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

FAO No.5558 of 2015 (O&M)

Date of decision: 12.09.2022

Shiv Bahadur

..... Appellant

versus

Phirasat and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Kanwal Goyal, Advocate
for the appellant.

Mr. Rajbir Wasu, Advocate
for respondent No.3.

TRIBHUVAN DAHIYA J.

This appeal has been filed by the appellant-claimant against the award passed by the Motor Accident Claims Tribunal-cum-Additional District Judge, Panchkula, dated 16.03.2015, whereby the claim petition under Section 166 of the Motor Vehicles Act, 1988, filed against the respondents, claiming compensation on account of injuries suffered by him in a motor vehicle accident on 20.07.2013, has been dismissed.

2. The Tribunal framed issued No.1 as under:

1. Whether Shiv Bahadur sustained injuries in accident dated 20.07.2013 which had taken place due to rash and negligent driving of truck bearing No.UP-22(T)-2365 driven by the respondent No.1? OPP

3. While returning finding on issue No.1, the Tribunal recorded that as per Medico Legal Report (Exhibit P-3), at the time of accident the appellant-claimant was shown to be under the influence of liquor and also that he was not wearing helmet. This remark has been recorded in the MLR (Exhibit P-3) at point-A. By referring to the MLR and remark of the Doctor at point-A, the Tribunal held that the accident in question was caused due to appellant-claimant's own negligence at the time of accident, as he was under the influence of liquor and was not wearing helmet.

4. It has been argued by learned counsel for the appellant by placing reliance upon the law laid down by the Supreme Court in ***Jiju Kuruvila and others vs. Kunjujamma Mohan and others, 2013(3) SCC(CrI) 849***, contended that Tribunal's finding holding the claimant negligent cannot be sustained.

5. In the instant case, the only evidence before the Tribunal on the basis of which finding of negligence of the appellant-claimant in driving the motor-cycle has been returned, is, a remark in the MLR (Exhibit P-3) at point-A of the Doctor concerned, which reads as under:

A/H/O RSA on 20/07/13 at 8.50 pm, he was hit by a heavy motor vehicle, while he was travelling on his two wheeler abhyapur phase 1, he was not wearing helmet and was under the influence of alcohol, he was taken to sec 6, govt. hospital and ref to PGI (NO REFERRAL SLIP)

H/O LOC+, Vomiting+, nasal bleed+.

6. This writing in itself does not show any negligence on the part of the appellant-claimant. Merely because he was stated to be

under the influence of liquor, as recorded in the MLR, was not sufficient to arrive at the conclusion that the appellant-claimant was negligent in driving the vehicle/motor-cycle in question. No other evidence to establish the negligence has come on record. In the absence whereof, the finding of negligence recorded by the Tribunal is not sustainable; as it is merely an assumption. It is settled law that an assumption cannot replace evidence.

7. It has been held by the Supreme Court in **Jiju Kuruvila's case (supra)** that no definite finding of negligence of deceased can be recorded merely on the basis that he had taken liquor. Para Nos.25 and 26 of the judgment read as under:

25. Post Mortem report, Ext.-A5 shows the condition of the deceased at the time of death. The said report reflects that the deceased had already taken meal as his stomach was half full and contained rice, vegetables and meat pieces in a fluid with strong smell of spirit.

26. The aforesaid evidence, Ext.-A5 clearly suggests that the deceased had taken liquor but on the basis of the same, no definite finding can be given that the deceased was driving the car rashly and negligently at the time of accident. The mere suspicion based on Ext.-B2, '*Scene Mahazar*' and the Ext.-A5, post mortem report cannot take the place of evidence, particularly, when the direct evidence like PW-3, independent eye-witness, Ext.A1 (FIR), Ext.-A4 (charge-sheet) and Ext.-B1 (F.I. statement) are on record.

In view of the aforesaid, we, therefore, hold that the Tribunal and the High Court erred in concluding that the said accident occurred due to the negligence on the part of

the deceased as well, as the said conclusion was not based on evidence but based on mere presumption and surmises.

8. Considering the evidence on record of the Tribunal, it appears that after the accident in question on 20.07.2013, an FIR was lodged against respondents No.1 and 2 (driver and owner of the offending vehicle) on 24.07.2013, upon the statement of eye-witness Sunil Kumar (PW-2). Report under Section 173 Cr.P.C. (Exhibit P-4) was filed by the police against respondent No.1 and 2, who faced criminal prosecution for the offences punishable under Sections 279, 337 and 338 of the IPC. Charges were also framed against them vide order dated (Exhibit P-2). The eye-witness (PW-2) has supported the version of police. Besides, the driver did not step into the witness-box to deny any fact.

9. In these circumstances, it can safely be concluded on the basis of preponderance of probability that the accident in question was due to rash and negligent driving of the offending vehicle by respondent No.1. It has been held by Hon'ble the Supreme Court in ***Parmeshwari vs. Amir Chand and others, 2011 (2) RCR (Civil) 153***, that the claimants were merely to establish their case on the touch stone of preponderance of probability and the standard of proof beyond reasonable doubt was not applicable. The relevant para No.12 of the judgment reads as under:

We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is

certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in **Bimla Devi and others v. Himachal Road Transport Corporation and others**, 2009(3) R.C.R. (Civil) 805: 2009(4) R.A.J. 408: 2009(2) AICJ 167: (2009) 13 SCC 530 are very pertinent:

“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”.

10. In view of the aforesaid analysis of facts and law, the finding of Tribunal on issue No.1 is set aside. It is held that the appellant-claimant sustained injuries in the accident dated 22.07.2013 on account of rash and negligent driving of the offending vehicle by respondent No.1 (driver). Since the Tribunal has not returned any finding on issue No.2 to assess the compensation payable to the appellant-claimant and by whom, the case is remanded to the Tribunal to return the finding on issue No.2 and decide the claim petition on that basis. Finding recorded by the Tribunal on issue No.3, which is not challenged before this Court, remains undisturbed.

11. The present appeal stands disposed of in above terms.

12.09.2022
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(TRIBHUVAN DAHIYA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No