

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-235-1999 (O&M) and
Date of Decision: September 12, 2023

Sarjo Devi and others

...Appellants

VERSUS

Shamsher Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Munish Kumar Garg, Mr.Tajveer Singh and
Mr.Vikas Mehra, Advocates
for the appellants.

Respondents No.1 and 3-ex parte.

Mr.R.S.Chahal, Advocate
for respondent No.2.

Mr.Aseem Aggarwal, Advocate
for respondent No.4-insurance company.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, assailing the judgment dated 09.10.1998 passed by learned Motor Accident Claims Tribunal, whereby, the claim petition filed by the claimants was dismissed.

The essential facts to be noticed are as herein given:-

That, on 14.12.1993, at about 11.30 p.m., Balwan Singh was returning to Jind from Narnaund, while on scooter, after completion of his private work. When he reached near village Gulkani, a Trax/Jeep bearing

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registration No.DL-5C-5884, which was being driven by respondent No.1-Shamsher Singh, came from his back side i.e. from Hansi side, at a very high speed. It was being driven, rashly and negligently and it hit the scooter, as a result whereof, Balwan Singh fell down and suffered serious multiple injuries, on his head. He was taken to Civil Hospital, Jind, where he was declared dead. The accident was witnessed by one Ram Kumar. Krishan Kumar, registered owner of the Trax/Jeep bearing registration No.DL-5C-5884 and the National Insurance Company, being insurer of the offending vehicle, were also impleaded as respondents No.1 and 2, respectively, but however, at later stage, in pursuance of disclosure made about Krishan Kumar to have sold the vehicle in question to Sehdev Singh s/o Mukhtiar Singh, said Sehdev Singh was arrayed as respondent No.2-A.

In pursuance of the notice issued, respondent No.1-Shamsher Singh made appearance and filed reply, wherein, he though admitted about the accident to have taken place, but however, he asserted the same to have taken place due to fault of Balwan Singh deceased, as the latter was driving his scooter, in a rash and negligent manner. However, respondent No.2-Krishan Kumar had asserted in reply, about himself to be not owner of Trax/Jeep in question, on the date of accident i.e. 14.12.1993, as he had already sold the said vehicle to one Sehdev Singh s/o Mukhtiar Singh. Further, Sehdev Singh, the subsequent purchaser was impleaded as respondent No.2-A on 18.05.1992 and he pleaded that the petition should be dismissed qua him. Thereafter, he was proceeded against ex-parte.

Respondent No.3-insurance company, in fact contested the claim petition and filed an application under Section 170(a) and (b) of the Motor

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Vehicles act, for taking over the defence of the claim, in the name of the insured and the same was allowed. In fact, the plea taken by the insurance company is about no accident to have taken place on 14.12.1993, with Trax/Jeep bearing registration No.DL-5C-5884. In fact, it took the plea about claimants to have colluded with driver and owner of the vehicle in question, in order to get compensation.

On the basis of the evidence, coming forth, following issues were framed:-

1. Whether Balwan Singh died as a result of injuries sustained by him in a motor-vehicular accident on 15.12.1993 in the area of village Gulkani due to rash and negligent driving of Trax/jeep No.DL-5C-5884 by respondent Shamsheer Singh?OPP.
2. Whether the accident took place because of fault and rash and negligent driving of scooter No.DL-IS(T)/B-0746 by deceased himself?OPR.
3. Whether the petitioner are the legal heirs/dependents of deceased Balwan Singh?OPP.
4. How much the petitioners are entitled to receive as compensation and from whom?OPP.
5. Whether respondent Shamsheer Singh was not holding valid driving licence on the date of accident?OPR-3.
6. Whether respondent Krishan Kumar is not liable for the reason that he had sold the offending trax to respondent No.2A, Sehdev Singh, prior to the accident?OPR-2.
7. Relief.

To so substantiate their claim, Ved Kaur, widow of deceased stepped into witness box as PW-4. Besides deposing about her relationship with the deceased and the avocation followed by the deceased, she also deposed about her parents-in-law, herself as well as her children, to be

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dependent upon the income of the deceased. She also deposed about death of her husband and that they had no source of earnings to meet the household expenses.

Besides the aforesaid, appellants-claimants also examined PW-1 Dr.G.D.Gupta, Medical Officer, District T.B. Office, Jind, who had proved the post-mortem report Ex.P1.

PW-2 MHC Satpal, Police Station Sadar had deposed about registration of FIR in the present case, which is Ex.P2 and further deposed about challan in the said FIR, having been presented in the Court of ACJM, Jind.

PW-3 Amar Parkash, CRC, S.P. Office, Jind, had brought the service record of ASI Balwan Singh and deposed about his salary to be Rs.3679/- per month, at the time of his death. He deposed about date of birth of Balwan Singh to be 03.07.1954 and the date of superannuation from service to be 31.07.2012. He proved the salary certificate, which is Ex.P3.

PW-5 Ram Kumar, is an eye witness to the accident in question. He had deposed about the manner of taking place of the accident, which led to death of Balwan Singh.

PW-6 Dharambir, deposed about Shamsheer Singh, driver of the offending vehicle, to have made extra-judicial confession before him on 15.12.1993.

Thereafter, learned counsel for the claimants, tendered into evidence photocopy matriculation certificate of Balwan Singh Ex.P6 and closed evidence, on behalf of the claimants.

Thereupon, learned counsel for respondent No.1-Shamsheer

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Singh, had tendered into evidence, photocopies of driving licence of Shamsher Singh Ex.R1, Registration Certificate of vehicle No.DL-5C-5884 Ex.R2 and closed the evidence, on behalf of respondent No.1.

Thereafter, learned counsel for respondent No.3 had examined RW-1 Sudesh w/o Randhir, RW-2 Bhagwan, RW-3 Har Kirat Singh RW-4 Krishan Kumar, registered owner, RW-5 Mukhtiara and then, learned counsel for respondent No.3, tendered into evidence, copies of jamabandis, voter lists and pedigree-table as Ex.R3 to R7. Furthermore, also tendered into evidence, copy of insurance policy Ex.R8, copies of mutations Ex.R9 to R12 and copy of jamabandi Ex.R13 and closed the evidence.

On appraisal of the evidence brought on record, learned Tribunal reached the conclusion that testimony of an eye witness does not inspire confidence and there is no reliable and probable evidence on file to hold that Balwan Singh, died in an accident caused by Trax/Jeep bearing registration No.DL-5C-5884, which was allegedly being driven by respondent No.1-Shamsher Singh. Consequently, issues No.1 and 2 were decided against the claimants and resultantly, vide impugned judgment, the claim petition was dismissed.

Feeling aggrieved by the aforesaid dismissal of the claim petition, the appellants-claimants have filed the present appeal.

In pursuance to the notice issued, the contesting respondents made appearance, whereas, respondents No.1 and 3 were proceeded against ex-parte.

I have heard learned counsel for the parties and perused the lower Court record.

At the very outset, learned counsel representing the appellants-claimants had submitted that before learned Tribunal, the appellants-claimants were required to prove their case by preponderance of probabilities and to so substantiate the fact of accident and manner of taking place of the same, which resulted into death of Balwan Singh, the claimants have examined PW-5 Ram Kumar and PW-6 Dharambir. Moreover, it is submitted that even the fact of accident, is not disputed by respondent No.1, though, he has disputed the rashness and negligence, on his part. In fact, it is submitted that respondent No.1-Shamsher Singh himself has not stepped into witness box. In the light of such evidence, coming on record, it is submitted that learned Tribunal had erroneously reached the conclusion about the fact of accident and involvement of Trax/Jeep bearing registration No.DL-5C-5884, to be not established.

Per contra, learned counsel representing the insurance company vehemently contends that the appellants-claimants neither proved the involvement of the vehicle in question nor proved the respondent No.1-Shamsher Singh was rash and negligent in driving the insured vehicle. Learned counsel has critically referred to the testimony of PW-5 Ram Kumar, alleged eye witness to the accident and also made reference to testimony of PW-6 Dharambir, to bring home his contention.

In fact, it is submitted that when the evidence, as a whole is read, it stands amply established that it was at the maximum, a case of 'hit and run', and the accident now is wrongly projected to have been caused by Trax/Jeep bearing registration No.DL-5C-5884, driven by Shamsher Singh, in a rash and negligent manner and that the same resulted into death of Balwan Singh.

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In fact, it is submitted by learned counsel for the insurance company that learned Tribunal had appraised the evidence in correct perspective and reached the right decision of dismissal of the claim petition and the said conclusion, calls for no interference and as such, appeal sans merit.

During the course of arguments, reference has been made to the judgment passed in *Sunita Vs. Rajasthan State Road Transport Corporation, AIR 2019(SC) 994*, wherein, it was held by the Hon'ble Supreme Court that in motor accident claim cases, the Tribunal is required to examine the case on the preponderance of probabilities and should not insist upon proving the case on strict standard of proof i.e. beyond all reasonable doubt. However, this Court does not dispute about the manner of appraisal of the evidence, in the motor accident claim case, as held in the aforesaid case law.

However, reference ought to be made to Section 3 of the Indian Evidence Act, 1872, which defines the expressions, '**proved**', '**disproved**' and '**not proved**', as herein given:-

"Proved". — A fact is said to be proved when, after considering the matters before it, the Court; either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

"Disproved". — A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its nonexistence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved". — A fact is said not to be proved when it is neither proved nor disproved."

A careful reading of the aforesaid three clauses indicate the degree of certainty, which is required to treat a fact as **proved**. Basically, the test is whether a prudent man, under the peculiar circumstances of the case, assume the existence of a certain fact as true or disbelieve it. The proof of effect of the evidence adduced, depends not upon the accuracy of the statements, but upon the probability of their existence. As per the Indian Evidence Act, 1872, the anvil of testing “**proved**” “**disproved**” and “**not proved**” is the same in both civil and criminal cases, which is that of a prudent man. The Presiding Officer is required to test every evidence in this light before relying upon it, in both civil and criminal proceedings.

Considering the civil and criminal cases, the difference lies only in the standard of proof, which is higher in criminal cases i.e., the facts must be proved beyond all reasonable doubt, but in civil cases, the party only has to convince the Court of preponderance of probabilities in his favour.

Further, Section 101 of the Indian Evidence Act, 1872, deals with the burden of proof, which provides that ‘whosoever desires any Court to give judgment in his favour, on the basis of certain facts, must establish the existence of those facts. Even, Section 103 of the aforesaid Act, provides that burden of proof of particular fact lies on the person, who wishes the Court to believe in it.

All the aforesaid provisions, form a part of one binding thread, which calls upon the plaintiff/claimant, an undisputed burden to establish the foundational facts of the case and bring evidence for all the facts, which he relies upon to convince the Court that in the mind of a reasonable man, such facts should be believed to be true. It is only, thereupon, that the doctrine of

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preponderance of probabilities will come into picture and the Court after being reasonably satisfied, will not demand strict proof of evidence or any further evidence, to prove the same fact, in case of civil proceedings. However, so far as, criminal cases are concerned, such fact may be required to be proved/endorsed, by way of additional evidence or corroboration. In the light of the same, the difference, therefore, lies in the probative force, attached to the evidence and not in the test of its proof (degree of proof).

The Court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes, as a balance of probability or the preponderance of the evidence. Proof of a fact depends upon the probability of its existence. The finding of the court must be based on:

1. The test of a prudent person, who acts under the supposition that a fact exists and;
2. In the context and circumstances of a particular case.

Thus, it is evident that the doctrine of preponderance of probabilities of evidence, does not mean that the Civil Court/Tribunal is not required to apply basic test that whether a particular fact is proved or not. Even, if the standard of proof in civil cases is lower, such requirement is not dispensed with.

In this backdrop, now adverting to the case in hand. With the able assistance of learned counsel for the appellants-claimants, the testimony of PW-5 Ram Kumar, an alleged eye witness to the accident, has been appraised threadbare by learned Tribunal, in the impugned judgment. Though, the said witness, in his examination-in-chief has stated about

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having witnessed the accident, which was caused due to rash and negligent driving of Trax/Jeep by Shamsher Singh-respondent No.1, but however, while facing cross-examination, certain facts have come on record, which do not inspire about the accident, having witnessed by the said witness as claimed. In fact, it is pertinent to mention that FIR Ex.P2 is the first version of the accident, coming forth, which was got recorded, at the behest of Constable Prem Singh, on 15.12.1993 at 10.30 a.m. The version given therein, was that death had occurred, in the morning of 15.12.1993, on account of an unknown vehicle, having struck against the scooter of Balwan from rear side. It has been rightly observed by learned Tribunal that in other words, as per the facts given in the FIR, **it was firstly a case of 'Hit and Run' accident and secondly, none had seen the accident taking place.**

Considering this manner of the first version, coming forth, the version, set up by PW-5 Ram Kumar about having witnessed the accident and his conduct, soon thereafter, does not inspire confidence. Although, he had asserted about his presence at the spot of accident, on the dark wintery night and that driver Shamsher Singh had stopped his vehicle, soon after the accident and disclosed his particulars, but however, the said witness had never bothered to have taken the injured to the hospital. If he had so stopped, then the normal human conduct required him to have escorted the injured to the hospital. Rather, he had stated that he had instructed Shamsher Singh, the driver of the offending vehicle, to take the injured to the hospital, which is highly improbable. Thereafter, the said witness had asserted himself to have left the place of accident and that he had gone to Delhi for sale of poultry-birds. It was only on 16.12.1993, when he returned

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from Delhi and on reaching home (in village Rajthali), he came to know that the name of the person, who had met with the accident, was ASI Balwan Singh and that the latter had expired, on the spot, as the driver of the Trax/Jeep did not take him to the hospital. He also claimed that thereafter, he had gone to the police station and told the name of driver and registration number of the Trax/Jeep. His presence at the spot i.e. Jind-Rajthali road, on the chilly night of the month of December, has not been explained. Furthermore, it was '*amavas*' night and the number of offending vehicle, would not have been visible to the rider of moving vehicle i.e. Ram Kumar, who was coming on scooter from the opposite side. Otherwise also, his testimony does not appear to be natural and probable, as nowhere the said witness was related to the deceased or deceased Balwan Singh was never known to him. Then, all the more, after coming back to his hometown i.e. Rajthali, why would he, all the way, come to Jind to report to the police station.

In the given circumstances, his testimony has been correctly appraised by learned Tribunal and has been believed to be unnatural and unreliable.

Not only this, even PW-6 Dharambir has been examined by the appellants-claimants before learned Tribunal, who had set up the version of extra-judicial confession of guilt, having made by Shamsher Singh-respondent No.1 before him on 15.12.1993 and that he had asked him to come on the next day, but he never turned up. This also carries a ring of falsehood, as while facing cross-examination, the said witness has not been able to disclose about having relationship with Shamsher Singh and that why he had not taken Shamsher Singh to the police station, at the time, when he

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made alleged confession. Why would Shamsher Singh-respondent No.1, come forward to make extra-judicial confession, when he had slipped away from the place of accident, while leaving the injured there. In these circumstances, even testimony of PW-6 Dharambir, is not probable and natural and thus, rightly concluded to be not inspiring confidence.

Furthermore, it should also be noted that it has been categorically observed by learned Tribunal about order of acquittal having secured by Shamsher Singh-respondent No.1, on account of Ram Kumar and Dharambir, the aforesaid witnesses, having not stepped into witness box. This conduct of the aforesaid witnesses, also belies to great extent, the version of having witnessed the accident and about Shamsher Singh to have made confession of guilt before Dharambir.

Besides the aforesaid, in view of the pedigree table Ex.R7, coming on record, it stands established that Shamsher Singh (respondent No.1) and Sehdev Singh (respondent No.2A) are real brothers and this fact has also been admitted by RW-5 Mukhtiar. Although, RW-1 Sudesh, who is wife of Randhir, younger brother of Balwan, had made an attempt to conceal the relationship, but it becomes evident from the various witnesses examined by the insurance company, about Sehdev Singh (alleged owner of offending vehicle) and Shamsher Singh (driver) to be grandsons of Mauji brother of Bhagwana, while Sudesh RW-1 is grand-daughter of Mauji. Out of the said two respondents, Sehdev Singh did not contest the claim petition and got himself proceeded ex-parte, while Shamsher Singh did not dispute the factum of accident, which in itself is a pointer to the alleged collusion, at the behest of the claimants, as so asserted by the insurance company.

Taken as a whole, the evidence, as such, coming on record, with regard to the fact of accident and the involvement of the Trax/Jeep bearing registration No.DL-5C-5884 and about the same having resulted into causing of fatal injuries to Balwan Singh, as such, do not stand established. In the light of the same, learned Tribunal has rightly appraised the evidence, brought on record and reached the correct conclusion, about the appellants-claimants to have failed to prove the issues No.1 and 2 and thus, had correctly decided the said issues, in favour of the insurance company, which had taken over the defence of the claim, in the name of insured.

In view of the aforesaid discussion, the impugned judgment calls for no interference and as such, the appeal sans merit and the same is hereby dismissed.

September 12, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No