

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) FAO-2231-2013 (O&M)

Rikhi Ram through LRs
...Appellant

VERSUS

Smt.Surinderjit Kaur and another
...Respondents

(ii) FAO-3235-2015 (O&M)

Surenderjit Kaur
...Appellant

VERSUS

Rikhi Ram and another
...Respondents

Date of Decision: July 14, 2023

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kshitij Sharma, Advocate,
 for LRs of appellant (in FAO-2231-2013) and
 for LRs of respondent No.1 (in FAO-3235-2015).

 Mr.S.S.Chhokar, Advocate,
 for appellant (in FAO-3235-2015) and
 for respondent No.1 (in FAO-2231-2013).

ARCHANA PURI, J.

These are two appeals, arising from the common Award passed by learned Motor Accident Claims Tribunal (hereinafter referred to 'Tribunal'), while granting compensation to the extent of Rs.40,81,000/- to claimant No.1-Surenderjit Kaur and fastening liability upon Rikhi Ram,

driver-cum-owner of the offending vehicle bearing registration No.HP-64-0469, vide Award dated 08.01.2013.

FAO-2231-2013 has been filed by Rikhi Ram, thereby, assailing the Award, on the count of non-involvement of the vehicle bearing registration No.**HP-64-0469**, in the accident in question and the liability, so fastened upon him, in the capacity of being driver-cum-owner.

FAO-3235-2015 has been filed by one of the claimants namely Surenderjit Kaur, thereby, seeking enhancement of the compensation, so awarded by the Tribunal.

For the convenience of the discussion, the parties are referred to as making appearing before the Tribunal.

Some essential facts are required to be noticed.

As per the case of the claimants, on 21.11.2008, Gurvinder Singh (since deceased) along with his cousin Maninder Singh had gone from Krishna Nagar Gamri to Ambala in Maruti Zen car. After completion of their work, while they were returning from Ambala to Kurukshetra, Gurvinder Singh was driving the said Zen car, at moderate speed, on the left side of the road and when they reached near Saha Chowk, at about 4.00 p.m., a Swaraj Mazda bearing registration No.HP-64-0469, came from the opposite side, which was being driven in a rash and negligent manner by respondent No.1-Rikhi Ram and he turned his vehicle towards Saha Side, at fast speed, without giving any indicator/signal, before turning his vehicle and as a result thereof, the offending vehicle struck the Maruti Zen car of Gurvinder Singh, as a result of which, Gurvinder Singh sustained injuries, who succumbed to the same, when taken to CHC Shahbad and Maninder

FAO-2231-2013 and connected case

Singh received minor injuries. Relating to the said accident, FIR No.413 dated 21.11.2008 under Sections 279 and 304-A IPC was registered against respondent No.1-Rikhi Ram.

Further, deceased Gurvinder Singh was asserted to be working as an agriculturist and partner in Sardar Kewal Singh Memorial Education Trust, Kurukshetra and practising in District Courts, Kurukshetra. He was 26 years old.

In reply, respondent No.1-Rikhi Ram denied the factum of accident and his involvement, while driving vehicle bearing registration No.HP-64-0469. In fact, Rikhi Ram took the specific plea that on 21.11.2008, he was present at Nayakar, Tehsil Kasauli, District Solan and his vehicle was parked at Chakki Ka More, Jabli, Tehsil Kasauli. The claimant, in collusion with the Maninder Singh s/o Surinder Singh and owner of vehicle bearing registration No.HR-64-0469, had illegally succeeded to involve the respondent and his vehicle bearing registration No.HP-64-0469 in the alleged accident, which stands established from the statement of Maninder Singh s/o Surinder Singh, got recorded to the police. It was all due to the manipulations that the accident has been projected to have been caused with the vehicle bearing registration No.HP-64-0469, driven by respondent No.1-Rikhi Ram.

On appraisal of evidence, coming on record, learned Tribunal concluded about rashness and negligence, on the part of Rikhi Ram, while driving vehicle bearing registration No.HP-64-0469, which caused the accident and resulted into fatal injuries, on the person of Gurvinder Singh and thus, compensation to the extent of Rs.40,81,000/- was granted to

FAO-2231-2013 and connected case

Surinderjit Kaur-claimant No.1, who is mother of deceased Gurvinder Singh.

Feeling dissatisfied with the Award, the rival parties filed the appeals, the detail whereof, has been given hereinbefore.

Now, in this context, the respective claims in the appeals, require appraisal.

To establish the factum and manner of taking place of the accident, the claimants examined Maninder Singh s/o Surinder Singh as PW-2, who was accompanying deceased Gurvinder Singh, at the relevant time. He has deposed about taking place of the accident on 21.11.2008, while they were coming back from Ambala to Kurukshetra and also deposed about vehicle bearing registration No.HP-64-0469, having come from the opposite side, which was driven in a rash and negligent manner by respondent No.1-Rikhi Ram and the same struck their car, as a result whereof, his cousin had sustained grievous injuries, who was shifted to CHC Shahbad, where he was declared dead. Even, Surenderjit Kaur, mother of deceased has deposed about death of her son, in a motor vehicular accident, which took place on 21.11.2008.

Furthermore, PW-5 Brij Mohan, Criminal Ahlmad, on the basis of the summoned record, has deposed about Rikhi Ram, to be facing trial in the criminal case, wherein, charge has been framed.

To counter the claim of the claimants, respondent No.1-Rikhi Ram stepped into witness box as RW-2 and his affidavit is Ex.RW2/A, which is, in consonance with his pleaded case of denial of taking place of the accident, at his behest, while driving vehicle bearing registration No.HP-64-

0469.

Throughout the arguments, much emphasis has been laid upon, the accident having not been caused by Rikhi Ram and non-involvement of vehicle bearing registration No.HP-64-0469, in the alleged accident. Precisely, on this account, learned counsel for respondent No.1-Rikhi Ram has assiduously submitted that learned Magistrate in a criminal Court, recorded acquittal of Rikhi Ram, which stood affirmed by learned lower Appellate Court. The judgments delivered by the criminal courts are Annexures A-6 and A-9, which were proved in additional evidence.

It is further submitted by learned counsel for respondent that soon after the accident, when the matter was reported to the police, Maninder Singh, author of the FIR Ex.P4, had given the number of offending vehicle as HR-64-0469. This is the first version of the fact of accident and the involvement of the offending vehicle. However, it is submitted that after 5-6 days, by way of supplementary statement, which is Ex.P9, complainant Maninder Singh had substituted the number of the vehicle involved as HP-64-0469. Thus, it is submitted that there was plantation of this vehicle, as an afterthought and as a result of collusion, between the claimant, Maninder Singh and also owner of vehicle, which was initially stated to be involved in the accident. Consequently, it is submitted that wrongful role has assigned to Rikhi Ram, driver-cum-owner of vehicle bearing registration No.HP-64-0469.

Such being the facts, it is submitted that learned Courts below had given concurrent findings of acquittal qua Rikhi Ram. On the fact of acquittal, learned counsel for respondent No.1 submitted that the finding of

negligence, do not with stand the requirement in seeking claim and this finding of negligence, as such, cannot be sustained.

To counter the manner of accident, as asserted by the claimants, learned counsel for the respondent has also made reference to site plan Ex.R2, mechanical reports of the car and the offending vehicle, which are Ex.R3 and Ex.A8/2 and even the photographs Mark R1 to R4. It is submitted that the version of the claimants is highly doubtful and therefore, involvement of respondent No.1 and his vehicle, do not stand established, more particularly, in view of the acquittal and thus, the claimants are not entitled to any compensation.

Rather, learned counsel for the appellant-claimant No.1 submits that on the basis of evidence coming forth, learned Tribunal had reached the conclusion about involvement of vehicle of Rikhi Ram, in the accident and also about rashness and negligence, on his part. The acquittal, so recorded, by the trial court, which stood affirmed by the learned lower Appellate Court, should not weigh the mind of the Court, as parameters of appraisal and the extent of evidence, to be brought on record, to establish the case, is entirely different in criminal proceedings, as compared to the tortious claims/proceedings, in the motor accident claims.

It has been consistently held by the Courts that the Tribunal is to adjudge the case, only on the basis of evidence, produced before it and not to rely, solely on account of material, put forth, before the criminal Court, on the basis, whereof, judgment of acquittal is passed. Of course, fundamental facts, ought to be established. Basically, the test is whether a prudent man, under the peculiar circumstances of a case, assume the existence of certain

FAO-2231-2013 and connected case

facts, as true or disbelieve it.

In *Municipal Committee, Jullundur v. Shri Romesh Saggi and others AIR 1970 P&H 137*, a Division Bench of this Court considered the question:

“Whether the judgment of a criminal court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is conclusive and binding upon the Motor Accident Claims Tribunal dealing with a claim petition under Section 110-C of the Motor Vehicles Act and if not, for what purposes and to what extent can such a judgment be availed of by the parties concerned?”

Answering the same, it was observed as under:-

33. To sum up in civil actions and criminal prosecutions arising out of the same motor accident involving bodily injury or death, the parties may be different, the issues may not be identical, the nature of the onus may vary and the effect of evidence may not be the same. It will, therefore, be contrary to all fundamental concepts of natural justice to treat the findings of the Criminal Court as binding on the Motor Accidents Claims Tribunal, assuming -- but not holding -- that such a Tribunal is not a Court as defined in Section 3 of the Evidence Act, but partakes the character of an Arbitrator, with most of the trappings of a Court.

34. It will, therefore, be opposed to fundamental canons of justice and public policy to treat the judgments of the criminal Court binding on a Motor Accidents Claims Tribunal, trying a claim arising out of a motor accident involving injury or death. The judgment of the Criminal Court, can at the most, be used only for the purpose and to the extent indicated in Section 43 of the Evidence Act.

35. For the reasons recorded in OUT separate judgments, we answer the question referred to us in the following manner, and direct that this appeal will now go back to the learned Single Judge for disposal on merits in accordance with law:--

"The Judgment of a Criminal Court in a prosecution arising out of a motor accident, determining the guilt or innocence of the driver of the motor vehicle concerned, is neither conclusive nor binding on the Motor Accidents Claims Tribunals, dealing with a claim petition under Section 110-C of the Motor Vehicles Act, and its 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 judgment can however, be relevant only for the purpose

and to the extent specified in Section 43 of the Evidence Act."

Reference is also made to ***Krishan S/o Mangiram v. Tarawati Widow and Others 2011 (3) PLR 29***, wherein. it was held that a criminal Court's judgment acquitting a driver would have no relevance in a case before the Tribunal and the Tribunal will consider the issue of negligence on the basis of the evidence adduced before it, uninfluenced by the fact of the pendency of the criminal case or the acquittal therein. It was observed as herein given:-

"3. It is also stated that in the criminal case the witnesses contradicted themselves in their versions to what they stated before the Tribunal. This cannot make the position better, for, a criminal Court's judgement acquitting a driver would have no relevance in a case before the Tribunal. The standards of proof of a criminal case are different from tortious claims for accident victims that are required to be established before the Tribunal and the Tribunal will consider the issue of negligence by the evidence adduced before it, uninfluenced by the fact of pendency of the criminal case or acquittal given by the criminal Court. It will be relevant no more than the fact that a criminal case had been registered and that it had concluded before the criminal Court. It cannot be used for any other purpose, unless it is a case of conviction rendered on admission before the criminal Court where the conviction by the criminal Court on an issue of negligence will have immense value before the Tribunal."

In ***The General Manager, Bihar Road Transport Corporation v. Smt. Uma Rani Behura and others 1998 WBLR 344***, a Division Bench of the Calcutta High Court held that a judgment of acquittal in a criminal case is admissible in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. But the findings of the criminal Court are not binding on the civil case. It was observed as herein given:-

“7. A judgment of acquittal passed in a criminal case is admissible in evidence in a civil matter only for the purpose of showing that a criminal case was initiated against some persons and the result of such criminal case. It is now well settled principle of law that the findings of a criminal Court are not binding on the Civil Court although the converse is true.”

In *Hem Ram and Another v. Krishan Chand and Another* 2015(9) R.C.R (Civil) 311, it was held by the Himachal Pradesh High Court that it is settled position that while a conviction recorded by the Criminal Court is enough to hold that the driver had driven the vehicle rashly and negligently, but his acquittal would be no ground to dismiss the claim petitions. It was observed as herein given:-

“28. The question is - whether the findings recorded by the Criminal Court can be made basis for holding that the driver has not driven the vehicle rashly and negligently and the deceased/injured were gratuitous passengers?”

29. It is beaten law of land that if conviction is recorded by the Criminal Court, that is the best ground to hold that the driver had driven the vehicle rashly and negligently, but, if the driver earns acquittal, that cannot be a ground for dismissal of the claim petitions”

It is indeed trite to state that while finding of a civil Court is binding on the criminal Court, the finding of criminal court, could not and should not influence the decision of the Tribunal. The Tribunal is to adjudge the case, on the basis of the evidence produced before it and not on the basis of the findings, solely recorded by the criminal court, though the same may put Tribunal, on some caution for scrutiny purposes.

Thus, there is requirement of independent appraisal of the evidence, as coming forth, before the Tribunal. The mere acquittal of the driver of the offending vehicle in a criminal case, cannot weigh against the evidence and the manner of appreciation, made by the Tribunal, keeping in

view that the standard of proof required, being different in the two proceedings.

Consequently, on the basis of the judgments passed by the criminal Courts, *ipso facto*, do not sustain the submissions of non-involvement and false plantation of vehicle bearing registration No.HP-64-0469 and the role assigned to Rikhi Ram.

Proceeding further, let's consider the plea of substitution of number of the offending vehicle, which caused the accident.

Soon after the accident, FIR **Ex.P4** was got registered, on the statement of Maninder Singh **Ex.P6**. Very true, as pointed out, Maninder Singh had mentioned the number of offending vehicle, in this first version of the accident as **HR-64-0469**. Also, as evident from **Ex.P9**, the supplementary statement of Maninder Singh was got recorded on **26.11.2008** and therein, he stated the number of the vehicle, involved in the accident, as **HP-64-0469**, instead of '**HR**' and also gave the name of the driver as Rikhi Ram. However, the change of number, as so got recorded by the author of the FIR, in subsequent statement **Ex.P9**, does not lead to the conclusion of their being substitution of the vehicle. It would not be out of context to mention that FIR was got registered, soon after the accident. The accident took place at about **4.10 p.m.** and the intimation reached the police station at **5.20 p.m.**, as per the recitals of the FIR **Ex.P4** and soon thereafter, the police had reached the spot and conducted further proceedings. One thing is certain that the FIR is lodged with promptitude.

By the very nature of things, an FIR is only aimed at intimating of the occurrence to the police. It cannot and does not purport to be

complete encyclopedia of all the attending circumstances.

One should not overlook the fact that on account of accident, author of the FIR also is expected to be in a traumatic state of mind, soon thereafter. It is nothing unnatural of his mentioning the vehicle number as 'HR' instead of 'HP', when the rest of the number is same. Moreover, in his supplementary statement Ex.P9, Maninder Singh gave the reason for wrong mention of the number as he was petrified, due to death of Gurvinder Singh.

Though, also it is pointed out that in the witness box as PW-2, Maninder Singh did not state as to how he came to know about the subsequent number, but however, it matters not much. Suffice to consider, the reason coming forth in Ex.P9. In the examination-in-chief, Maninder Singh had stated about the fact of accident having caused by vehicle bearing registration No.HP-64-0469, which came from opposite side, driven in rash and negligent manner by respondent No.1-Rikhi Ram and struck against their car, as a result whereof, Gurvinder Singh had sustained injuries and he was shifted to CHC Shahbad, where he was declared dead. He deposed about his statement to have been got recorded to the police. However, while conducting cross-examination, Maninder Singh had stated that his statement was got recorded by the police twice. Thereupon, a suggestion was given to him that he had given a different number in his first statement and he had mentioned the number of the offending vehicle to be **HR-64-0469** and in subsequent statement, it was made clear that number of vehicle was **HP-64-0469**. This suggestion was admitted by him to be correct. Giving of this suggestion, which was admitted to be correct, fills the lacuna/omission surfacing about the number of the offending vehicle as HP-64-0469.

FAO-2231-2013 and connected case

Besides the aforesaid, no suggestion was given about number to have been given in subsequent statement Ex.P9, as an afterthought, and outcome of collusion, which is now so submitted. This subsequent statement Ex.P9 got recorded after 5-6 days, in itself is not pointer to substitution, as there is nothing unnatural about the same, coming to the notice of the author of the FIR, when it so transpired during the course of investigation. Above all, no cross-examination was conducted with regard to the plea of collusion or substitution of number of the vehicle, as an afterthought. Even, there is nothing on record about any complaint or application being filed during the course of investigation to challenge the involvement of this vehicle.

Even though, halfheartedly, Rikhi Ram, while facing cross-examination as RW-2, had stated about having sent an application to Superintendent of Police, Kurukshetra, through registered post, after his arrest, but he had stated that he has no record or postal receipt regarding sending of any such application to SP, Kurukshetra, nor he retained copy of the application with him. He was unable to state the date, as to when this application was moved and furthermore, he had not even summoned any witness from the office of SP, Kurukshetra, relating to filing of any such application. Otherwise also, it should always be kept in mind that FIR is got registered in haste, in such kind of cases and moreover, it is not essential pre-requisite. The statement made on oath, as such, has to be considered, which clearly speaks about Maninder Singh accompanying Gurvinder Singh deceased, at the relevant time and he has categorically stated about rashness and negligence, on the part of Rikhi Ram, while driving the offending

FAO-2231-2013 and connected case

vehicle, which caused the accident.

Furthermore, much emphasis has been laid upon site plan Ex.R2, as well as Photographs Mark R1 to R4 and mechanical reports of the vehicle in question, involved in the accident.

Although, it is submitted that as per mechanical reports, extensive damage was caused to the ill-fated car, but however, the vehicle of the respondent did not have any scratch, which in itself speaks about the non-involvement of the same, in the accident, but however, this submission is bereft of merits, on the basis that these mechanical reports have not been duly proved. These were brought on record in additional evidence. No witness was examined, who had prepared the mechanical reports. Statement of Ashok, who prepared the same, has simply been placed on record. He was not examined before the Tribunal and thus, the claimant had no opportunity to conduct the cross-examination and thus, no sustenance can be drawn from the said mechanical reports.

Similarly, the site plan and the photographs depicting the location of the vehicles also does not prove to be of any help in the present case, as the persons, who prepared the site plan and who clicked the photographs, as such, have not been examined. It often happens that the location of the vehicle is changed soon after the accident to facilitate smooth passing of the traffic, at the spot of accident. In the given circumstances, without examination of the persons, who clicked the photographs and who prepared the site plan and without providing an opportunity of cross-examination to the claimants, the same, as such, could not be taken into consideration.

Another fact, which weighs mind of the Court to disbelieve the

FAO-2231-2013 and connected case

version of substitution or false involvement of offending vehicle, is that vehicle bearing registration No.HP-64-0469 was not even insured, nor anything is coming on record about the claimants, having any kind of grievance or bitterness with Rikhi Ram. Things would have been different, if an uninsured vehicle was replaced/substituted with an insured vehicle. Then definitely, vested interest of the claimant could be considered to be there. However, it is not so in the present case and precisely, such position dilutes the submission of substitution to a great extent.

Thus, considering the evidence adduced, in the backdrop of the submissions aforesaid, the accident having caused due to rash and negligent driving of vehicle bearing registration No.HP-64-0469 by Rikhi Ram and the same having resulted into causing of fatal injuries to Gurvinder Singh, stands amply established.

Now, coming to the extent of compensation, so awarded by the Tribunal.

It is the version of the claimants that Gurvinder Singh was indulging in agricultural work and at the same time, was acting as partner in Sardar Kewal Singh Memorial Education Trust, Kurukshetra and was also practising with District Bar Association, Kurukshetra. Relating to the same, various witnesses have been examined by the claimants. PW-3 Rishi Gaur has deposed about Gurvinder Singh to be employed as Registrar at Sardar Kewal Singh Polytechnic, Kirmach and deposed about him to be getting salary of Rs.25,000/- per month, out of which, Rs.780/- was deducted as Provident Fund. Another witness examined by the claimants is PW-4 Ratti Ram, Senior Tax Assistant of the office of Income Tax, Kurukshetra, who

FAO-2231-2013 and connected case

proved the tax record of Gurvinder Singh for the year 2007-08 and proved the copy of acknowledgment on the income tax return, which is Ex.P3. Besides the same, copies of jamabandi and mutation have been proved, thereby depicting about the deceased to be having more than 20 acres of land. Though solely, reliance cannot be placed upon the income tax acknowledgment receipt, so proved, but however, it weighed in the mind of the Tribunal about the return to have been filed prior to the death of Gurvinder Singh and even if, it is so taken, it states about the income as Rs.7,87,030/- including agricultural income of Rs.6,88,500/-. There is no mention of the income allegedly received from the Educational Trust, as asserted. Otherwise also, if the deceased was working as a Lawyer, he could not be employee, as alleged by the claimants. Moreover, if it was so, it must be the part of the income, so spelt. However, it should be taken into consideration that agricultural land is still available with the claimants. It is the managerial loss, on account of death of Gurvinder Singh, which is caused and besides the same, there is also expensive input in the agricultural pursuit, which also dilutes the profit, from the earnings, so spelt.

In the given circumstances, learned Tribunal had very appropriately took the earnings of the deceased as Rs.40,000/- per month.

From the evidence on record, the date of birth of deceased is established to be 17.09.1983. Thus, at the time of accident, the deceased was 25 years and 2 months old. Also, it stands established that he was unmarried boy. That being so, on account of personal expenses, the deduction ought to be to the extent of 50%. Moreover, learned Tribunal had erroneously applied the multiplier, while considering the age of mother of

the deceased. However, it has to be applied as that of age of the deceased. Looking, at the age of the deceased, as per *Smt.Sarla Verma vs. Delhi Transport Corporation and anr., 2009(3) RCR (Civil) 77*, the appropriate multiplier to be applied is ‘18’. As per *National Insurance Company Limited vs. Pranay Sethi and others, 2017(4) RCR (Civil) 1009*, addition of 40% has to be made, on the count of ‘future prospects’. While working out the same, it comes to be **Rs. 20000+40%x12x18=Rs.60,48,000/-**.

Besides the aforesaid, on the count of ‘loss of consortium’, ‘loss of estate’ and ‘funeral expenses’, as per *Pranay Sethi’s case (supra)*, in view of 10% enhancement, as due, the compensation to be granted comes to be Rs.44,000/-, Rs.16,500/- and Rs.16,500/- respectively, on the aforesaid three counts.

Thus, the total compensation, as now awarded comes to be **Rs.60,48,000+Rs.44,000+Rs.16,500+Rs.16,500=Rs.61,25,000/-**. As such, the compensation, so granted by learned Tribunal stands enhanced from **Rs.40,81,000/- to Rs.61,25,000/-**. The interest component on the enhanced amount from the date of filing of the appeal, till its realization, shall remain the same, as ordered by learned Tribunal. The impugned Award dated 08.01.2013 stands modified, to the extent, as indicated aforesaid.

In view of the aforesaid terms, appeal filed by appellant-Rikhi Ram bearing FAO-2231-2013 stands **dismissed**, whereas, appeal filed by appellant-Surenderjit Kaur bearing FAO-3235-2015 stands **allowed**.

July 14, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No