

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

**Reserved on 5th of August, 2022.
Pronounced on 16th of August, 2022**

FAO No.8118 of 2015

Ashish and another

....Appellants

Versus

Sanjeev Kumar and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Arun Singal, Advocate
for the appellants.

Respondents No.1 & 2 already proceeded *ex parte*
vide order dated 30th May, 2016.

Mr. S.S. Sidhu, Advocate
for respondent No.3/Insurance Company.

PANKAJ JAIN, J.

Claimants are in appeal. Claim Petition filed under Section 166 of the Motor Vehicles Act, 1988 at their behest stands dismissed by the Motor Accidents Claim Tribunal, Panipat (for short, 'the Tribunal') vide impugned Award dated 1st October, 2015.

2. Claim petition was filed seeking compensation on account of death of Neelam (mother of the claimants) who lost her life in a motor-vehicular accident dated 13th December, 2010.

3. As per claim petition while Neelam (deceased) was crossing GT Road, a car bearing No.HR-06N-4601 being driven in a rash and

negligent manner by respondent No.1 hit her. Deceased was taken to hospital in injured condition where she succumbed to her injuries.

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

“1. Whether the deceased Neelam died in the motor vehicle accident due to the rash and negligent driving of respondent no.1 of the vehicle bearing registration No.HR06N-4601? OPP.

2. Whether the claimants are entitled to be compensated by the respondents on account of death of deceased in the motor vehicle accident, if yes how much and from whom? OPP.

3. Whether the respondents no.1 & 2 have infringed the conditions of Insurance policy, if so what its effect? OPR

4. Relief.”

5. Issue No.1 has been decided against the claimants resulting in dismissal of the claim petition.

6. Ld. Counsel for the appellants has drawn attention of this Court to the statements suffered by PW1-Hanish and PW4-Suraj Mal, who are eye-witnesses to the accident. He submits that statements suffered by both the witnesses have been discarded by the Tribunal without assigning any plausible reason and, thus, prays for reversal of finding on Issue No.1.

7. Per contra, Ld. Counsel for respondent No.3/Insurance Company has argued that from bare perusal of FIR, it is evident that no registration number or the details of the car were mentioned in the FIR

hence, there is no cogent evidence on record that links the alleged offending vehicle to the accident. He asserts that statements of the alleged eye-witnesses i.e. PW-1 and that of PW-4 have been rightly discarded by the Tribunal by reasoned order.

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

9. There is no dispute w.r.t. death of the deceased in a motor-vehicular accident. FIR was lodged without any delay. Report under Section 173 Cr.P.C. was filed by the Investigating Agency as untraced report. The same has been proved on record as Exhibit R-1. It is trite that the outcome of the criminal proceedings itself has no bearing on the result of the petitioner(s) claiming compensation. The Tribunal is required to form its own opinion on the basis of evidence produced by the parties. In the present case, PW-1 Author of the FIR was examined. His statement has been discarded by the Tribunal holding as under :-

“...However, his cross-examination creates suspicion regarding authenticity of his version where he himself has denied most of the part of his examination-in-chief. While being cross-examined, he has deposed that the vehicle which caused the accident was not at the place of accident and when he reached, it had already left the place. The number of the vehicle was disclosed to him by the persons gathered at the place of accident. He himself had not seen the registration number of the vehicle, which caused the accident and he even did not remember the exact number of the vehicle, on the date

of his deposition before court. He further deposed that he disclosed the number to police on the basis of a slip given by a person standing at the place of accident and that slip was given by him to police, when police recorded his statement at the place of accident.”

10. The other eye-witness to the accident is Suraj Mal, who appeared as PW-4. Testimony of Suraj Mal reads as under :-

“PW4 Suraj Mal son of Sh. Daya Chand, age 40 years, occupation labourer, r/o Village Madlauda, District Panipat. Stated that I tender into my evidence my affidavit Ex Pw4/A, the same be kindly read in my evidence.

*xxxxx by Sh. P.S. duhan, Advocate for respondent no.3
& Sh. Surin Singla, Advocate for respondent no.1 & 2.*

I am seventh class passed. I can read Hindi and English Alphabets. The lady which met with an accident on 13.12.2010 was not known to me. I was following the lady at a distance of 30-40 paces. The car which caused the accident of the lady was of white colour. I do not know the make and marka of the car. Just after the accident I reached the place of the accident and many other person are also gathered at the spot. The offending car did not stop at the place of the accident. It stopped for a while and thereafter left the place of accident. I am not witness of the driver of the offending car. I remained at the place of accident for two / four minutes only. I do not know the name of the person to whom I gave the number of the offending car in writing. I have not seen that writing after the accident nor I met the person to whom I gave the slip of registration number of the offending car. I

have not informed the police about the accident of the said lady nor police ever recorded by statement regarding the accident dt. 13.12.2010. It is correct to suggest that the lady was crossing the G.T. Road from Eastern side to western side towards Village Nangal Kheri. It is also correct that at the place of the accident there is no proper provision for crossing of the pedestrian. It is also wrong to suggest that I have not witnessed the accident of the lady on 13.12.2010. It is also incorrect to suggest that the car number HR-06N-4601 has not caused any accident on 13.12.2010. It is incorrect to suggest that I have made a false statement and submitted wrong affidavit regarding accident dt. 13.12.2010 caused by car no.HR-06N-4601. It is also incorrect that the deceased was known to me and I have tried to falsely involve the aforesaid car in the accident of the lady which has been caused by some other vehicle and that it was a hit and run case. It is incorrect that I am deposing falsely.

RO&AC

(Devender Singh)
MACT, Panipat 16.04.2014”

11. Tribunal discarded the same holding that -

“...PW4 Suraj Mal, another alleged eye witness to the accident, also creates doubt regarding authenticity of his version. During cross-examination, he deposed that he does not know the name of the person to whom he gave the number of the offending car in writing. He has not seen that writing after the accident nor met the person to whom he gave the slip of registration number of the offending car. As observed already, if this witness had given the registration number in writing, the same could well find mention in the FIR.”

12. In the considered opinion of this Court, the Tribunal erred in analyzing the statements of these witnesses separately from each other in isolation. Tribunal also erred in not considering the cumulative effect of the statements suffered by these witnesses. Suraj Mal (PW-4) is explicit in his deposition when he states that the offending vehicle which caused the accident was of white colour and that he saw the accident with his own eyes. He noted number of car on a slip and handed over to the person present at the spot. He has withstood the test of cross-examination. At the same time, Hanish (PW-1) also states unambiguously that he was disclosed number of vehicle by the persons gathered at the place of accident as his shop is situated at a distance of about 100 ft. from the place of accident. The reasons recorded by the Tribunal to discard evidence of PW-1 and PW-4 are merely conjectural. The same cannot be upheld to demolish the testimony of the witnesses. Thus, the finding recorded by the Tribunal on Issue No.1 cannot be sustained. Resultantly, the impugned award is set aside.

16. Owing to the fact that the accident pertains to the year 2010, 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.

17. Parties are directed to appear before the District Judge, Panipat on 29th of September, 2022. On their appearance, Ld. District Judge

August 16, 2022

(PANKAJ JAIN)

Whether speaking/reasoned : Yes

Whether reportable : No