

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

496

FAO-5836-2017(O&M)
Date of Decision: 22.09.202

Pinki and others

..... Appellants

Versus

Ombir and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr.Kuldeep Sheoran, Advocate
for the appellant.

Mr. Sushil Sheoran, Advocate
for respondent No.2.

Mr. Ankur Gupta, Advocate
for respondent No.3.

JAGMOHAN BANSAL, J. (Oral)

1. The appellants through instant appeal are seeking setting aside of award dated 06.05.2017 passed by Motor Accident Claims Tribunal, Bhiwani (for short 'Tribunal') whereby Tribunal has rejected claim petition.

2. The brief facts emerging from record and necessary for the adjudication of present appeal are that Anil Kumar son of Shri Rajender Kumar met with a vehicular accident on 15.04.2015 at about 9.00/9.30 p.m. Anil Kumar was got admitted in General Hospital, Bhiwani from where he was referred to Jindal Hospital, Hisar. Due to critical condition, he was further taken away to

Lifeline Hospital, Hisar where he died on 21.04.2015 at about 5.00 a.m.

3. The legal representatives of Anil Kumar filed a petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation on account of death of Anil Kumar. In the claim petition, it was averred that a Ford Figo Car bearing registration No.HR-16K-4488 was coming from opposite side and had struck with motorcycle of Anil Kumar. Anil Kumar fell down on the road and received multiple injuries, which proved fatal. An FIR No.243 dated 21.04.2015 was registered at Police Station Sadar Bhiwani under Sections 279 and 304-A IPC against Ombir son of Sube Singh, who was driver of the aforesaid car. FIR was registered on the statement of Sandeep against unknown person and thereafter on the basis of statement dated 09.05.2015 of Sandeep at whose behest FIR was registered, the number of afore-stated car was added in the FIR.

4. The Tribunal framed following questions for itself consideration and adjudication :-

“1 Whether the accident in question took place on 15.04.2015 at about 9.00/930 p.m. due to rash and negligent driving of vehicle Ford Figo Car bearing registration No. HR-16K-4488 being driven by respondent No.1, causing death of Anil Kumar son of Rajender Singh? OPP

2 If issue No.1 is proved whether claimant is entitled to compensation, if so, to what amount and from whom? OPP

3 Whether the petition is not maintainable in the present form? OPR

4 Whether the petition is bad for non joinder or necessary parties? OPR

5 Whether the petitioner has neither any locus standi and nor any cause of of action accrued to him for filing and maintaining this petition OPR

6 Relief.”

5. The Tribunal after considering date of incident, date of registration of FIR, deposition of eye witness, deposition of Sandeep and pleadings of owner of afore-stated car as well as insurer came to a conclusion that alleged car was not involved in the alleged accident. The Tribunal held that there is no evidence to suggest that alleged vehicle was involved whereas evidences suggest that vehicle has been falsely implicated. The relevant extracts of findings recorded by learned Tribunal are reproduced as below:-

“14. This Court is of the considered opinion that no doubt non mentioning of registration number of offending vehicle or name of driver ipso facto is no fatal and the name of offending vehicle and driver may be un earth by investigation officer after due deliberation. However, it is the case wherein evidence suggest that vehicle in question has been falsely implicated in this case. Occurrence pertains to 15.04.2015. As per story of claimants on that day PW3 Ram Mehar witnessed the accident, he took mobile of deceased and informed PW4 Ajmer. On that

day PW4 Ajmer further informed PW2 Sandeep and PW2 Sandeep went to place of occurrence and shifted the injured to hospital. Therefore, it is clear that on 15.04.2015 it was in the Knowledge of PW2 Sandeep that the accident was witnessed by one Ram Mehar (PW3) who informed PW4 Ajmer and PW4 Ajmer informed PW2 Sandeep. The time between the accident i.e. 15.04.2015 and 09.05.2015 was sufficient enough which may be utilized by PW2 Sandeep to contact Ajmer and to get mobile number and to contact Ram Mehar. This exercise could have been done by PW2 Sandeep within a day or two. The delay which occurred between day of accident i.e. 15.04.2015 and recording statement of Ram Mehar on 09.05.2015 by the police is considerable delay. It is highly improbable that from day of registering FIR on 21.04.2015 till 09.04.2015 PW2 Sandeep could not inform the police regarding involvement of offending vehicle. Therefore, it emerged out from the aforesaid facts that the delay was utilized by the claimants to involve offending vehicle No. HR-16K-4488. The version given by PW2 Sandeep, PW3 Ram Mehar and PW4 Ajmer appears to be cooked one. My aforesaid view is fortified by law laid down in Geeta Devi and others versus Balwan Singh and others (supra). This Court is also of the considered opinion that civil cases are to be decided on

probabilities. In case it appears probable that accident was caused by alleged vehicle, only on the basis of FIR and investigation carried out by the police, claim petition can be decided in favour of the claimants. However, as a matter of rule mere registration of criminal case cannot establish the case of the claimants. Claimants have to establish their case on the basis of evidence which probablize, case of the claimant. If it is not so, the claim petition cannot be accepted. My aforesaid view is based upon Kamla Devi and others versus Dharampal and others, 2016 (2) PLR 127 (P&H).

15. Consequent upon the aforesaid findings authority Ravi versus Badri Narain, cited by counsel for the claimants is not applicable to fact of the present case. In this case, this Court has come to the conclusion that there is probability of implicating/fabrication and thus delay is fatal. Likewise, authority Geeta and others versus Balwan Singh and others (supra) is also not applicable to fact of the present case. In the present case the deceased was attending by family and relatives who were having knowledge of alleged offending vehicle from day one and despite that they did not report it to the police, whereas in Geeta Devi and others versus Balwan Singh and others (supra) case there was no other members of family of deceased except his mother who was quite old to lodge FIR.”

6. Learned counsel for appellants assiduously contended that the Tribunal has failed to appreciate oral evidence of witness. He primarily contended that PW-3 Ram Mehar was an independent witness and he is a Government School Teacher. Ram Mehar has no direct or indirect relation with deceased and his family members, thus, there was no reason to disbelieve deposition of Ram Mehar. The non-filing of DDR prior to registration of FIR, acquittal of driver of alleged vehicle in criminal trial, non disclosure of vehicle number at the time of registration of FIR, non-availability of eye witness at the time of registration of FIR and disclosure of vehicle number after few days cannot deprive the appellants from their right to get compensation. The Tribunal is not bound to follow strict procedure prescribed under Evidence Act and Code of Civil Procedure. The Tribunal has scrutinized deposition and documents on record as if a criminal court where prosecution is supposed to prove its case beyond reasonable doubt.

7. Per contra, learned counsel for insurer and owner of vehicle in the same tone contended that the Tribunal has rightly held that vehicle in question was falsely implicated. The alleged accident took place on 15.04.2015 and no DDR was registered even though deceased passed away on 21.04.2015. In the FIR, number of vehicle was not disclosed and even mark or colour of the vehicle was not disclosed. The alleged independent witness, Sandeep Kumar-complainant, Ajmer and Ramher @ Ram are

from the same village as well as friends/relatives of each other. Thus, Ram Mehar (PW-3) was not an independent witness. The Investigating Officer has deposed that he lodged FIR on the statement of Sandeep Kumar whereas Sandeep Kumar feigned ignorance before Criminal Court, thus, contradiction is stark and claim has been rightly rejected.

8. I have perused the record and heard arguments of counsel for appellants.

9. The conceded position emerging from record is that Anil Kumar met with an accident on 15.04.2015 and he remained in hospital from 15.04.2015 to 21.04.2015. There is no statement of deceased on record from which it could be culled out that alleged car was involved in the accident. An FIR was registered against driver of the vehicle. However, driver has been acquitted vide judgement dated 17.10.2018 passed by learned JMJC, Bhiwani. The FIR was registered on 21.04.2015, however, make colour or vehicle number was not mentioned in the FIR. Sandeep at whose behest FIR was registered disclosed number of alleged vehicle on 09.05.2015.

10. It is settled proposition of law that civil/quasi judicial authorities are not bound by findings recorded by Criminal Court because in a criminal trial, the prosecution has to prove its case beyond reasonable doubt whereas in civil or quasi judicial proceedings, matter is decided on preponderance instead of strict proof. In the case in hand, the findings recorded by Criminal Court

could be ignored had there been findings by the Tribunal in favour of the appellants whereas in the present case, Criminal Court has acquitted driver of the alleged vehicle and similar findings have been recorded by the Tribunal. Thus, the findings recorded by Criminal Court cannot be totally ignored.

11. The FIR was registered on 21.04.2015 whereas accident took place on 15.04.2015. No attempt was made to record statement of the deceased. No DDR was lodged on 15.04.2015 and FIR was lodged on 21.04.2015. The appellants did not disclose number, colour or make of the alleged car. It is believable that appellants were not aware about registration number of car whereas non disclosure of colour, make of car for quite long time was fatal to claim of the appellants. The sole argument of appellants is that eye witness was an independent witness whereas respondents are contending that he is a friend of Sandeep and they are of the same village, thus, he is an interested witness. Whether eye witness was friend of Sandeep or deceased is an irrelevant argument because statement of even family member can be relied upon because proceedings before Tribunal are not criminal proceedings. However, the appearance of alleged eye witness on 09.05.2015 whereas accident took place on 12.04.2015 creates scope for doubt. Sandeep, complainant of FIR got message from Ajmer (PW4) who in turn had got message from Ram Mehar, PW3. As held by learned Tribunal, Sandeep could easily contact Ram Mehar and inform police about

registration number of the car. The appellants opted to remain silent from 15.04.2015 to 09.05.2015, which creates doubt. It is also conceded fact that Sandeep in his statement before trial Court feigned ignorance about statement recorded by police where police officer in his statement before learned Tribunal categorically submitted that he has registered FIR on the basis of complaint of Sandeep and number of car was recorded on the basis of statement of Sandeep. The police officer has also stated that registration number of car was disclosed by Sandeep in his statement dated 09.05.2015. Before the trial Court, Sandeep in his cross-examination has stated that he has not made a statement before police. He has further refused to admit that he informed police that Ram Mehar is witness of accident and he (Ram Mehar) has informed registration number of car. The contradiction is stark. It is further apt to notice that eye witness has stated that deceased was moving on his motorcycle which was ahead to his car and alleged car coming from opposite side, hit motorcycle and driver sped away from the spot. It seems intrigue that eye witness was moving behind motorcycle of deceased and a car coming from opposite side, struck the motorcycle but car of the witness remained untouched. There is further no evidence qua damage of alleged car. It is also highly improbable that a car met with an accident with a motorcycle but there is no damage to car.

12. In view of above facts and circumstances, I do not find

any infirmity in the order passed by learned Tribunal. The appeal deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.09.2022
anju

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

