

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
237 **FAO-2015-2021 (O&M)**
Date of decision: 30.05.2023

Charno @ Charan Kaur & Others

...Appellant(s)

Vs.

Anand & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Parveen Kaushik, Advocate
for the appellants.

NIDHI GUPTA, J.

CM-11009-CII-2021

This is an application under Section 5 of Limitation Act,
1963 seeking condonation of delay of 21 days in filing the appeal.

After going through the contents of the application, the
same is allowed subject to all just exceptions.

MAIN APPEAL

Present appeal has been filed by the claimants against
dismissal of their claim petition by Motor Accident Claims Tribunal,
Rohtak (hereinafter referred to as “the learned Tribunal”) vide Award
dated 03.03.2020 passed in MACT Case No.77 of 2018 filed under
Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as
“the Act”). The five claimants/appellants are the widow, mother, 22-
year-old son, 21-year-old daughter, and 19-year-old son of deceased-
Narender who was 40 years old at the time of death.

2. The claim petition was filed by the appellants herein alleging that the deceased-Narender had died due to injuries suffered by him in a motor vehicular accident that took place on 13.06.2017 due to rash and negligent driving of trola bearing registration No.HR-56A-6202 (hereinafter referred to as 'the offending vehicle') being driven by respondent No.1, owned by respondent No.2, and insured by respondent No.3 herein.

3. On the basis of the pleadings of the parties, learned Tribunal formulated the following issues:

- "1. Whether the accident in question occurred due to rash and negligent driving of vehicle i.e. Trola bearing registration No.HR-56A-6202 by respondent No.1? OPP
2. If issue No.1 is proved, whether Narender had died due to the injuries sustained by him in the above-said accident, if so to what amount of compensation and from whom, the claimants are entitled to? OPP
3. Whether there was wilful violation of the terms and conditions of the insurance policy, if so to what effect? OPR
4. Relief."

4. Learned Tribunal on the basis of pleadings and evidence adduced before it concluded that the rash and negligent driving of the offending vehicle on part of respondent No.1 was not made out. As the learned Tribunal found that no negligence is attributable to driver of trola bearing registration No.HR-56A-6202, learned Tribunal did not consider it necessary to return a finding on issues No.2 and 3.

5. It is submitted by learned counsel for the appellants:

a) that the learned Tribunal was in patent error in dismissing their claim petition inter alia, on account of the fact that PW4/Sanjay has proved that the accident in question has been caused by respondent No.1 i.e. driver of the offending vehicle;

b) that learned Tribunal has wrongly ignored that FIR (Exhibit P3) was also registered against respondent No.1 who is facing trial for causing the accident;

c) that learned Tribunal has ignored the well settled law that evidentiary value of pendency of criminal proceedings against driver where FIR is lodged, chargesheet is filed and specially in a case where driver after causing accident had fled away from spot, then said facts are sufficient to establish that driver of offending vehicle was negligent in causing accident, particularly when there was no defence available from his side. It is submitted that therefore, in the present case appellants have proved negligence of driver of offending vehicle.

6. No other argument is raised by learned counsel for the appellants.

7. Heard.

8. Perusal of record of the case evidences that admittedly the accident had taken place on 13.06.2017 and FIR (Exhibit P3) was lodged by alleged eyewitness-Rajender (PW2). However, it is to be noted that FIR was registered against an unknown vehicle and unknown driver. In the FIR (Exhibit P3), even description of the vehicle in question has not been given by Rajender (PW2).

9. In this regard, findings in Para 17 of the Award are relevant, and are reproduced hereinbelow:-

“17. Having heard counsel for the parties and gone through the evidence on the file, I am of the considered view that it was a hit-and-run case by some unknown vehicle and the offending vehicle was introduced later on by the claimants in collusion with the police. Admittedly and evidently, neither the name of the driver nor the number or make of the offending vehicle was mentioned in the FIR (Ex.P3). The FIR was lodged by Rajender (PW2), an alleged eye-witness of the accident, wherein he reported that on 13.06.2017 he along with deceased Narender was on his way to village Bahlbha on the motorcycle bearing temporary registration No.HR-99Temp/8507. Meanwhile Sanjay made a telephonic call to the deceased and asked to receive him, as he was coming on foot from Meham bye-pass to village Bahlbha. When they just crossed Jai Jawan Dhaba, Sanjay was standing on the road, in the meanwhile some unknown vehicle came from behind being driven in a rash and negligent manner and struck them and then Sanjay. As a result of this, they suffered multiple grievous injuries. After causing the accident, the driver fled towards Meham side. During investigation, the offending vehicle bearing No.HR-56A-6202 was taken into possession by the police on 17.09.2017 and the accused was arrested on 28.09.2017 i.e. more than three months after the accident. In his cross-examination Sanjay Kumar (PW4) has deposed that his statement was recorded by the police on 14/15.06.2017. He disclosed the number and type of the vehicle to the police in his statement, but

the same is not mentioned in his statement under Section 161 Cr.P.C. If he had disclosed registration number and type of the vehicle, it should have recorded in his statement. Even otherwise, there are material contradictions in the statements of the witnesses. Sanjay (PW2) in his testimony has affirmed that on 05.09.2017, Anand and Surender, respondents No.1 and 2, driver and owner of the offending vehicle respectively, requested Satbir, brother-in-law of the deceased to compromise the matter. However, Satbir (PW5) in his cross-examination has deposed that respondents No.1 and 2 went to police station for compromise and the police disclosed the name of the driver and then, they came to his house for compromise on 27/28.08.2017. In the same breath, Charno @ Charan Kaur (PW6) has affirmed that respondents No.1 and 2 never went to the house of Satbir for compromise. These contradictions in the testimonies of the witnesses go to the root of the case and make the entire case of the claimants wholly unbelievable. I am of the considered view that the evidence led by the claimants is not credible and no reliance can be placed on the same. I am of the considered view that it was a hit-and-run case and the claimants in order to get the compensation have falsely involved vehicle bearing registration No.HR-56A-6202 and falsely implicated respondent No.1 in the accident. In view of this, I find this issue against the claimants.” (Emphasis added)

10. Learned counsel for the appellants is unable to dispute, controvert, or explain the above said findings of the learned Tribunal.

Learned counsel has relied upon testimony of PW4-Sanjay. However, learned counsel is unable to explain as to why if PW4 had mentioned number and type of offending vehicle to the police in his statement, on 14/15.6.2017, then why was the said information, not included in his statement under section 161 Cr.P.C. Even otherwise, there are too many discrepancies and loopholes in the story and version of events put forth by the appellants. Accordingly, I am in absolute concurrence with the above said findings of the learned Tribunal.

11. It has further been argued on behalf of the appellants that the fact that FIR has been registered against respondent No.1 is evidence of his rash and negligent driving. In this regard, reference may be made to judgment of this Court in **Smt. Dharma Devi Vs. Jitender, (Punjab And Haryana) Law Finder Doc Id # 817067**, wherein it has been held that simply because a report under Section 173 Cr.P.C. was presented by police to competent Court and said driver 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.

12. Therefore, I find no ground is made out to interfere in the impugned Award. Present appeal accordingly stands, **dismissed**.

13. Pending application(s) if any also stand(s) disposed of.

30.05.2023
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No