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

**FAO-6947-2019 (O&M)
Reserved on : 05.09.2022
Date of decision : 20.09.2022**

Harjit Singh & Another

.... Appellants

Versus

Anita Rani & Others

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sandeep Singh Jattan, Advocate for the appellants.

ALKA SARIN, J.

The present appeal has been preferred by the owner and the driver of the vehicle bearing registration No.HR-04-C-1841 (hereinafter referred to as the 'offending vehicle') against the award dated 05.10.2019 passed by the Motor Accident Claims Tribunal, Ambala (in short the 'Tribunal) granting compensation of Rs.14,74,060/- along with interest @ 6% per annum from the date of institution of the petition till realization.

Learned counsel for the appellants has contended that the Tribunal has not considered the fact that the accident took place on 28.07.2012 and the FIR was lodged on 30.07.2012. It is further the contention that the driver of the offending vehicle was acquitted vide judgment dated 16.05.2015 by the Court of Judicial Magistrate First Class, Naraingarh and against the acquittal a Criminal Appeal No.486 of 2015 was

also dismissed on 05.05.2016. Learned counsel for the appellants has further contended that though the accident took place on 28.07.2012, the deceased died on 21.11.2015 i.e. after a lapse of 3 years and 3 months and there was no evidence on the record to prove that the deceased died due to the injuries sustained in the accident.

Heard.

The brief facts relevant to the present *lis* are that on 28.07.2012 at about 07.30 a.m. Suresh Kumar (deceased) was going from his house in Shiv Colony, Naraingarh to his shop at Lotan Naraingarh while pedalling his bicycle at a slow speed on the left side of the road. When he reached in front of Loton gate, a motorcycle bearing registration No.HR-04-C-1841 came at a high speed from the side of Kala Amb and struck the bicycle of Suresh Kumar. As a result of the accident, Suresh Kumar fell on the road and sustained injuries and he was taken to the Civil Hospital, Naraingarh from where he was referred to PGI, Chandigarh. The deceased remained admitted in PGI Chandigarh upto 02.08.2012. Thereafter, he again remained admitted in PGI Chandigarh from 22.08.2013 to 24.08.2013 and again from 12.08.2014 to 15.08.2014. The deceased had undergone several surgeries at PGI Chandigarh. However, he expired on 21.11.2015 due to the injuries sustained in the accident. An FIR bearing No.230 dated 30.07.2012 under Sections 279 and 337 of the Indian Penal Code, 1860 was registered against appellant No.1 herein at Police Station Naraingarh. The claim petition was filed by the wife and children of the deceased, Suresh Kumar, wherein it was claimed that the deceased was 35 years of age at the time of his death and was working as a tailor and earning Rs.18,000/- per month. It was further pleaded by the claimants that they were fully dependent upon the income of

the deceased. The claim petition was contested by the appellants herein by filing a joint written statement. The factum of the accident was denied and it was averred that a false FIR had been lodged against appellant No.1 herein. It was further averred that appellant No.1 faced criminal trial and was acquitted by the Trial Court. The appeal against acquittal was also dismissed. On merits, it was averred that the accident took place due to the rash and negligent driving by the deceased himself.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the accident in question took place due to the rash and negligent driving of motorcycle bearing Registration No.HR-04-C-1841 by respondent No.1-Harjit Singh resulting into death of Suresh Kumar, as alleged ? OPP
2. If issue No.1 is proved, whether the claimants are entitled to compensation, if so, how much and from whom ? OPP
3. Whether the petition is not maintainable in the present form ? OPR
4. Relief.

On issue No.1, the Tribunal held that the factum of the accident was duly proved by the claimants. The Tribunal awarded compensation of Rs.14,74,060/- along with interest @ 6% per annum from the date of institution of the petition till realization.

The argument raised by learned counsel for the appellants that since there was a delay in lodging of the FIR and hence it was proved that

the accident did not take place, cannot be accepted inasmuch as in the FIR (Ex.P1) registered on 30.07.2012 on the statement of the eye-witness, Nanak Singh, it had been mentioned that information regarding the accident was received at Police Station from PGI, Chandigarh on 28.07.2012 itself. The Police went to PGI Chandigarh on 28.07.2012, however, Suresh Kumar was at that time stated to be in the operation theatre. The Police again visited PGI Chandigarh on 29.07.2012, however, Suresh Kumar was declared unfit to make any statement. Since no eye-witness was present at PGI Chandigarh, ultimately statement of PW1, Nanak Singh was recorded on 30.07.2012. Hence, the delay in lodging the FIR stands duly explained.

The second argument of learned counsel for the appellants that since appellant No.1 had been acquitted by the Trial Court and the appeal against acquittal had also been dismissed and hence the Tribunal had erred in awarding the compensation, also cannot be accepted. It is trite that the outcome of the criminal proceedings would have no effect on the claim petition filed by the claimants under the Motor Vehicles Act, 1988. Hon'ble Supreme Court in case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [2020 (13) SCC 486]** has held as under :

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while

deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

The third argument of learned counsel for the appellants that the accident took place on 28.07.2012 and the deceased died on 21.11.2015 after a lapse of 3 years and 3 months and that there was no evidence on the record to prove that the deceased, Suresh Kumar, died because of the injuries sustained at the time of the accident, is liable to be rejected inasmuch as PW2, Anita Rani, tendered her affidavit in evidence (Ex.PW2/A) wherein she had stated that the accident took place on 28.07.2012 and that firstly the deceased was taken to the Civil Hospital, Naraingarh from where he was referred to PGI Chandigarh where he remained admitted from 28.07.2012 to 02.08.2012. He was, thereafter, taken up for follow up treatment, however, his condition did not improve and he was again admitted in PGI Chandigarh on 22.08.2013 and discharged on 24.08.2013. Thereafter, he again remained under treatment. On 28.12.2013 he was again admitted in Civil Hospital, Naraingarh from where he was referred to PGI, Chandigarh once again for further treatment on 02.01.2014. On 09.01.2014 he was advised another operation and was admitted in PGI Chandigarh on 12.08.2014 and was again operated upon on 13.08.2014 and discharged on 15.08.2014. Thereafter, he regularly went for follow up treatment to PGI Chandigarh on 26.08.2014, 08.11.2014 and lastly on 09.06.2015. However, his condition did not improve and ultimately he expired on 21.11.2015 (Ex.P2 to Ex.P11). A perusal of the cross-examination of PW2, Anita Rani, reveals that no

suggestion was given to the said witness that her husband did not die as a result of the injuries sustained by him at the time of the accident. PW3, Dr. Puneet Malik, Neurosurgeon, Senior Resident from PGI Chandigarh, had stated that Suresh Kumar was admitted on 28.07.2012 and was operated on the same day. He was brought with head injuries with Rt frontal contusion with Rt FTP acute SDH. He had testified that Suresh Kumar was under treatment from 28.07.2012 to 09.06.2015. There is no evidence to the contrary which has been produced by the appellants herein.

No other argument has been raised by learned counsel for the appellants.

In view of the above, I do not find any illegality and infirmity in the award passed by the Tribunal. The present appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

20.09.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO