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

229

FAO-3132-2016 (O&M)
Decided on : 19.04.2022

Nitin Dhingra and another

. . . Appellant(s)

Versus

Hirawati and others

. . . Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. V.K. Sachdeva, Advocate
for the appellant(s).

Mr. Ashwani Arora, Advocate
for respondents No.1 to 4.

Mr. Punit Jain, Advocate
for respondent No.5 – Insurance Company.

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MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the owner and driver of the offending vehicle i.e. motorcycle bearing registration No. CH01-AR-3896, to impugn the award dated 07.12.2015, passed by the Motors Accident Claims Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') in the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, filed by the claimants/respondents No.1 to 4, wherein, compensation in the sum of Rs. 17,17,644/- was awarded to the claimants i.e. wife, son and two daughters of the deceased Ram Karan.

The Tribunal assessed and awarded the compensation in the following terms:

Sr. No.	***Head***	***Amount***
1.	Monthly Income	Rs.31,898/-
2.	Add, % of increase	15%
3.	Deduction (50%)	Rs.31,898/2 = Rs. 18,341/-

4.	Multiplicand	Rs. 18,341 x 12 x 7 = Rs. 15,40,644/-
5.	Multiplier	7
6.	Loss of dependence	-
7.	Medical expenses	-
8.	Loss of consortium	Rs. 1,00,000/-
9.	Loss of love and affection	Rs. 50,000/-
10.	Funeral expanses	Rs. 25,000/-
	Total:	Rs.17,15,644/-

Learned counsel for the appellant has challenged the impugned award on the grounds;

I. That the accident in question did not take place due to the rash and negligent driving of appellant No.1, as the respondent/claimant No.1, who claimed to be an eyewitness to the accident had categorically deposed while appearing in the criminal case FIR No. 64, dated 14.04.2014, lodged under Sections 279/337 and 304-A IPC, registered at Police Station 19, Chandigarh, subsequent to the accident that she was not present when the accident occurred.

Learned counsel for the appellant vehemently argued that since contradictory versions had come forth during the deposition of claimant/respondent No.1 before the Tribunal and before the Criminal Court during the trial in case FIR No. 64, dated 14.04.2014, it left no manner of doubt that firstly she was not present at the spot when the accident in question occurred and the offending driver as well as the offending vehicle had been falsely implicated on the basis of hearsay evidence.

II. That despite the offending vehicle being insured with the insurance company i.e. respondent No.5, the Tribunal exonerated it and dismissed the claim against the insurance company by holding that the insured cover Note No. A1349408, dated 05.04.2014, which had been issued with respect to the offending vehicle was a manipulated and fabricated document.

Learned counsel for the appellant while vehemently arguing *qua* the exoneration of respondent No. 5 – Insurance Company from indemnifying the appellants, submitted that the Tribunal gravely erred in failing to appreciate that appellant No.2 (owner of the offending vehicle) had paid premium to the Insurance Company in the sum of Rs. 1460/- in cash and in lieu of the same, receipt of payment stood duly signed and stamped on behalf of the Insurance Company. He submitted that the premium paid covered the period of accident, as it was from 06.04.2014 to 05.04.2015. Learned counsel further submitted that copies of the cover note dated 05.04.2014 were duly exhibited during trial, however, the Tribunal strangely arrived at an erroneous conclusion that the cover note, which had been exhibited, was one of those cover notes, which had been lost by an employee of respondent No.5 – Insurance Company in the year 2009. Learned counsel submitted that the Tribunal failed to appreciate that the offending vehicle as per Note No.A1349408, dated 05.04.2014 (Annexure A-3) was manufactured only in the year 2013 and the offending vehicle stood insured from 06.04.2014 to 05.04.2015 i.e. much after the loss of the cover notes in the year 2009. It was submitted that in the aforementioned circumstances, the inference drawn by the Tribunal that the cover note of the offending vehicle was fake and a fabricated documented, deserved to be rejected.

Learned counsel for the appellant also challenged the exorbitant compensation awarded and submitted that it deserved to be scaled down.

On the other hand, learned counsel for the claimants/respondents No.1 to 4, vehemently opposed and disputed the submissions made by the learned counsel for the appellants that claimant/respondent No.1, was not an eye-witness to the accident in question. It was submitted that on the basis of the evidence led, it stood proved that appellant No.1 i.e. driver of the offending vehicle while driving at a high speed and in a negligent manner struck his motorcycle against Ram Karan (deceased) and, as a result of which, the deceased died. It was also submitted that in case FIR No.64, dated 14.04.2014, under Sections 279/337 and 304-A IPC, which were registered against the appellant soon after the accident, he stood convicted for causing accident and death of the deceased due to his rash and negligent driving, vide judgment dated 13.05.2015, passed by the trial Court.

Learned counsel for respondent No.5 – Insurance Company vehemently disputed the submissions made by learned counsel for the appellant *qua* the cover note not being fake and fabricated. He submitted that it was a matter of record that in the year 2009, as many as 1400 cover notes had been lost and immediately thereafter, a DDR was also recorded at Police Station Hauz Khas, New Delhi, followed by issuance of a public notice on 16.09.2009 *qua* the aforementioned loss. Learned counsel argued that the alleged cover note No. A1349408, dated 05.04.2014, on which the appellant was placing reliance, was one of those cover notes, which were lost in the year 2009, more so, since there was no receipt of any payment produced by the appellants w.r.t. the premium paid for the year 2014-2015. He further submitted that neither did the appellant step into the witness-box before the Tribunal nor examined the person to whom the payment of premium was made, hence, the cover note on which he was placing reliance was nothing more than a waste paper. Rather, it made it abundantly clear that it was a fake and fabricated document.

I have heard learned counsel for the parties and perused the relevant material on record.

This Court does not concur with the submissions made by the learned counsel for the appellants with respect to the negligence of the offending vehicle and driver not being proved before the Tribunal. The claimant No.1 who witnessed the accident in question while stepping into the witness-box as PW-1, gave a vivid account of the accident. This Court from a perusal of her deposition finds no reason to disbelieve her version or even to dispute her presence at the spot, as the accident in question took place very close to the workplace of her husband, where she too was present on the fateful day. She was subjected to a lengthy cross-examination by the learned counsel for the appellants (respondents No. 1 & 2) before the Tribunal, however, they failed to create any dent in her deposition. This Court cannot also lose sight of the fact that the negligence of the appellant stood duly proved during trial in case FIR No. 64, dated 14.04.2014, under Section 279/337 and 304-A of IPC, where the appellant was convicted vide judgment dated 13.05.2015 of the trial Court. Moreover, it needs to be reiterated that standard of proof in claim petitions filed under the Motor Vehicles Act, cannot be kept at par with that of criminal cases where the prosecution has to prove its case beyond reasonable doubt. The MACT cases stand on a different footing, where the claimants are required to prove their case on the touchstone of preponderance of probabilities, as has also been held by the Hon'ble Supreme Court in a plethora of cases.

Coming to the next submission of the learned counsel for the appellant *qua* the insurance company/respondent No.5 having been exonerated by the Tribunal. Undoubtedly, the submissions made by the counsel for the appellants do sound very attractive and convincing, however, neither the appellants stepped into the witness-box in support of their submissions nor did they examine the person to whom they had made payment of the insurance premium. The best witnesses in support of their case, would have been the appellants themselves, however, admittedly they did not enter appearance as witnesses before the Tribunal. No doubt, the cover note was duly exhibited during trial as 'Ex.R3', but the respondent-Insurance Company was not even confronted *qua* the same during evidence and it went unchallenged. Hence, an adverse inference shall have to be drawn against the appellants, as they had to discharge the burden of proving that 'Ex.R3', was indeed a genuine document.

As a sequel to the above, the appeal filed by the appellants stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

April 19, 2022
J.Ram

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