

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

**FAO-4909-2009
DATE OF DECISION: 29.08.2023**

BOHTI DEVI AND OTHERS

.....APPELLANTS

VERSUS

RAJ KUMAR AND ORS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr.P.S. Saini, Advocate for
for the appellant.

Mr. V.K. Gupta, Advocate
for respondents No.1 and 2.

Mr. Vikas Sharma, Advocate for
Mr. R.K. Bashamboo, Advocate
for respondent No.3.

VIKRAM AGGARWAL, J

1. The claimants have come up in appeal aggrieved by the judgment dated 01.08.2009 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (hereinafter referred to as the 'MACT') vide which the claim petition preferred by the appellants under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as the 'Act') for grant of compensation on account of the death of Ram Kumar in a motor vehicular accident which took place on 29.09.2006 was dismissed.

2. The appellant No.1 is the widow of Ram Kumar. Appellants No.2 and 3 are his minor children (at the time of filing of the appeal, appellants No.2 and 3 were minors) and appellants No.4 and 5 are the parents of Ram Kumar.

The facts, as emanating from the record, are that Ram Kumar is stated to have

been returning to his house on his motor cycle bearing registration No.HR-02A-2704 after attending a 'Jagran' at the house of one Ram Singh in the same village. Jai Pal, brother of Ram Kumar was accompanying him. At about 5:00 am, when the brothers reached near the waterworks of the village, a white Maruti Car bearing registration No.DL-4CA-2876 (hereinafter referred to as the 'offending vehicle') which was being driven by respondent No.1, in a rash and negligent manner, came from the opposite side and by going on the wrong side, struck against the motorcycle of Ram Kumar. Both brothers fell on the un-metalled portion of the road. Ram Kumar suffered grievous injuries and expired at the spot whereas his brother-Jai Pal sustained minor injuries. Respondent No.1 fled from the spot in the offending vehicle. The matter was reported to the police on the same day as a result of which an FIR was also registered. It was claimed that Ram Kumar was 35 years old, was a painter by profession and was earning ₹4,500/- per month. A compensation of ₹10,00,000/- was accordingly claimed.

3. The claim petition was resisted by the respondents. All three respondents filed separate written statements. Respondent No.1 denied the factum of the accident. Respondent No.2 denied his ownership stating that he had already sold the car to respondent No.1 on 21.09.2006. The insurance company i.e. respondent No.3, apart from raising certain preliminary objections, denied the factum of the accident. It was also stated that the offending vehicle seemed to have been introduced at a later stage in collusion with other respondents because the FIR had been registered against some unknown vehicle. The usual defences of the driver of the offending vehicle not holding a valid driving licence etc. were also raised.

4. The MACT framed the following issues for adjudication:-

“1. Whether the accident in question resulting into death of Ram Kumar took place on account of rash and negligent driving of car No.DL-4CA-2876 by respondent No.1, as alleged?

2. If issue No.1 is proved, what amount of compensation the petitioners are entitled to and from whom?

3. Whether the respondent No.1 was not holding valid and effective driving licence at the time of accident and insured violated the terms and conditions of insurance policy, as alleged? If so, to what effect?

4. Relief.”

5. Parties led evidence and after consideration of the same, the MACT came to the conclusion that the offending vehicle was not actually involved in the accident and that the same had been introduced later on by the appellants in collusion with the respondents and, therefore, the claim petition was dismissed leading to the filing of the present appeal.

6. I have heard learned counsel for the parties and with their assistance, have gone through the record which was duly summoned.

7. Learned counsel for the appellants submitted that the MACT had erred in rejecting the claim petition. Learned counsel submitted that the FIR in question was registered on the same day and that PW4-Mam Chand was a genuine witness but was wrongly disbelieved by the MACT. Learned counsel submitted that the Act is a welfare legislation and is aimed at providing timely compensation to the kith and kin of persons who lose their lives in motor vehicular accidents. Learned counsel submitted that strict rules of evidence are not applicable and the case has to be proved on the basis of preponderance of

probabilities. Learned counsel submitted that the MACT adopted a hyper technical approach and erred in rejecting the claim petition. Learned counsel referred to the entire oral and documentary evidence available on the record of the case and submitted that the claim petition deserves to be allowed. In support of his contentions, learned counsel relied upon the judgments passed by Co-ordinate Benches of this Court in *FAO-1042-2003* titled as *Harbans Lal and others Vs. Harvinder Pal and others, 2015 (3) TAC 352, First Appeal from Order No.232 of 2004* titled as *National Insurance Co. Ltd. Vs. Bala Devi and others, 2006 (4) RCR (Civil) 131, MA-55-1997* titled as *Mannulal Vs. Surender Pal Singh and others, 2001 (1) MPLJ 423* and *FAO-50-1993* titled as *Gurdeep Kaur Vs. Tarsem Singh, 2008 (2) RCR (Civil) 774* as well as a judgment passed by Madhya Pradesh High Court in *MA-1699-1998* titled as *Beni Bai and another Vs. Chhandilal and another, 2005 ACJ 816*.

8. On the other hand, learned counsel for the respondents submitted that no interference is called for in the well-reasoned judgment passed by the MACT. Learned counsel submitted that PW4-Mam Chand was not at all a reliable witness and he himself had admitted that he was closely known to the family for the last 20 years. It was submitted that the MACT rightly disbelieved PW4-Mam Chand and rejected the claim petition.

9. I have considered the submissions made by learned counsel for the parties.

10. It is unfortunate that the life of a young person namely Ram Kumar was snuffed out in the prime of his youth by a rashly driven vehicle. His family would definitely deserve to be compensated for his death. However, this alone would not be sufficient and the appellants would have to prove their

case by leading evidence. It is not disputed that the Act is a welfare legislation and strict rules of evidence do not apply. It is settled that the case has to be proved on the touchstone of preponderance of probabilities and the necessity to prove the involvement of the offending vehicle the way the guilt of an accused is proved in a criminal trial is not there. However, at the same time, it has to be kept in mind that the claimants should not be permitted to misuse the provisions and it has to be seen that they do not introduce vehicles not actually involved in the accident, only with a view to obtain compensation. It has been opined by this Court that the very fact that an accused is facing trial would *prima facie* point towards the fact that the offending vehicle was being driven in a rash and negligent manner. Reference can be made to the judgment of a Co-ordinate Bench of this Court in the case of '**Girdhari Lal Vs. Radhey Shyam and Others**', 1993 (2) PLR 109. At the same time, it has also been opined that mere registration of an FIR would not *ipso facto* prove rashness and negligence. In '**Minu B. Mehta and another V. Balkrishna Ramchandra Nayan**' 1977 ACJ 118, it was held by the Hon'ble Supreme Court that it is incumbent upon the claimants to prove negligence before the owner or insurance company could be held liable for compensation because the liability of owner of vehicle to compensate the victim is base on law of Tort. Hon'ble Supreme Court held further that if compensation is awarded without proof of negligence, it would lead to strange results. Further, the concept of vicarious liability without any negligence is opposed to the basic principles of law. Further in '**Chameli Devi V. Mukesh**' 2016 ACJ 27 (P&H), it was held that the fact of driver facing trial in a criminal case in relation to the accident and the finding arrived therein would not ipso facto establish any negligence on the part of driver.

In '**Mukesh Devi V. Sandeep**' 2018 (2) RCR (Civil) 629 (P&H), it was held that in a petition filed under Section 166 of Motor Vehicles Act, initial onus is always upon the petitioners to prove the negligence of the offending vehicle. Mere finding of the challan against respondent No.1 facing of the trial by him or even the conviction recorded in criminal proceedings, cannot be sufficient to hold him responsible for causing the accident in the absence of any evidence produced in the petition. This High Court held further that result of criminal proceedings should not affect claim proceedings under the Motor Vehicles Act and rather, it is to be established on the evidence produced. In '**Ram Karan V. Zile Singh**' 2001 (3) RCR (Civil) (P&H) 582, it was held that mere an FIR, framing of charge and even judgment of conviction or acquittal of criminal Court is not binding on the Tribunal and that onus of proving negligence is always upon the claimants and they have to discharge it before the Tribunal. In '**Anguri Devi V. Lakhvinder Singh**' 2017 (3) PLR 86 (P&H HC), this High Court held as under:-

*"It is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the driver as the Tribunal is required to act upon the evidence adduce before it. To support this view reference can be made to case '**Ram Karan V. Zile Singh**' 2001 (3) RCR (Civil) 582. In the latest judgment titled as '**Kamlesh and Others V. Attar Singh and others**' 2016 (1) RCR (Civil) 24, the Hon'ble Apex Court has laid down that though the police has registered a case against the driver of the Tempo and filed the charge sheet but the same cannot be said to be conclusive."*

There are, therefore, diametrically opposite views on the issue. However, it is for the MACT initially to examine the matter in its entirety and then arrive at a conclusion based upon the facts and the evidence of the particular case. If one

examines the entire record of the case, it emerges that the MACT committed no error in dismissing the claim petition.

11. To appreciate as to what must have happened, we shall have to go back to that fateful morning of 29.09.2006 when Ram Kumar, accompanied by his brother-Jai Pal were returning to their house on a motorcycle. The accident is alleged to have taken place at about 5:00 am. The FIR (Ex.P4) was registered on the basis of information received in the Police Station on 29.09.2006 at about 9:40 am. The information was given by Jai Pal. In this information, it was mentioned that a white Maruti Car had struck against their motorcycle. However, it was mentioned that the name and address of the driver of the vehicle was unknown. The matter was investigated and finally, the final report under Section 173 Cr.P.C. is stated to have been submitted. During the trial, in the claim petition, Sunil Verma, Additional Ahlmad of the Court of Judicial Magistrate First Class, Jagadhri appeared as PW-1 and deposed about the trial being pending against respondent No.1. Appellant No.1-Bohti Devi stepped into the witness box as PW-2 and deposed mainly about the age and the avocation of the deceased. Jai Pal appeared as PW-3 and reiterated his version. However, this time he gave the number of the vehicle in his examination-in-chief. He then went on to state in his evidence that upon inquiries made by him, it was found that Mam Chand of Village Bhamboli had seen the offending vehicle and when he disclosed the number of the offending vehicle to Jai Pal, he informed about the same to the Police. The Police subsequently traced out the vehicle from a taxi stand in Bilaspur. In his cross-examination, he submitted that Mam Chand was known to him and he had told the number of the offending vehicle to him after 8-10 days of the accident. He also stated that the offending vehicle was apprehended by the

Police three months after the accident. He admitted that he was not aware of the number of the car when the FIR was registered. He also admitted that the Police had subsequently told him that the offending vehicle was being used as a taxi at a taxi stand in Bilaspur. Mam Chand also stepped into the witness box as PW-4. His statement is required to be reproduced for proper appreciation of the same. It was deposed by Mam Chand as under.

“On 29.09.2006 at about 5-5.15 a.m. I was standing near the road in front of my house in search of some vehicle for going to my relatives. In the meantime a maruti car No.DL-4CA/2876 came from the side of Village Bhambol and was going towards Bhamboli bus stand in a rash and negligent manner being driven by a clean shave person. Who was aged about 27-28 years. The front bumper of said car was hanging. I gave signal to stop him but he did not stop the said car and then I went to my relatives. After 7-8 days when I returned back to my village I came to know that the said car caused accident to Ram Kumar who succumbed to his injuries. I told the number of the car to the brother and father of deceased Ram Kumar.

XXXX by Shri Ram Parshad and Shri J.S. Tehi counsel for respondents no.1 & 2.

I was standing on the kutcha burm of the road at a distance of 50 yards from my house. I was waiting for a vehicle for going to bus stand Jagadhri from where I had to go to Paunta Sahib, Himachal Pradesh. It is incorrect to suggest that I never saw the said car and I have deposed falsely to help the claimants.

XXXX by Shri Parmod Gupta, counsel for respondent no.3.

The number plate on the car was in English. I know English. I wrote down the said number on a paper which I have not brought today. I did not disclose to the police regarding this accident nor the police ever made any

enquire from me regarding this accident. I have not seen the said accident. I know Jai Pal, his father Chuhar Mal and his deceased brother Ram Kumar for the last more than 20 years. I have come to the court for evidence of my own. I am not a summoned witness. The said was never seen by me earlier to this accident nor I saw it thereafter. I also do not know the driver and the owner of the said car. It is incorrect to suggest that I had not seen the said car no.DL-4CA/2876 as stated by me in my Examination-in-chief. It is also incorrect to suggest that I have deposed falsely today only to help the claimant in connivance with the owner and the driver of the car to help them in getting a false claim from the insurance company.”

12. A perusal of the above statement would show that Mam Chand is an introduced witness. It is quite strange that once a car did not stop on a signal having been given by him, he noted the number of the same. It would be quite unnatural for someone to note down the number of a car which does not stop on being signalled to stop. Ram Kumar was not a police official and was not on some checking duty that he noted the number of the car. He stated that after 7-8 days of the said accident, when he came back to his village, he came to know that the same car had struck down Ram Kumar as a result of which he had expired. He then disclosed the number of the car to the brother and father of Ram Kumar. However, in the cross-examination, he admitted that he knew Jai Pal, his father-Chuhar Mal and his deceased brother-Ram Kumar for the last more than 20 years. It seems to be quite a co-incidence that Ram Kumar saw the offending vehicle after it had caused the accident. He was just wanting to board the car. Since he did not stop, he noted down the number and subsequently disclosed it to Jai Pal. He admitted that he knew the family for

the last 20 years. It is, therefore, very hard to trust the evidence of the PW4- Mam Chand. To top it all, during the course of arguments, this Court was informed that even in the trial, respondent No.1 had been acquitted. None of the sides could place on record a copy of the judgment giving the reasons for acquittal but even the appellants did not deny that respondent No.1 had been acquitted and learned counsel simply feigned ignorance.

13. I have gone through the judgments relied upon by learned counsel for the appellants. As has been observed earlier by this Court, there are judgments on both sides. All judgments were given on their own facts. The general principles about the act being a welfare legislation, strict laws of evidence not being applicable, the requirement of proving the case on the basis of preponderance of probabilities etc. have been laid down in these judgments. There is no dispute in the said principles. However, the peculiar circumstances as discussed in the preceding paragraphs leads this Court to the conclusion that the offending vehicle was not actually involved in the accident. Under the circumstances, the MACT did not commit any illegality in rejecting the claim petition.

In view of the aforementioned facts and circumstances, I do not find any illegality in the judgment passed by the MACT warranting interference by this Court. The appeal is, therefore, dismissed, being devoid of merit.

29.08.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

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