

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 1992/2022

Date of decision:23/02/2023

Jasoda Ahirwar and others

.....Appellants

Vs.

Prem Kumar and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Jai Singh Yadav, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants against dismissal of their claim petition bearing MACP No.810/2018 filed u/s 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act') by Motor Accident Claims Tribunal, Rewari (hereinafter referred to as 'the Tribunal') vide Award dated 9.1.2020. Claimants are parents and sister of deceased Akhilesh, who died in a motor vehicular accident that took place on 18.3.2018.

It was pleaded case of the appellants that deceased had died due to rash and negligent driving of Tractor bearing registration No. HR-

36U-5858, (hereinafter referred to as 'the offending vehicle') driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3 herein.

Ld. Tribunal on the basis of pleadings and evidence led before it dismissed the claim petition on the ground that rash and negligent driving of the offending vehicle on the part of respondent no.1 was not proved by the claimants/appellants.

Ld. Counsel for the appellants submits that the above said finding of the Tribunal is incorrect as a criminal case was registered against the driver of the offending vehicle vide FIR No. 0066 dated 18.3.2018 filed u/s 279 and 304-A IPC at PS Khol. It is submitted that in view of pendency of the FIR in question, ld. Tribunal could not have dismissed their claim petition.

No other argument has been advance on behalf of the appellants.

Heard ld. Counsel for the appellants.

Perusal of the record of the case shows that as per Medical Report Ex.P8, the following injuries were found on the person of the deceased:-

"1. Ligature mark in the form of reddish colored pressure abrasion is present all around the neck. The ligature mark completely encircles the neck and is running horizontally. The width of ligature mark ranges from 2-4 cm. The ligature mark is 2 cm below thyroid cartilage prominence. The total neck circumferences is 43 On fine dissection of the neck the underlying subcutaneous tissue is found contused and hemorrhagic. Diffuse extravasation of blood was found in the tissues underneath the ligature mark. Transaction of trachea present. C3 cervical vertebrae was found fractured along with extravasation of blood. Hyoid

bone, thyroid cartilage and other laryngeal cartilages are found intact.

2. Lacerated wound of size 2.5cm x 1cm x bone deep present over right side of occipital region of head."

On the basis of above medical evidence Ld. Tribunal concluded that the deceased died on account of injuries sustained by him when the cloth (*parna*) worn by him around his neck got entangled in the fan belt while he was collecting Mustard crop (Sarson). It was in view of the above circumstances that the Ld. Tribunal correctly concluded that the rash and negligent driving of the offending vehicle was not proved by the claimants.

Moreover, it has also been found on record that the deceased was sitting on the mudguard of the Tractor and trying to collect Mustard crop. The law in respect of gratuitous passengers is very clear. It has been held in numerous judgments of this Court as well as of the Hon'ble Supreme Court that Insurance Company is not liable for injury or death of a gratuitous passenger under an Act Policy. It has further been noticed that the offending vehicle/ Tractor has a seating capacity of only one, including the driver.

Further, it is a well settled proposition of law that registration of an FIR, or even judgment of acquittal or conviction, are of no relevance in a motor vehicular accident case, and the Tribunal is required to decide such cases on the basis of material placed before it. In this regard, reference may be made to the judgment passed by this Court in '**MAGMA HDI General Insurance Co. Ltd. v. Nirmala Devi, (Punjab And Haryana) : Law Finder Doc Id # 1179732**', wherein it has been held as follows:

"8. In the considered view of this Court, the Tribunal while passing the impugned award has

rightfully held that the judgment of a criminal Court determining the guilt or innocence of a driver is neither conclusive nor binding on the Tribunal dealing with a claim petition. It is by now well settled that while adjudicating claim petitions regarding motor accident claims, the principle that is to be followed is preponderance of evidence. The standards of proof of a criminal case are different from claims set up for accident victims and the Tribunal while considering the issue of negligence adduced before it has to proceed un-influenced by the fact of pendency of a criminal case or judgment of acquittal given by the criminal Court.”

Again in case of ‘**Smt. Dharma Devi v. Jitender, (Punjab And Haryana) : Law Finder Doc Id # 817067**’, this Court has held that:

“11. Having considered the aforesaid arguments, as also the Award of the learned Tribunal, though undoubtedly, negligence of a driver of a vehicle stated to be involved in a motor vehicle accident, is not to be proved in a claim petition filed under Section 166 of the Motor Vehicles Act, in the same manner as the guilt of the driver has to be proved in a criminal trial, however, I find myself unable to agree with learned counsel for the appellant, inasmuch as, simply because a report under Section 173 Cr. P.C. was presented by the police to the competent court and respondent no. 1 was facing a trial with a charge sheet drawn up against him, it would not establish his negligence even for the purpose of summary proceedings before a Motor Accidents Claims Tribunal.”

In the present case too the Claimants’ case is solely based on the FIR, however, in my view, that alone does not prove negligence on part of the driver. Claimants have failed to lead any evidence to prove negligence of the driver. Accordingly, I find no merit in this appeal, and the same is hereby, dismissed.

23/02/2023.	(Nidhi Gupta)
Joshi	Judge
Whether speaking/reasoned	Yes
Whether reportable	Yes/No