Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Robin Dutt, Advocate for the applicants/appellants.

HARKESH MANUJA, J.

CM-10625-CII-2022

This is an application for listing the main case by fixing some actual date of hearing.

Notice of the application to non-applicant/ respondents.

Mr. Rajbir Singh, Advocate, who is present in Court, accepts notice on behalf of respondent No.3-Insurance Company and raises no objection to the prayer made in the application.

For the reasons mentioned in the application, which is supported by an affidavit of one of the appellants and in view of the fair stand taken by learned counsel for respondent No.3, the same is allowed.

With the consent of both sides, main appeal is ordered to be taken up for hearing today itself.

MAIN CASE:

Present appeal has been filed against the award dated 26.07.2011 passed by learned Motor Accident Claims Tribunal,

Yamuna Nagar at Jagadhri, (for short 'Tribunal'), whereby the claim petition filed by the claimants/appellants was dismissed.

The facts, in brief, are that on 16.07.2008, deceased (Omkar) was coming from Kurukshetra towards his Village Bhukhri, District Yamuna Nagar on his new motorcycle make Hero Honda CD Dawn. At about 11.30 PM when he reached opposite Saraswanti School, Chhachhrauli Road, Jagadhri, a vehicle hit the motorcycle of deceased, resulting into multiple grievous injuries on the head, face, nose and other parts of the body. Deceased was taken to Civil Hospital, Jagadhri where he was declared brought dead. About this incident, an FIR No.271 dated 17.07.2008 was registered against unidentified person, on the basis of the statement of brother of the deceased. Subsequently, investigating officer HC Jagdish Chander, during the investigation met one Mehfooz on 08.08.2008 and on the basis of his statement, respondent No.1 was arrayed as an accused and details of offending vehicle (Tata 407 bearing registration No.HR-58-8168) were also brought on record. Thereafter, in September, 2008, final report under Section 173 (2) Cr.P.C. was filed in the Court.

On account of death of Omkar, his dependents/claimants filed a claim petition before the learned Tribunal. During the proceedings before the learned Tribunal, learned counsel for the claimants/appellants relied upon FIR Ex.P1, final report submitted under Section 173 Cr.P.C., Ex.P2, copy of charge sheet Ex.P4, statement of HC Jagdish Chander, who appeared as PW1 and statement of PW5 Sarvjeet Singh. It was argued that though the FIR had been registered against an unknown vehicle, however, from the

statement of PW1 HC Jagdish Chander and PW5 Sarvjeet Singh, it stands established that the accident had been caused by the offending vehicle.

On the other hand, learned counsel for the respondents argued that from the evidence led on the record, it does not stand proved that the accident in question took place due to the rash and negligent driving of the offending vehicle by respondent No.1. He referred to the statements of PW1 HC Jagdish Chander and PW5 Sarvjeet Singh to contend that the offending vehicle was introduced lateron.

Vide its impugned award dated 26.07.2012, learned Tribunal dismissed the claim petition by observing that the claimants have not been able to prove that the accident in question took place due to the rash and negligent driving of the offending vehicle by respondent No.1 and in fact even its involvement could not be proved. Learned Tribunal disbelieved the testimony of PW1 HC Jagdish Chander as it observed that it would be most unnatural for an Investigating Officer to meet some person after more than 20 days of the accident. Similarly, it also found the conduct of eye-witness PW5 Sarvjeet Singh unacceptable and disbelieved his testimony, therefore, sequence of events narrated by him could not gather the confidence of the Tribunal.

In the present appeal, the appellants/ claimants have challenged the award dated 26.07.2011 passed by learned Tribunal and have sought compensation on account of death of Omkar.

It has been vehemently contended by learned counsel for the appellants that the learned Tribunal has failed to appreciate the testimony given by the independent witness Sarvjeet Singh who in his statement before the Tribunal categorically averred that after the accident they chased the offending vehicle and stopped it at Buria Chowk by putting their motorcycle in front of the truck and noted the registration number of the said truck as HR-58-8168 along with the details of the driver and came back. He further contended that the testimony of this independent witness could not have been brushed aside just because during cross-examination witness was not able to tell that whether offending vehicle was being driven by a Sikh gentlemen or a clean shaven person. He again submitted that the learned Tribunal has decided the claim petition of the appellants as if it is deciding a criminal case, while in a claim petition, claimants were merely to establish their case on the touchstone of preponderance of probabilities.

On the other hand, Mr. Rajbir Singh, learned counsel for respondent No.3-Insurance Company supported the impugned award to contend that the same being based on correct application of evidence, warrants no interference.

Having heard learned counsel for the parties and gone through the paper-book as well as the lower Court record, 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 the record in its proper perspective. It is settled law that in claim petitions, the standard of proof beyond reasonable

doubt could not have been applied and the evidence available should have been tested on the touchstone of preponderance of probabilities as has been held by Hon'ble Supreme Court in **Bimla Devi and others Vs. Himachal Road Transport Corporation and others**, 2009 (3) RCR (Civil) 805 and para 15 of the said judgment being relevant is reproduced hereunder:-

“15. 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.”

While ignoring the statement of Sarvjeet Singh, learned Tribunal failed to appreciate that the testimony given by the independent witness Sarvjeet Singh PW5, is very categoric regarding the identity of the offending vehicle. It is nowhere controverted by the respondents in their written statement that this witness was known or familiar with the appellants or had any personal grudge towards the respondents to implicate them in this case.

Learned Tribunal went wrong while recording that the conduct of the witness PW5-Sarvjeet Singh was unreliable. In fact, it failed to realize that in extreme conditions prevailing at the time of accident, the conduct of parties could be affected by several factors including their past experiences and it cannot be put into a straight

jacket formula. Therefore, when in substance the testimony of independent witness is reliable on the basis of small contradictions here or there, his testimony should not have been brushed aside. Especially considering that the Motor Accident Claims Tribunal Act is a beneficial legislation, evidences has to be construed liberally as has been held by Kerala High Court in a recent judgment dated 23.08.2022 passed in M.A.C.A. No.864 of 2012 and para 19 of the same is extracted hereunder:-

“19. It is apposite in this context to have a glimpse regarding the rule of evidence to be applied in this case. It is the trite law that 'preponderance of probabilities and possibilities' is the rule of evidence to be applied while querying proof of allegations involved in civil cases. When coming to benevolent legislations, the rule of evidence is nothing but 'preponderance of probabilities and possibilities' and in such cases, the evidence shall be evaluated in a liberal manner without insisting for the extreme form of 'preponderance of probabilities and possibilities'. When a person died while working as a cleaner in a lorry, it is not possible always to produce documentary evidence to prove his job as a cleaner. Therefore, the available evidence should be liberally evaluated to find the question as to whether the so called person was working as a cleaner in the lorry at the time of accident. Viewing so, the evidence discussed herein above can be relied on to hold that 'Najmal' was working as cleaner in the lorry at the time of accident.”

Learned Tribunal also lost sight of the fact that FIR No.271 dated 17.07.2008 was filed in this case under Section 279/304 A IPC; charges were framed on 16.03.2009 and subsequently, final report under Section 173 (2) Cr.P.C. was also

filed and respondent No.1 was put on trial in this case. It is not uncommon that a case of hit and run is registered at first instance and later the investigating agency finds out the particulars of offending vehicle during investigation, the same cannot be doubted once carried out in official discharge of their statutory duties unless it is rebutted or any fraud or collusion is alleged & established. In the present facts, neither complete particulars of fraud or collusion are made part of pleadings; nor proved on record. In fact, the appellants have discharged their burden to prove the factum of accident involving the offending vehicle, however, the respondent Insurance Company has failed to rebut the same when onus shifted upon it. Learned Tribunal held that Omkar died in the aforementioned accident and from the postmortem report it was established that he died due to the head injury suffered therein. These facts should not have been ignored by the learned Tribunal in shadow of objections. It was observed by the Hon'ble Apex Court in **Dulcina Fernandes and others Vs. Joaquim Xavier Cruz and another**, reported as 2013 (10) SCR 480 that these facts are fundamental in deciding the claim petition. Relevant extract of para 8 of the same is extracted hereunder for reference:-

“8.However, there are certain other features of the case which are more fundamental and, therefore, have to be specifically noticed. CW-2, who was at the relevant time working as the Head Constable of Main Eurtorim, Police Station, had deposed that a criminal case was registered against the first respondent in connection with the accident and that after investigation he was

charge-sheeted and sent up for trial. Though it is submitted at the Bar that the first respondent was acquitted in the said case what cannot be overlooked is the fact that upon investigation of the case registered against the first respondent, prime facie, materials showing negligence were found to put him on trial.....”

It may further be pointed out that the judgment cited on behalf of respondents is not applicable to the facts and circumstances of the present case. In case of **Smt. Bimla Devi's** (supra), FAO No.1464 of 2003, decided on 22.05.2012, it was the original complainant at whose instance FIR was registered, himself gave the name of Driver after almost a month and he was disbelieved. Similarly, in the case of **Smt. Saroj and others Vs. Het Lal and others**, FAO No. 4470-208, decided by this Court on 15.05.2009, the claimants failed to examine the independent witness in front of whom the driver of offending vehicle make confession and as such the entire story was disbelieved. Further, in the case of **Smt. Hemlata and ors. Vs. Sh.Uma Shankar and others**, FAO No. 454/2011, decided by this Court on 12.07.2011, the claimants were disbelieved as the statement of eye-witness was recorded after 4½ months and he was found shaky in his cross-examination.

From the discussion made hereinabove, I find that the accident in question resulting into the death of Omkar took place on account of rash and negligent driving of respondent No.1, involving the offending vehicle i.e. TATA-407, bearing registration No.HR-58-8168. Therefore, in view thereof, the appeal is allowed. Impugned award dated 26.07.2012 passed by learned Tribunal is hereby set

aside while directing the learned Tribunal to assess the amount of compensation payable to the appellants/ dependents within a period of four months from today after affording the parties to lead further evidence in case they desire to do so.

Parties are directed to appear before the learned Tribunal on 18.10.2022.

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

October 10, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>