

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-3327-2005 (O&M) and
Date of Decision: October 09, 2023

Bimla and others

...Appellants

VERSUS

Parmod and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.S.Chauhan, Advocates
for the appellants.

Mr.Amar Vivek Aggarwal and Mr.Zoheb Sidhu, Advocates
for respondent No.1.

Mr.Vipul Sharma and Mr.Neeraj Khanna, Advocates for
Mr.Ravinder Arora, Advocate for respondent No.3

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, assailing the judgment dated 01.04.2005 passed by learned Motor Accident Claims Tribunal, whereby, the claim petition filed by the appellants-claimants for seeking compensation, on account of death of Maman Ram, in a motor vehicular accident, was dismissed with costs

The essential facts, to be noticed are, as follows:-

That, on 14.08.2001, Maman Ram along with his uncle Ishwar Singh was crossing G.T. Road, at village Nangal Kheri, just opposite Pooja Dhaba.

In the meanwhile, a truck bearing registration No.HR-01B-2551, which was

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being driven in rash and negligent manner by respondent No.2-Sher Singh, came from the side of Delhi and struck against Maman Ram. Due to the impact, Maman Ram fell down on the ground and driver of the offending vehicle ran away from the spot, after leaving his vehicle. Ishwar Singh immediately took Maman Ram to Civil Hospital, Panipat, from where, he was referred to PGI, but however, he was got admitted to Dr.Prem Hospital, Panipat, where he remained admitted for a period of 10 days. Ultimately, Maman Ram died on 24.08.2001. A criminal case bearing FIR No.251 dated 15.08.2001 under Sections 279, 337 and 304-A IPC was lodged against respondent No.2-Sher Singh, at Police Station Chandni Bagh.

The deceased was stated to be 40 years old at the time of accident and he used to earn Rs.10,000/- per month. Thus, on account of death of Maman Ram, in a motor vehicular accident, the appellants-claimants had sought compensation to the extent of Rs.15 lakh.

In pursuance of the notice issued, respondents made appearance and filed their respective written statements. Respondents No.1 and 2, in their joint written statement, had denied the factum of accident and also denied that it had taken place due to rash and negligent driving of the offending vehicle or that Maman Ram had received injuries, which proved fatal.

Respondent No.3-insurance company, in its separate reply also denied the accident in toto. It also pleaded that though the offending vehicle was insured with it, but denied the liability to indemnify the insured or the claimant, being a third party, as there was violation of terms and conditions of the policy of insurance. It was pleaded that at the time of alleged accident, the driver of the offending vehicle was not holding valid and

effective driving licence.

From the pleadings of the parties, following issues were framed:-

1. Whether the accident in question had taken place due to rash and negligent driving on the part of respondent No.2?OPP.
2. If issue No.1 is proved, whether the claimants are entitled to any claim, if so, to what extent and from which of the respondents?OPP.
3. Whether the respondents No.1 and 2 contravened the terms and conditions of the Insurance Policy?OPR.
4. Relief.

On appraisal of the evidence, brought on record, issue No.1 was decided against the appellants-claimants. Though, while adjudicating on the question of issue No.2, the extent of compensation, was so worked upon, but however, on the basis of the findings recorded on issue No.1, the claim petition was ultimately dismissed with costs vide impugned judgment dated 01.04.2005.

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

In pursuance of the notice issued, respondents No.1 and 3 made appearance through their counsel.

Heard learned counsel for the parties and lower Court record also perused.

At the very outset, learned counsel for the appellants-claimants has assiduously submitted that learned Tribunal had erroneously not considered the evidence, coming on record, to establish about the fact of

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accident. In fact, learned counsel has drawn attention to the testimony of Gaje Singh, Addl. Ahlmad, who stepped into witness box as PW-2 and categorically stated about respondent No.2-Sher Singh to be facing trial on account of accident in question. In the light of the same, it is submitted that the fact of accident, being result of rash and negligent driving of the truck, by respondent No.2-Sher Singh stands amply established and therefore, the appeal be accepted.

However, the aforesaid submission is not tenable. Very true, as so pointed out learned counsel for the appellants-claimants, as many as, five witnesses have been examined by the claimants. PW-1 Daya Chand, is father of the deceased, who had deposed about death of his son, in a motor vehicular accident and further also deposed about the avocation of the deceased, as well as his earnings. PW-2 Gaje Singh, Addl. Ahlmad of the Court of Magistrate, had brought the record of FIR No.251 dated 15.08.2001 under Sections 279, 337 and 304-A IPC, Police Station Chandni Bagh, Panipat and he had deposed about the charge to have already been framed and the case is fixed for evidence of the prosecution.

Besides the same, claimant No.1-Bimla, herself stepped into witness box as PW-3, who had deposed about death of her husband, in the motor vehicular accident. PW-4 Ashok Kumar, Tax Assisant, had brought the income tax record of deceased Maman Ram. PW-5 Dr.Pankaj Mutneja, Prem Hospital, Panipat had deposed about treatment having extended to the deceased, on account of head injury.

Even though, the aforesaid witnesses have been so examined by the appellants-claimants, but it is pertinent mention that none of the

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witnesses, so examined, has deposed about having witnessed the accident. Very true, as so pointed by learned counsel for the appellants-claimants that from the testimony of PW-2 Gaje Singh, it is evident that the charge has been framed and case is fixed for recording of the prosecution evidence. However, framing of the charge, in a criminal case, pertaining to the accident, does not *ipso facto*, prove that the concerned accused is solely responsible for the accident.

In a motor accident claims petition under Section 166 of the Motor Vehicle Act, no such inference, can be drawn. In this case, the claimants have not examined any material eye witness to prove the rash and negligent driving of respondent No.2-Sher Singh. Merely because respondent No.2-Sher Singh has been charge-sheeted by the police, in a criminal case, pertaining to the alleged accident, it cannot be held that he was responsible for the accidental death of Maman Ram. This is all the more essential to note as respondent No.2-Sher Singh, in his reply, had categorically denied about taking place of the accident and rashness and negligence, imputed upon him. In this regard, also it is important to make reference to the testimony of Sher Singh himself, when he stepped into witness box as RW-1. While in the witness box, he has categorically stated that he did not cause the accident. His vehicle was parked on the road and someone has given the number of his vehicle to the police and police has lodged a false case against him.

In the light of the same, simply on the score of criminal proceedings having initiated, does not *ipso facto*, establish the incriminating role of respondent No.2-Sher Singh. Even, FIR Ex.PB has been got

registered against the unknown person. In the given circumstances, it was all the more important for the claimants, at least, to have examined the Investigating Officer, who could have made the things very clear about the manner of implication of Sher Singh, in the accident in question. However, no such steps have been taken by the appellants-claimants, at the time of leading evidence.

In the light of the same, since there is no eye witness account given, more particularly, when Ishwar Singh, author of the FIR, who could have been the best person, to depose about the manner of taking place of the accident, as he was accompanying the deceased, at the relevant time, has also not been examined, no sufficient evidence, as such, has come on record to establish about death of Maman Ram, having been caused, on account of rash and negligent driving of the offending vehicle by respondent No.2-Sher Singh. As such, the findings, so recorded by learned Tribunal, on the said issue, stands affirmed. Precisely, on this account, learned Tribunal has rightly dismissed the claim petition.

As such, the present appeal sans merit and the same is hereby dismissed.

October 09, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No