

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

**FAO-5720-2009
DATE OF DECISION: 15.11.2023**

KUSUM LATA AND ORS.

.....APPELLANTS

VERSUS

JAGJIT SINGH AND ANR.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. Nonish Kumar, Advocate
for the appellants.

Mr. Munish Mittal, Advocate
for respondent No.1.

Mr. Vijiyesh Malhotra, Advocate
for respondent No.2.

VIKRAM AGGARWAL, J

1. The present appeal assails the award dated 16.03.2009 passed by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as the 'Tribunal') vide which the claim petition filed by the appellants-claimants under Section 166 of the Motor Vehicles Act (hereinafter referred to as the 'Act') seeking compensation of ₹10,00,000/- on account of the demise of Pawan Kumar who expired in a motor vehicle accident which took place on 26.05.2007, was dismissed.

2. The facts, as borne out from the record, are that a claim petition was filed by the appellants under Section 166 of the Act. It was averred that on 26.05.2007 at about 8.00 pm, Pawan Kumar who was working as an Expert Spinning Master in Bhartiya Spinning Mills, Panipat was going on his motor cycle bearing registration No.HR-06-L-9757 towards Karnal. At about 9.00 pm, when he crossed Saini Dhaba in the area of village Rambha, a Tata Turbo Truck bearing registration No.HR-09-K-6822 (hereinafter referred to as 'the offending vehicle') being driven

by respondent No.1 came from the side of the Indri. The offending vehicle was being driven in a rash and negligent manner and was at a very high speed. It struck against the motor cycle which was being driven by Pawan Kumar at a normal speed. Pawan Kumar fell down on the unmetalled portion of the road and sustained multiple and serious injuries on the right side of his body. He was rushed to General Hospital, Karnal by one Som Dutt who is alleged to have witnessed the accident. Subsequently, Pawan Kumar was referred to PGI, Chandigarh but he unfortunately expired at about 2.30 am on 27.05.2007. Under the circumstances, the claim petition was filed seeking compensation of ₹10,00,000/-. It was averred that Pawan Kumar was 42 years old at the time of the accident and was drawing a salary of ₹11,500/- per month. The claimants were his widow, one son and three daughters.

3. Respondent No.1 admitted the accident in his written statement but stated that the accident had been caused on account of the rash and negligent driving of Pawan Kumar. The insurance company denied the factum of the accident and opposed the claim petition on various grounds including quantum and respondent No.1 not being in possession of a valid and effective driving license. The Tribunal framed the following issues from the pleadings of the parties:-

- (1) Whether the death of Pawan Kumar was caused in a vehicular accident on 26.05.2007, near Saini Dhaba in the area of village Rambha, Tehsil and District Karnal, on account of rash and negligent driving of Truck bearing registration No.HR-09-K-6822 being driven by respondent No.1?*
- (2) Whether the petitioners are entitled to any compensation if so, to what amount and from whom?*
- (3) Whether the claim petition is not maintainable?*
- (4) Whether respondent No.1 was not having a valid and effective driving licence at the time of alleged accident. If so, to its effect?*
- (5) Whether respondent No.1 has contravened the terms and conditions of the insurance policy. If so to its effect?*
- (6) Relief.*

4. Parties led their respective evidence. The Tribunal decided issue No.1 against the appellants-claimants and held that they had not been able to prove that the accident as a result of which Pawan Kumar expired had taken place due to the rash and negligent driving of the offending vehicle by respondent No.1. The quantum of compensation was, however, calculated under issue No.2 but eventually, in view of the findings of issue No.1, the claim petition was dismissed leading to the filing of the present appeal.

5. I have heard learned counsel for the parties and have also perused the record.

6. Learned counsel representing the appellants made strenuous efforts to convince the Court that the award passed by the Tribunal is not sustainable. He referred to the FIR (Exhibit P-1), the statement of PW1-Pawan Kumar additional Ahlmad, PW4-HC Bir Singh and PW5-Som Dutt. It was submitted that a combined reading of the statements of the witnesses would go on to prove that the accident as a result of which Pawan Kumar lost his precious life had taken place on account of the rash and negligent driving of the offending vehicle by respondent No.1. Learned counsel submitted that the Tribunal placed undue reliance on the fact that the number of the offending vehicle was not mentioned in the FIR. Learned counsel submitted that when such an accident takes place, it is most natural for any eye-witness to miss the registration number. It was submitted that otherwise, Som Dutt had given the entire details of the accident and it was nowhere stated or proved that he was an interested witness but on the contrary, he was a very natural witness as there was a police post nearby. Learned counsel contended that the view taken by the Tribunal is not sustainable. In support of his contentions, learned counsel placed reliance upon some judgments passed by a Co-ordinate Bench of this Court in ***First appeal From Order No.1356 of 2000*** titled as ***“Nikki and others Vs. Darshan Singh and another”***, ***Civil Appeal No.2269 of 2011*** titled as ***“Kusum Lata and***

others Vs. Satbir and others”, FAO No.1543 of 2015 titled as “*New India Assurance Company Limited Vs. Saroj Devi and others*”, *FAO No.1495 of 2006* titled as “*New India Assurance Co. Ltd. Vs. Bimla Devi and others*”, *FAO No.6897 of 2010* titled as “*Renu Devi Vs. Mohammad Yunis*” and *Civil Appeal No.10321 of 2010* titled as “*Saroj and others Vs. Het Lal and others*”.

7. On the other hand, learned counsel representing respondent No.2 submitted that the impugned judgment does not call for any interference. He referred to the cross-examination of Som Dutt and submitted that from his cross-examination, it stands proved that the offending vehicle had been introduced later on and that there was a clear-cut collusion between the appellants-claimants and respondent No.1. Learned counsel submitted that mere registration of FIR would not mean that the accident had taken place on account of the rash and negligent driving of respondent No.1.

8. I have considered the submissions made by learned counsel for the parties and have perused the record.

9. It is unfortunate that the life of a 50 years old person was snuffed out in a motor vehicular accident leaving behind a family consisting of his wife and children who were left to fend for themselves. However, this alone would not be sufficient for a petition to succeed under the provisions of Section 166 of the Act and it would have to be proved that the accident as a result of which Pawan Kumar lost his life had taken place on account of the rash and negligent driving of the offending vehicle by respondent No.1. After having gone through the entire case file as also the record, this Court does not find any infirmity with the findings returned by the Tribunal on issue No.1. No doubt, an FIR was registered and normally when an FIR is registered, it can be presumed that the driver of the offending vehicle was negligent. There are many judgments to this effect including the judgment 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 filing of the challan against respondent No.1, facing of 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 a mere 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 a particular case.

10. In the present case, there are certain glaring circumstances which lead us to the conclusion that there was a collusion between the claimants-appellants and respondent No.1. The accident in question took place at about 8.00 pm on 26.05.2007. The matter was reported to the Police at about 7.40 am on 27.05.2007 and the FIR was registered on the statement of Som Dutt who later appeared as PW5. The said Som Dutt is said to have witnessed the accident. As per him, he was a police official posted at the Police Post, Rambha which was at a distance of about 2 Kilometers from the spot where the accident took place. Strangely enough, Som Dutt did not report the matter to the police immediately nor did he utter a word about it even when he went to the Police Post. In fact, he admitted in the cross-examination that he had the telephone number of Police Post, Rambha but he did not inform the Police. Further, he did not accompany the victim but informed the police on the next day in the morning. Then, in the FIR it was only mentioned that the accident had been caused by a truck. The registration number was not mentioned. The driver of the truck i.e. respondent No.1 was apprehended on 30.06.2007 i.e. more than one month after the accident had taken place. Som Dutt stated in his cross-examination that the number of the offending vehicle was disclosed to him by the Dhaba owner

10 days after the accident. However, the Dhaba owner was not examined. Som Dutt also stated that apart from him, there were other persons present at the spot but none of them was examined. It is also quite strange that no one noticed the number of the offending vehicle at that stage and did not give information to the police about the same.

11. The matter does not end here. Respondent No.1 filed a written statement admitting the factum of the accident but it was averred that the accident had taken place due to the rash and negligent driving of the motor cycle by Pawan Kumar. However, the driver did not step into the witness box to state this fact which would have given an opportunity to the insurance company to cross-examine him. An adverse inference can, therefore, be drawn against him. All these facts do point towards collusion between the parties.

12. After considering the matter from all angles, this Court does not find any reason to interfere in the award passed by Motor Accident Claims Tribunal, Karnal.

In view of the aforementioned facts and circumstances, I do not find any merit in the present appeal and the same is accordingly dismissed.

15.11.2023
Prince Chawla

(VIKRAM AGGARWAL)
JUDGE

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