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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: May 25, 2023

Meena Sharma and others

....Appellants

versus

Teja Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rakesh Dhiman, Advocate for appellants.Mr. Yogesh Gupta, Advocate
for respondent No.3-Insurance Company.

ARUN MONGA, J. (ORAL)

Appellants before this Court are (widow and two minor sons of deceased) claimants assailing impugned award dated 25.05.2012 rendered by learned Motor Accidents Claims Tribunal, Gurgaon (for brevity, "Tribunal"), whereby claim petition filed by claimants was dismissed.

2. Succinct facts, as noted by learned Tribunal, are as below:

"2. Brief facts of the case are that on 26.03.2010, in the morning, Jagmohan (deceased) was going from his house Sector 9, Gurgaon to attend his duty in International Techno Tex Pvt. Ltd. PlotNo.21, Sector 4, IMT, Manesar, Gurgaon on his motorcycle No.HR-26-AB-5021 (hereinafter referred to as motorcycle). At about 10.30A.M., when he reached near Iron Railing of Shikohpur chowk, NH-8, Gurgaon, Bolero No.RJ-31-JA-0375 (hereinafter referred to as offending vehicle), being driven by respondent No.1 in a rash and negligent manner came from behind and hit the motorcycle of deceased, as a result of which deceased fell down alongwith his motorcycle and suffered serious, grievous and multiple injuries on all over his body and succumbed to his injuries at the spot. The accident was witnessed at the spot by Vishnu Bhagwan Saini, who was going on his motorcycle behind the deceased, who also noted the registration number of offending vehicle. The brother-in-law (Sala) of deceased namely Satish Sharma received message regarding accident and death of deceased and he reached at the spot. FIR No.75 dated 26.03.2010 was registered on the statement of Satish Sharma."

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3. Upon notice, respondents No.1 and 2 filed joint written statement and by taking preliminary objections *qua* locus standi; cause of action: respondent No.1 was holding valid and effective driving license and vehicle was insured with respondent No.3 and petition being bad for mis-joinder and non-joinder of necessary parties. On merits, all the averments of petition were denied and dismissal of petition with cost was prayed.

3.1. Respondent No.3-Insurance Company filed its written statement by taking preliminary objections regarding cause of action; petition being bad for vague and lacking material particulars; vehicle No.RJ-31-UA-0375 has been planted by petitioner in collusion with local police in order to extract the amount of compensation and respondent No.1 was not holding valid driving license.

3.2. On merits, the age, profession and income of deceased was denied. Other averments of the petition were denied as incorrect. At last, prayed for dismissal of the petition with costs.

4. Learned Tribunal framed the following issues:

- “1. *Whether the accident which took place on 26.03.2010 at about 10.30 AM had occurred due to rash or negligent driving of Teja Singh, respondent No.1 of vehicle bearing registration No.RJ-31-UA-0375? OPP*
2. *Whether the petitioners are entitled for compensation on account of death of Jagmohan Sharma in accident and from whom. If issue No. 1 is proved in favour of the petitioners? OPP.*
3. *Whether respondent No.1 was not holding a valid and effective driving license on the date of accident? OPR*
4. *Relief.”*

5. On appraisal of record/ evidence, learned Tribunal decided issues No.1 against claimants. In view of findings on issue No.1, issues No.2 and 3 were ordered to have become infructuous. Consequently, claim petition filed by claimants was dismissed.

6. Learned counsel for appellant-claimants contends that PW5-Vishnu Bhagwan Saini, eyewitness had deposed that due to rash and negligent driving of

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offending vehicle by respondent No.1, deceased fell down on the road and suffered serious, grievous and multiple injuries and ultimately succumbed to his injuries at the spot. He would contend that claimants examined many other witnesses as well to substantiate that accident in question was occurred due to rash and negligent driving by respondent No.1. He also contends that even respondent No.1 was facing criminal trial in FIR No.75 dated 26.03.2010 *qua* accident in question and learned Tribunal erred in dismissing the claim petition on the basis of certain technicalities that matter was reported to police after a long period, inasmuch as the accident had though taken place on 26.03.2010 but statement of eyewitness was recorded by police on 17.04.2010.

7. On the other hand, learned counsel for respondent No.3-Insurance Company opposes the appeal while supporting the award of learned Tribunal. He contends that number of the offending vehicle i.e., RJ-31-UA-0375 allegedly involved in the accident in question is different than that mentioned on the cover note of insurance policy i.e., RJ-31-CA-0375.

8. I have heard learned counsel for the parties and perused case file.

9. Occurrence, age and nature of employment of the deceased-victim of the accident is not in dispute herein. The only dispute is with regard to involvement of the vehicle. Learned Tribunal disbelieved the testimony of the eyewitness primarily on the ground that (A) he did not take any steps to report the accident despite being an eyewitness amongst group of other 10-11 people, who had gathered on the spot; and (B) it was after a lapse of about 3 weeks that he suddenly showed up in the police station claiming himself to be an eyewitness.

9.1. On both counts, learned Tribunal fell in grave error in returning the findings that he was a planted eyewitness. In the examination-in-chief, the aforesaid eyewitness clearly stated that at the time of accident, he was going on his motorcycle to the construction site where shuttering work was taking place and the

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labourers at the site were waiting for him and due to urgency of his going to the site, he had given vehicle number to one of the witnesses, who had gathered in the group there along with his particulars and thereafter, thought that law will take its own course.

9.2. The registration of FIR is not in dispute and in the course of investigation, it was found that vehicle in question was indeed involved in the accident and thereafter, charge-sheet was filed in the criminal proceedings against the driver of the offending vehicle initiated. On a Court query, none of the counsels are readily able to inform as to what was the final outcome of criminal proceedings.

9.3. Be that as it may, criminal proceedings initiated under Sections 279, 304-A IPC against driver/respondent No.1 indicate that after investigation, it was found by local police that he was driving rashly or negligently. Mere, delay in reporting the matter to police does not seem fatal to claim of widow of the deceased. What is to be seen herein is whether the offending vehicle was involved or not? In view of the un-impeached testimony of PW-8 SI Nirotam Parsad, Investigating Officer and that of the eyewitness, learned Tribunal clearly fell in grave error in giving over importance to the eyewitness having not himself gone to the police station to get the FIR registered on the date of accident. It is matter of common knowledge that generally citizens avoid being unnecessarily embroiled in Court proceedings. In my opinion, the learned Tribunal erred in giving undue importance to the eye witness having himself not getting registered the FIR on the date of accident and further taking a period of three weeks to get the FIR registered.

9.4. As regards argument of learned counsel for respondent No.3- Insurance Company that vehicle in question was not involved as borne out from Exhibit P-4 i.e., cover note of the insurance policy wherein it is stated to be RJ-31-

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CA-0375 and the number mentioned in the testimony of witnesses as well as claim petition is RJ-31-UA-0375, I am unable to once again persuade myself to accept the contention that there is inherent contradiction between registration certificate Exhibit P-3 wherein it is clearly stated to be RJ-31-UA-0375. It appears that while issuing cover note, there has been an inadvertent mistake in writing letter 'C' instead of letter 'U' while noting the registration number of the vehicle while rest of the number is correct. What has to be given precedence is the number mentioned in registration certificate and not the cover note.

10. Inquiries in compensation claims under Motor Vehicles Act are civil proceedings. In such inquiries, proof of disputed facts by preponderance of probabilities is sufficient. As against this, in criminal trials a higher degree of proof is required and the prosecution has to prove its case beyond any reasonable doubt. In present case, the evidence led by the appellants shows that the offending vehicle was indeed involved in the accident, which was caused by its rash and negligent driving by respondent No.1 and resulted into the death of Jagmohan. Neither out of respondent No.1 and 2 stepped into the witness box to say that at the relevant time, the offending vehicle and its driver respondent No.1 were elsewhere than at the place of accident or that the accident was not caused by its rash and negligent driving by respondent No.1. No evidence has been led by the respondents to refute the claimants' version as aforesaid. I am of the opinion that evidence led by the claimants was sufficient to prove by preponderance of probabilities that the offending vehicle was indeed involved in the accident, which was caused by its rash and negligent driving by respondent No.1 and resulted into the death of Jagmohan. It appears that while evaluating the evidence, the learned Tribunal misdirected itself in applying the standard of proof beyond any reasonable doubt like in a criminal trial, indulged into unnecessary hair

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splitting and knit-picking and wrongly decided issue No.1 against the claimant-appellants.

11. In the premise, I am of the considered opinion that the finding on issue No.1 against the claimant-appellants returned by the learned Tribunal is erroneous and needs to be reserved. The same is set aside. Accordingly, issue No.1 is decided in favour of claimant-appellants.

12. In view of the aforesaid finding on issue No.1 returned by me, impugned award is set aside and claim petition is remanded to learned Tribunal to proceed further in accordance with law to render findings on issues No.2, 3 and 4. Parties to appear before learned Tribunal, on 11.07.2023. All other contentions are also left open to be adjudicated by learned Tribunal below.

13. In the premise, appeal filed by claimants stands disposed of in above terms.

14. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 25, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No