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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Judgment 28.11.2023

BALWAN

...Appellant

Versus

SURENDER AND ORS

....Respondents.

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Ms. Rajni Bala, Advocate and Mr. Shokeen Singh Verma,
Advocate for the appellant.

Mr. Sumit Sangwan, Advocate for respondent No.1.

Mr. Punit Jain, Advocate for respondent No.3.

AMARJOT BHATTI, J.

1. The appellant/claimant – Balwan has filed present appeal against impugned Award dated 03.10.2012 passed by learned Motor Accident Claims Tribunal, Bhiwani vide which the claim petition filed by the appellant/claimant Balwan has been dismissed with costs.

2. The brief facts of the case are that appellant/claimant Balwan filed claim petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of injuries sustained by him in a motor vehicular accident due to rash and negligent driving by respondent No.1 while driving Jeep bearing No.HR-19E-0228. It is submitted that at the time of accident he was 28 years of age. He was doing dairy farming and agricultural work. He was earning Rs.15,000/- per month from both the sources. On the fateful day of 18.07.2008 at about 5 pm, he along with his brother Rajender boarded Pickup Jeep No.HR-19E-0228 from the turn of

main road village Atela Khurd for going to their village Dohka Hariya. The pickup jeep was driven at a high speed and in a rash and negligent manner by its driver. He and his brother requested him to drive slowly but he did not listen. When the pickup jeep reached near the village of Atela Khurd, the driver lost control over his vehicle and it turned turtle. The appellant/claimant suffered serious injuries on various parts of his body as he came beneath the pickup jeep. He was taken to Ranvir Hospital, Bhiwani by arranging another vehicle. The accident took place due to rash and negligent driving of respondent No.1 Surrender. Regarding this accident, FIR No.136, dated 23.07.2008 under Sections 279/337/338 IPC was registered at Police Station Badhra. The appellant/claimant was taken to Ranvir Hospital where he was operated upon by Dr. Ranvir on 21.07.2008. He was referred to General Hospital, Bhiwani where he was medico legally examined. Thereafter, he was again admitted in Ranvir Hospital for better treatment where he remained admitted from 18.07.2008 to 21.07.2008. After discharge, he used to visit the Hospital for follow up treatment. On 02.09.2008, he was admitted and operated in SMS Medical College and Hospital, Jaipur and was discharged on 15.09.2008. He suffered a permanent disability. He has spent Rs.3 lacs on his treatment till date and he may require Rs.1.50 lacs for his future medical treatment. The claimant has claimed compensation to the tune of Rs.20 lacs along with interest @ 18% p.a. from the date of filing of the claim petition till realization on account of medical treatment, conveyance charges and other heads as detailed in para No.21 of the claim petition. Hence the claim petition.

3. Notice of the claim petition was given to the respondents. The

respondents No.1 and 2 filed their joint written statement taking preliminary objections that no accident took place with pickup jeep bearing No. HR-19E-0228 due to the driving of respondent No.1. He is falsely implicated in this case. A false FIR has been registered. The claim petition has been filed only to extract money illegally and unlawfully. In fact, no accident ever took place. Therefore, they are not liable to pay any compensation. Even otherwise the pickup jeep was duly insured vide cover note No.36013933 valid from 05.03.2008 to 04.03.2009. In case any compensation is awarded on account of contributory negligence of the answering respondent, then it is the Insurance Company which is liable to pay the same. Therefore, the claim petition filed against them may kindly be dismissed with costs.

4. The Insurance Company filed separate written statement taking preliminary objections regarding maintainability to file the claim petition. The appellant/claimant is estopped from filing this petition by his own act and conduct. He has no cause of action or locus-standi to file this case. The Insurance Company further took the objection that insured has violated the terms and conditions of Insurance Policy. The answering respondent did not receive any intimation about the accident from the insured, therefore, the factum of accident is denied. It is pointed out that Insurance Company is not liable to pay any compensation because the Insured has violated the terms and conditions of Insurance Policy by allowing the pickup to be driven by a person who is not having a valid driving licence. The original Insurance Policy is not proved on record. Without prejudice to the aforesaid stand taken by Insurance Company, it is submitted that the appellant/claimant was travelling in the vehicle i.e.

pickup *dalla*, which is a goods vehicle, in gross violation of the terms and conditions of the Insurance policy. The appellant/claimant was a paid passenger, therefore, the answering respondent has no liability to pay compensation. On merits, the facts are denied taking the stand that no accident took place and respondent No.1 has been falsely involved in the criminal case. The appellant/claimant did not receive any injury nor he incurred any expenses on his treatment. The ownership of the vehicle is a matter of record. The appellant/claimant is not entitled to receive any compensation from the answering respondent. It is prayed that the claim petition may kindly be dismissed with costs.

5. From the pleadings of the parties, following issues were framed by the Tribunal on 23.10.2010:-

1. Whether the accident which occurred on 18.07.2008 at about 5.00 p.m. caused injuries to petitioner due to rash and negligent driving of respondent No.1 while driving jeep No.HR19E/0228, as alleged? OPP.
2. If issue No.1 is proved, whether the petitioner is entitled for compensation, if so to what amount and from whom? OPP.
3. Whether the petition is not maintainable in its present form? OPR.
4. Whether the petitioner has no locus standi to file the present petition? OPR.
5. Whether the driver of the offending vehicle was not holding the valid driving licence on the date of accident? OPR
6. Whether the respondent No.3 is liable to indemnify to respondent No.2? OPR 3.
7. Whether the petition is bad on account of mis joinder of parties and non joinder of necessary parties? OPR.
8. Relief.

6.

In order to prove the claim petition, claimant Balwan himself

stepped into the witness box as PW1 and also examined Dr. Ranvir Singh as PW2. Thereafter, learned counsel for the appellant/claimant tendered in evidence documents Ex.P4 to Ex.P121 and closed the evidence.

7. In order to rebut the evidence of the appellant/claimant, respondents had examined Anand Sawroop- RW1, Surender RW2, Khadev Singh- DW3 and tendered copy of insurance policy as Ex.R6 and thereafter, learned counsel for the respondents closed the evidence on 20.03.2012.

8. After hearing the arguments advanced by learned counsel for the parties, the claim petition filed by the appellant/claimant was rejected by passing impugned Award dated 03.10.2012 as referred above. Feeling aggrieved of this Award, the present appeal has been preferred by appellant/claimant.

9. I have heard the arguments of learned counsel for the appellant/claimant as well as learned counsel representing the respondents.

10. Learned counsel for the appellant/claimant argued that the findings given by Motor Accident Claims Tribunal, Bhiwani is wrong and without any justification. It is wrongly held that the appellant/claimant did not receive any injury in the accident which took place on 18.07.2008. Balwan the claimant stepped into the witness box as PW1 and proved his version by way of affidavit Ex.PW1/A. He has confirmed the manner in which the accident took place as well as the injuries suffered by him and the treatment which he had received from Ranvir Hospital, Bhiwani and Medical College and Hospital, Jaipur. He was also medico-legally examined at General Hospital, Bhiwani and his medico legal report was also prepared. Dr. Ranvir Singh PW2 also stepped into the witness box to

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prove the discharge card and bed head tickets which are Ex.P2 and Ex.P3. He had placed on record the bills regarding purchase of medicines and various tests report which are Ex.P4 to Ex.P111. The Discharge Ticket, Department of Urology, S.M.S. Medical College & Hospital, Jaipur is Ex.P112 and Ex.P114. Even after discharge from the hospital he was getting treatment as out door patient. The learned Motor Accident Claims Tribunal has not given any findings regarding the medical expenditure incurred by him while getting treatment from various hospitals. The learned Motor Accident Claims Tribunal has wrongly come to the conclusion that the claimant had failed to prove rash and negligent driving on the part of respondent No.1. The statement of Balwan as PW1 has been totally ignored on hyper technical grounds.

The learned counsel for the appellant/claimant further pointed out that the judgment of acquittal relied upon by the counsel for the respondent No.1 in criminal case bearing No.883-1 RBT of 2008/2010 decided on 13.12.2012 will have no bearing while deciding the present claim petition. It is pointed out that the judgment in criminal case is not binding on Motor Accident Claims Tribunal. In criminal case the guilt is to be proved beyond the shadow of reasonable doubt. Whereas in the proceedings before Motor Accident Claims Tribunal it is a summary procedure and the evidence is appreciated on the preponderance of probabilities. Learned counsel for the appellant/claimant has relied upon the authority cited in **2017 (1) PLR 253 of Coordinate Bench** in case titled as **“Oriental Insurance Company Limited Vs. Balinder Pal @ Varinder Singh and others”** wherein in para No.13 it was observed as under:-

“It was held that the judgment of the Criminal Court determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunal, dealing with a claim petition under the Motor Vehicles Act. The findings as to the guilt or otherwise of the driver are wholly irrelevant for the purpose of the trial on merits of the claim petition before the Motor Accidents Claims Tribunal. Such a judgment is relevant only to the extent specified in Section 43 of the Evidence Act.”

It was concluded in that case that Tribunal will consider the issue of negligence on the basis of evidence adduced before it uninfluenced by the fact of pendency of criminal case or the acquittal therein. In that case appeal preferred by Insurance Company was, accordingly, declined. On this point, the learned counsel for the appellant/claimant has relied upon another authority cited in **2016 (3) R.C.R. (Civil) 980 of Coordinate Bench** in case titled as **“Suman and others Vs. Somveer and others.”** The relevant para No.20 runs as under:-

“20. Learned counsel for the appellant-Insurance Company has pleaded that respondent No.1 Somveer the driver of the tractor has been acquitted in the criminal case but the acquittal of respondent No.1 in the criminal case is of no consequence and has no effect on the merits of this claim case. As already mentioned, the standard of proof in the criminal case and the claim case is entirely different. The findings in the claim case/civil case is to be recorded on the

principle of preponderance of probabilities, whereas in the criminal case the prosecution has to prove the charge to the hilt i.e. by eliminating the possibility of any doubt which may arise in favour of the accused. In the instant case, the issue regarding negligence is to be decided on the basis of the evidence adduced by the parties in this case. The subsequent acquittal of respondent No.1 Somveer is no ground to upset the findings of the issue of negligence recorded by the learned Tribunal.”

11. Learned counsel for the appellant/claimant has relied upon another authority in **2019 (1) R.C.R. (Civil) 86 of Hon’ble Supreme Court** in case titled as **Vimla Devi & Ors. Vs. National Insurance Company Limited and Ors.** Relevant para Nos.25 to 29 run as under:-

“25. Keeping in view the aforementioned principle of law when we examine the facts of the case at hand, we are of the considered opinion that the Claims Tribunal and the High Court were not justified in dismissing the appellant’s claim petition. In our view, the appellants’ claim petition ought to have been allowed for awarding reasonable compensation to the appellants in accordance with law. This we say for the following reasons:-

26. First, the appellants had adduced sufficient evidence to prove the accident and the rash and negligent driving of the driver of the offending vehicle, which resulted in death of Rajendra Prasad.

27. *Second, the appellants filed material documents to prove the factum of the accident and the persons involved therein.*

28. *Third, the documents clearly established the identity of the Truck involved in the accident, the identity of the driver driving the truck, the identity of the owner of the Truck, the name of the insurer of the offending Truck, the period of coverage of insurance of the Truck, the details of the lodging of FIR in the concerned police station in relation to the accident.*

29. *In our view, what more documents could be filed than the documents filed by the appellants to prove the factum of the accident and the persons involved therein.”*

12. On the basis of these authorities, learned counsel for the appellant/claimant argued that the findings given by learned Motor Accident Claims Tribunal pertaining to issue No.1 is without justification. The statement of Balwan claimant as PW1 coupled with the contents of FIR No.136, dated 23.07.2008 under Sections 279/337/338 IPC registered at Police Station Badhra, Ex.P120, the factum of accident as well as rash and negligent driving on the part of respondent No.1 is duly proved and the Motor Accident Claims Tribunal was duty bound to grant compensation on the basis of medical treatment record and the bills regarding purchase of medicines duly proved on the file. Therefore, the findings given by the Motor Accident Claims Tribunal while passing award dated 03.10.2012 may be set aside by accepting the present appeal

and the appellant/claimant may be granted just and reasonable compensation for the injuries received by him in the motor vehicular accident.

13. On the other hand, learned counsel for respondent No.1 i.e. driver and counsel for respondent No.3 – Insurance Company pointed out that the facts of the case and the findings on record were rightly appreciated by the Motor Accident Claims Tribunal while deciding issue No.1. Firstly the appellant/claimant was required to prove that the accident had taken place due to rash and negligent driving of respondent No.1 Surender which he miserably failed. The statement of Balwan PW1 was duly considered by the Motor Accident Claims Tribunal and it was found to be untrustworthy. The appellant/claimant tried to change the version by withholding the name of Rohtash Kumar who was also accompanying him and Rajender while boarding the said pickup vehicle which allegedly met with an accident. The learned counsel representing the contesting respondents referred to the cross-examination of Dr. Ranvir PW2 who confirmed that the injured was brought to the Hospital by his brothers namely Sandeep Kumar and Rohtash who stated that the accident occurred due to the negligence of injured himself and they did not want to lodge any FIR. Later-on, the FIR was lodged on 23.07.2008 without explaining the delay in lodging the report to the police. Learned counsel representing the contesting respondents further referred to the judgment of acquittal in FIR No.136, dated 23.07.2008 under Sections 279/337/338 IPC was registered at Police Station Badhra where Surender was acquitted of the charges framed against him as all the witnesses namely Balwan – present appellant, Rajender and Rohtash did not support the prosecution case as

PW5 to PW7 respectively and were declared hostile as a result of which Surender the driver of said Pickup *Dalla* HR-19E-0228 was acquitted of the charges framed against him. Now at this stage, the present appellant/claimant cannot be allowed to change his version altogether in order to get compensation under the provisions of Section 166 of the Motor Vehicles Act. The appeal preferred by the appellant/claimant is without merits and the same may kindly be dismissed.

14. I have considered the arguments advanced before me and I have also gone through the authorities relied upon by learned counsel for the appellant/claimant. In the case in hand, Balwan the present appellant/claimant filed claim petition under Section 166 of Motor Vehicles Act for grant of compensation on account of injuries sustained by him in motor vehicle accident which took place on 18.07.2008. Regarding the accident as well as rash and negligent driving, specific issue No.1 was framed by Motor Accident Claims Tribunal and regarding this the learned MACT came to the conclusion that the appellant/claimant had failed to establish that he sustained injuries on 18.07.2008 due to rash and negligent driving of respondent No.1 and consequently the claim regarding compensation was declined by passing impugned award dated 03.10.2012.

15. In order to prove the factum of accident as well as rash and negligent driving on the part of respondent No.1 Balwan the claimant himself stepped into the witness box as PW1 and filed his affidavit Ex.PW1/A where he reiterated his version, as detailed in the claim petition. As per his own version he along with his brother Rajender boarded pickup jeep bearing No.HR-19E-0228 driven by respondent No.1 from the main road village Atela Khurd for going to village Dohka Hariya.

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Balwan claimed that Surrender was driving the said jeep in a high speed and in rash and negligent manner as a result he lost control over his vehicle and it turned turtle, as a result of which he suffered several injuries on various parts of the body due to sole rash and negligent driving of respondent No.1. Regarding this accident, FIR No.136, dated 23.07.2008 under Sections 279/337/338 IPC, Police Station Badhra. The copy of FIR is proved on record as Ex.P120.

It is a matter of record that the accident took place on 18.07.2008 and FIR was registered on 23.07.2008. It has come in the cross-examination of Dr. Ranvir PW2 where the injured Balwan – the claimant was initially admitted in the hospital by the brothers of the patient i.e. Sandeep Kumar and Rohtash Kumar who stated that the accident had occurred due to the negligence of injured himself and they did not want to lodge any FIR. However, subsequently, the present appellant/claimant Balwan was admitted in General Hospital Bhiwani where he was medico legally examined on 21.07.2008 and on his statement the aforesaid FIR was lodged on 23.07.2008. It is kept in mind that the version of brother of the present appellant/claimant before doctor cannot be given undue importance. It is well settled proposition of law that the statement of injured/eye witness has to be considered which is recorded before the Motor Accident Claims Tribunal. Therefore, as per the statement of Balwan as PW1 he categorically claimed rash and negligent driving on the part of respondent No.1 Surrender. During the pendency of present appeal, the respondent No.1 has also placed on file copy of judgment in criminal case No.883-1-RBT of 2008-2010 instituted on 25.10.2008 which was decided on 13.12.2012 in which Surrender the respondent No.1 was

acquitted of the charges framed against him. It is also settled proposition of law that judgment of criminal Court is not binding in the proceedings before Motor Accident Claims Tribunal. The criteria for deciding of criminal case as well as a civil case is also different. But at the same time it cannot be ignored that the appellant/claimant when stepped into the witness box before the learned Judicial Magistrate 1st Class, Charkhi Dadri, Bhiwani Haryana as PW5 did not support the prosecution case. He was declared hostile. He was also confronted with his statement before the police to which he claimed that he never suffered the said statement to the police. Apart from Balwan the other two witnesses namely Rajender and Rohtash who are the brothers of Balwan were also examined as PW6 and PW7, they also did not support the prosecution case and were declared hostile. They also denied to have given statement before the police. The aforesaid witnesses did not identify Surrender as driver of the said offending pickup vehicle. Therefore, Balwan the present appellant/claimant totally changed his stand when he appeared before the learned Magistrate in the criminal case whereas while stepping into the witness box before Motor Accident Claims Tribunal as PW1 he alleged rash and negligent driving on the part of the same driver/accused who was respondent No.1 before the Motor Accident Claims Tribunal. The challan in the said criminal case was presented on 25.10.2008 and it was decided on 13.12.2012. On the other hand, the MACT's case was filed on 06.08.2009 and it was decided on 03.10.2012. The present appellant/claimant Balwan was giving different version before the Magistrate and he was taking contradictory stand while appearing into the witness box before Motor Accident Claims Tribunal. Therefore, the

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statement of Balwan is self contradictory and the same cannot be relied upon. The present appellant/claimant cannot be permitted to change his stand while appearing before different forum. The conduct of present appellant/claimant cannot be ignored. The case would have been different in case some other eye witness had appeared before the learned Magistrate or had given a different version not supporting the prosecution case. But in the case in hand, the present appellant/claimant has changed his stand from time to time and he is not trustworthy witness.

Therefore, the conclusion drawn by Motor Accident Claims Tribunal while deciding issue No.1 does not require any interference. Consequently, no purpose would be served by calculating the quantum of compensation.

In view of the aforesaid discussion, I do not find any reason to interfere in the findings given by Motor Accident Claims Tribunal by passing award dated 03.10.2012 dismissing the claim petition and the same is accordingly upheld.

16. The appeal preferred by the appellant- Balwan is accordingly dismissed.

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

28.11.2023
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(AMARJOT BHATTI)
JUDGE

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