

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 6733/2016(O&M)

Date of decision: 11.05.2023.

Smt.Savitri and others

.....Appellants

Vs.

Ram Niwas Singh and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sandeep Lather, Advocate for the appellants.

Nidhi Gupta, J.

Present appeal has been filed by the claimants against the dismissal of their claim petition No.MACT 172/2014 under Section 166 of the Motor Vehicles Act,1988 (hereinafter referred to as 'the Act'), by Motor Accident Claims Tribunal, Jind (hereinafter referred to as 'the Tribunal') vide Award dated 21.5.2016. Claimants are the widow and five major children aged 30, 28, 24, 26, and 19 years of deceased Jagdish.

It was pleaded case of the appellants before the Id. Tribunal that deceased Jagdish had died due to injuries suffered by him in a motor vehicular accident that took place on 28.11.2013 due to rash and negligent driving of Tractor Trolley bearing registration No. HR-31-H-4228 (hereinafter referred to as 'the alleged offending vehicle'), being driven by respondent no.1, owned by respondent no.2 and insured by respondent no.3.

It is submitted by learned Counsel for the appellants that the appellants had led cogent evidence before the Id. Tribunal to prove rash and

negligent driving on the part of respondent no.1, yet Id. Tribunal has ignored this evidence and dismissed the claim petition filed by the appellants. It is submitted that the appellants had examined eyewitness PW1 Karan Singh on whose statement FIR No.298 dated 29.11.2013 was registered under Sections 279/304-A IPC, at PS Julana in respect of the accident in question. It is stated that even PW4 Monu, one of the claimants/eyewitness of the said accident had testified in favour of the appellants. It is submitted that therefore, the Id. Tribunal was in patent error in ignoring/ not considering the above said evidence in right perspective and dismissing the claim petition. In support, Id. counsel for the appellants relies upon judgment of this Court in **Shri Ram General Insurance Company Limited v Jeeto Devi & others, 2020(1) Law Herald (P&H) 83.**

No other argument has been raised.

Heard Id. counsel.

Perusal of the record of the case shows that in the criminal trial that ensued from present FIR No.298 dated 29.11.2013 registered against driver of the alleged offending vehicle / respondent No. 1 herein, PW1 Karan Singh had appeared as PW4 and had not supported the case of the prosecution and had in actual fact, deposed that accused therein/ respondent no.1 herein/driver of the alleged offending vehicle, is not the person who was driving the vehicle in a rash and negligent manner and had not caused the accident in question. Consequentially, respondent no.1 stood acquitted in the said criminal trial, vide judgment dated 16.3.2015 Ex.R5 passed in case titled as 'State v Ram Niwas'. As a result, PW1 Karan Singh was declared hostile in the criminal trial. Same is the case with Monu PW4 herein who was PW2

in the criminal trial, who had also deposed along the same lines as PW1, Karan Singh, and was also declared hostile in the said trial.

Findings of the Id. Tribunal in this regard are contained in paras 16 to 20 of the Award which are reproduced hereunder:-

“16. PW-1 filed his affidavit which is reproduced as under:-

"That the deponent is complainant in FIR No.298 dated 29.11.2013 under sections 279, 304A IPC, P.S. Julana and said accident has been witnessed by the deponent. That 28.11.2013 at about 4.30 the complainant alongwith Rajpal son of Sultan, Jagdish son of Sultan and Monu son of Jagdish Caste Dhanak all residents of village Bhaini Chanderpal were going to Meham from Julana in a Auto bearing registration No. HR-61-B-6880. The complainant was driving the above said auto and when reached near the village Deorar in the meantime a tractor alongwith trolley driven by respondent No.1 at the very fast speed, rashly and negligently from opposite side and on seeing it, the deponent parked his auto on the side of the road and respondent No.1 hit the Auto inside. Due to forceful hit Jagdish son of Sultan sustained multiple and grievous injuries. The driver of said tractor fled away from the spot. Thereafter the injured Jagdish was shifted in PGIMS, Rohtak but he died on the same day in PGIMS, Rohtak due to injuries suffered in this accident. The postmortem of the body of deceased was conducted in PGIMS, Rohtak vide PMR No.1247/13 dated 29.11.2013. That prior to death the deceased Jagdish was doing agricultural work, sowing vegetable in two acres and also doing dairy farming and milk selling and was earning about Rs. 20,000/- per month."

17. PW-4 Monu also filed affidavit in the lines of PW-1. The same is reproduced as under:-

"That the deponent is eyewitness of above said accident and a FIR No.298 dated 29.11.2013, under sections 279, 304-A IPC, P.S. Julana and said accident has been registered. That 28.11.2013 at about 4.30, Karan Singh (complainant) alongwith Rajpal son of Sultan, Jagdish son of Sultan and deponent, all residents of village Bhaini Chanderpal were going to Meham from Julana in a Auto bearing registration No. HR-61-B-6880. The complainant was driving the above said auto and when reached near the village Deorar in the meantime a tractor alongwith trolley driven by respondent No.1 at the very fast speed, rashly and negligently from opposite side and on seeing it, the complainant parked his auto on the side of the road and respondent No.1 hit the Auto inside. Due to forceful hit Jagdish son of Sultan sustained multiple and grievous injuries. The driver of said tractor fled away from the spot. Thereafter the injured Jagdish was shifted in PGIMS, Rohtak but he died on the same day in PGIMS, Rohtak due to injuries suffered in this accident. The postmortem of the body of deceased was conducted in PGIMS, Rohtak vide PMR No. 1247/13 dated 29.11.2013. That prior to death the deceased Jagdish was doing agricultural work, sowing vegetable in two acres and also doing dairy farming and milk selling and was earning about Rs. 20,000/- per month".

18. From the perusal of these affidavits, it clearly shows that no registration number of the offending vehicle was mentioned. It is only alleged that the accident was occurred due to rash and negligent driving of the respondent No.1.

19. Perusal of Ex.PI FIR shows that the name of the driver and registration number of the tractor is not

mentioned. There is no evidence to prove that how the offending vehicle and driver involved in this case. The claimants relied upon report under section 173 Cr.P.C. wherein it is mentioned that respondent No.1/accused was identified by PW-1 Karan Singh on his arrest but when he appeared as PW-4 in that case he has not identified the driver. So, the respondent No.1 was acquitted vide judgment Ex.R-5. So, these documents i.e. FIR, Charge sheet and report under section 173 Cr.P.C. lend no help to the case of the claimants. As far as affidavits of PW-1 Karan Singh and PW-4 Monu is concerned, perusal of judgment Ex R5 shows that PW-4 Monu also appeared as PW-2 in case State Vs. Ram Niwas it observed in para No.10 of the judgment, has specifically stated that he has neither seen the accused present in the court previously nor he has not caused any accident and PW-1 in this case Karan Singh who appeared as PW-4 in State case has deposed as mentioned in para No.12 of the judgment Ex.R5 that he does not know the vehicle which caused accident. He has seen the accused present in the court but he did not caused the accident. On this, this witness Karan Singh was declared hostile and was cross-examined by learned APP and stated in his cross-examination that his statement Ex.PW4/A was neither read over and explained to him and he stated that he has not mentioned in his statement for rash and negligent driving. The specific portions of his statement were put to him but he denied the same in to and in conclusion of para-No. 17 of the judgment, the learned trial court has given the finding that in view of above discussion, it is quite clear that there is not an iota of evidence on the record to connect the accused with the offence. The accused in that case/respondent No.1 was not acquitted on technical grounds but on the ground that PW-1 Karan Singh who

appeared as PW-4 in that case and PW-4 Monu who appeared as PW-2 have not supported the case of the prosecution and deposed that the accused is not the person who was driving the vehicle and caused the accident due to rash and negligent driving of respondent No.1. The contention of learned counsel for respondent No.3 has merit that the respondents No.1 and 2 in collusion with the claimants has not stepped into witness box in this case to help the claimants and the claimant in State case deposed in favour of respondent No.1 to save him from legal punishment so, it is a collusion between them and the application for additional evidence is filed by respondent No.2 only when it came to his knowledge that Insurance Company is not liable due to the case laws titled as **New India Assurance Company Limited vs. Sohan Lal and others, IV 2014 ACC 223 (P&H)** and **Bhajan Singh versus Jarnail Singh and others IV 2014 ACC 901 (Utt)** that trolley is not insured and in cross-examination PW-1 stated that T/Wheeler hit the trolley so it is a collusion between them to defraud the insurance company.

20. As in affidavits Ex.PW1/A and Ex.PW4/A the witnesses have not mentioned the registration number of the offending vehicle and they only stated that the accident was caused due to rash and negligent driving of the respondent No.1 but in judgment Ex.R5 they stated otherwise and the documents Ex.P1, Ex.P4 and Ex.P5 does not lend any support in the light of the judgment Ex.R-5 wherein the respondent No.1 acquitted from the charges under sections 279 and 304A IPC as there is not an iota of evidence to connect the accused and he was not acquitted on the technical grounds. In case law **Seth Ramdayal Jat Vs. Laxmi Prasad 2010 (1) Civil Court Cases 305 (SC)**, the Hon'ble Supreme Court has held

that Judgment in a criminal case is admissible provided it is a relevant fact in issue and the relevant fact in the case that whether the accident was caused by respondent No.1 while driving vehicle No. HR- 31-H4228. So, claimants fails to prove issue No.1 by leading cogent and reliable evidence”. (emphasis supplied.)

Ld. counsel for the appellants is unable to deny the above said findings of the Id. Tribunal. It is, therefore, clear, that the witnesses relied upon by the claimants to prove their case that the accident in question had occurred due to the rash and negligent driving of the alleged offending vehicle by respondent No. 1, had testified the exact opposite in the criminal trial. Therefore, I concur with the finding of the learned Tribunal that the rash and negligent driving of the alleged offending vehicle was not proven by the claimants. Clearly the statements of the relied upon witnesses were untrustworthy as they had changed their stance in order to procure the compensation.

As regards judgment of this Court in **Jeeto Devi's** case (supra) cited by the appellants, the same in fact, does not advance their cause as it is held therein that “*when an eyewitness gives totally different version before the criminal court from the statement before the Tribunal, the testimony of such a witness should be simply rejected*”. Head note in **Jeeto Devi's** case (supra) reads as below:

**(A) Motor Vehicles Act, 1988, S.166-Accident-Claim
Petition-Hostile Witness-In case an eyewitness gives
totally different version before the Court conducting
trial in criminal case from the statement made by the
said eyewitness before the Tribunal, the testimony of
such a witness is unworthy of being accepted and the
evidence should be simply rejected.**

For the reasons noticed above, the present appeal stands
dismissed.

Pending Application(s), if any, stand disposed of.

11.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No