

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

FAO-6769-2016(O&M)

Date of decision:-11.1.2023

Smt.Gorika Sahdev and others

...Appellants

Versus

Honey Matta and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Ashwani Arora, Advocate,
for the appellants.

Ms.Vandana Malhotra, Advocate
for respondent No.3.

H.S. MADAAN, J.

1. Under challenge in this appeal is award dated 4.4.2016 passed by Motor Accident Claims Tribunal, Sonapat (hereinafter referred to as the Tribunal) vide which claim petition bearing MACT Case No.99 of 2013 under Section 166 of Motor Vehicles Act (hereinafter referred to as the Act) filed by claimants Smt.Gorika Sahdev and others on account of death of Sh. Rahul Sahdev in a motor vehicular accident had been dismissed. It is pertinent to mention here that three other claim petitions were also filed on behalf of other claimants, which were also dismissed vide the same award.

2. Briefly stated, facts of the case are that Smt.Gorika Sahdev, aged about 26 years – widow, Smt.Veena Sahdev, aged 58 years – mother, Sh.Sushil Kumar, aged about 66 years – father and Ms.Aaina – minor daughter of Sh.Rahul Sahdev, all residents of House No.255, Ground Floor, Indraprasth Colony, Sector 30-33, Faridabad had brought a claim petition bearing MACT Case No.99 of 2013 under the Act against Honey Matta – driver (since dead, now being represented by his mother Smt.Neelam and father - Sh.Surender Kumar), Sh.Nitin Sharma - owner (since deceased now represented through Sh.Ram Sarup Sharma – father, Smt.Chander Prabha Sharma – mother) as well as against ICICI Lombard General Insurance Company Ltd. - insurer of the car bearing registration No.DL-8-CU-5746 (hereinafter referred to as the offending car), claiming compensation on account of death of Rahul Sahdev.

3. As per the version of the claimants on 2.9.2013 at about 6:00 a.m., deceased Rahul Sahdev, Ananya, Aradhya along with Neeti Sharma and Madhav as well as Nitin Sharma were travelling in the car bearing registration No.DL-8-CU-5746; they were going from Ludhiana to Delhi; the car was being driven by respondent No.1 – Honey Matta at a fast speed in a rash and negligent manner; after crossing Ganaur Flyover, the driver of the car lost his control over the car, resultantly the car struck against a small bridge in the area of village Teha, resulting in the occupants of the car suffering injuries;; Rahul Sahdev and Honey Matta died on the spot, whereas, Ms.Ananya and Aradhya died on the way to hospital; the dead bodies of those four persons were taken to General Hospital, Sonapat; Sh.Nitin Sharma, Smt.Neeti Sharma and Madhav, who

had sustained injuries were taken to Max Hospital, Delhi; an FIR No.329 dated 2.9.2013 for the offences under Sections 279, 337, 304-A IPC was registered against the driver of unknown vehicle with Police Station Ganaur.

4. According to the petitioners, the accident had taken place due to negligence of respondent No.1 and even if the facts mentioned in the FIR are to be believed that the accident took place due to collision with the unknown vehicle, which had sped away after the accident, then also it is a case of composite negligence, since the deceased and the injured had no role to play in causing the accident.

5. According to the claimants deceased Rahul Sahdev was aged about 34 years at the time of his death in the mishap and he was earning Rs.82,187/- per month by working as an Engineer with Computer Science Corporation India Pvt. Ltd., Noida (U.P.). They had claimed compensation of Rs.2 crores.

6. It is pertinent to mention here that other claim petitions i.e. MACT Case No.201 of 2014 and MACT Case No.200 of 2014 filed by claimant Smt.Neeti Sharma on account of suffering injuries in the accident and on account of death of her daughters Ananya and Aradhya and a separate claim petition bearing MACT Case No.202 of 2014 filed by claimant Madhav (minor) through her mother Smt.Neeti Sharma on account of injuries suffered by him in the accident had been filed arising out of the same accident. All the claim petitions were taken up together by the Tribunal for the purpose of trial and passing award.

7. Notice of the claim petitions in question was given to the

respondents. Respondent No.1 and 2 had expired and had been sued through their LRs and notices were sent to their LRs, who however did not appear, as such respondents No.1 and 2 were proceeded against ex-parte.

8. In the written statement filed on behalf of respondent No.3 – insurance company, it refuted the assertions in the claim petitions contending the alleged offending vehicle had been falsely involved in this case in order to grab compensation from the insurance company and as per the FIR, the accident was caused by some unknown vehicle, therefore the answering respondent was not liable to pay any compensation to the petitioners.

9. On the pleadings of the parties following issues were framed:

1. Whether the accident took place due to rash and negligent driving of car bearing registration NO.DL-8-CU-5746 by its driver – respondent No.1 on 02.09.2013 within the jurisdiction of police station, Ganaur resulting into death of Rahul Sahdev, Ananya and Aradhya and injuries to Madhav and Neeti Sharma as alleged? OPP.
2. If issue No.1 is proved in the affirmative to what amount of compensation, the petitioners are entitled to and from whom? OPP.
3. Whether the claim petition is not maintainable and petitioners have no cause of action and locus standi to file the present claim petition? OPR.
4. Whether the respondent No.1 was not holding valid and effective driving licence at the time of alleged accident, if so its effect? OPR.

5. Whether the respondent No.1 was driving the vehicle i.e. Car bearing registration No.DL-8CU-5746 in violation terms and conditions of Insurance policy? OPR.

6. Relief.

10. Both the parties were afforded adequate opportunities to lead evidence to prove their respective claims.

During the course of their evidence, the petitioners examined PW1 Gorika, PW2 Sushil Kumar, PW3 Raj Kumar Yadav, PW4 Jatin Rawal, PW5 Neeti Sharma, PW6 Harish Kirpal and PW7 Dev Raj Sharma.

In rebuttal the respondent had examined RW1 ASI Sumer Singh and RW2 Pankaj Bhardwaj.

11. After hearing learned counsel for the parties, the Tribunal decided issue No.1 against the petitioners holding that the claimants have failed to prove that accident in question took place due to rash and negligent driving of the offending vehicle by respondent No.1 and further it cannot be said that it is a case of composite negligence because police investigation has concluded that the accident in question had taken place due to negligence of driver of unknown vehicle only. Issue No.2 was decided against the petitioners holding that petitioners are not entitled to any compensation from the respondents. Issue No.3 was decided against the respondents. Issues No.4 and 5 were decided in favour of the respondent No.3 – insurance company. As a result of findings on issues, all four claim petitions were dismissed by the Tribunal vide common award dated 4.4.2016, which left the claimants of claim petition bearing

MACT Case No.99 2013 aggrieved and they have filed an appeal before this Court, notice of which was issued to the respondents. Only respondent No.3 – insurance company has appeared through counsel, whereas service of respondents No.1 and 2 was dispensed with.

12. I have heard learned counsel for the parties besides going through the record.

13. The Tribunal had dismissed the claim petitions in view of the verdict given on issue No.1 drawing an inference that the claimants had failed to prove that the accident in question took place due to rash and negligent driving of ill-fated car by respondent No.1 Honey Matta and it cannot be said that it was a case of composite negligence because during the course of investigation, the police concluded that the accident in question had taken place due to fault of driver of unknown vehicle only.

14. After hearing learned counsel for the parties and perusing the record especially the evidence available on the file closely, I find that such verdict given by the Tribunal is erroneous and cannot be sustained. The Tribunal has decided the issue as if it was dealing with a criminal trial requiring it to fix the criminal liability of the accused forgetting that the matter before it was claim petitions under Section 166 of the Motor Vehicles Act for grant of compensation to the victims/their legal representatives. This provision is a piece of welfare legislation. It was enacted by the Parliament to provide relief to the persons, who suffered injuries in the motor vehicular accident as well as to the legal representatives of the victims, who unfortunately lost their lives in such mishaps. Strict rules of evidence and procedure are not applicable there.

15. The FIR with regard to the accident was lodged bearing No.329 dated 2.9.2013 with Police Station Ganaur on the basis of written application submitted by one Dev Raj Sharma addressed to SHO, Police Station Ganaur. The incident had taken place at about 6:00 a.m. in early morning hours. As per version narrated by Dev Raj Sharma, at about 6:00 a.m. some unknown vehicle hit the ill-fated car from side with the result car lost balance and struck the culvert on the road side. After registration of the FIR, the matter was investigated. However, as per final report copy Ex.R3, the investigating agency despite best efforts could not find the registration number of that vehicle or particulars of its driver, as such an untraced report in the matter was filed.

16. Now the question arises as to how much importance is to be given to the FIR. No need to say, the purpose of FIR is to set the criminal machinery into motion and allegations in the FIR are required to be investigated by the police. The assertions in the FIR do not get proved *ipso facto*. Undoubtedly, the deposition of a witness on oath in a Court is at much higher pedestal than statement of a person made to a police officer. In this case PW5 Neeti Sharma had provided the ocular version of the accident. She having suffered injuries in the accident is a stamped witness and her presence at the spot cannot be doubted. She had categorically stated in her affidavit Ex.PW5/A that the ill-fated car was being driven by Honey Matta at a fast speed and in a rash and negligent manner. Her husband Sh.Nitin Sharma and children, Madhav, Ananya and Aradhya and Sh.Rahul Sahdev were the other occupants of the car and after crossing Ganaur Flyover, the driver of the car lost his control over

the car due to excessive speed and the car struck against a small bridge in the area of village Teha, as a result of which all the occupants received serious injuries; Rahul Sahdev and Honey Matta died on the spot; Ananya and Aradhya died on the way to hospital. She categorically stated that the accident took place due to rash and negligent driving of the car by Honey Matta. She was cross-examined at length on behalf of the respondents. However, she could not be shattered on any material point. She having lost her children in the accident would have been the last person to shift the responsibility for causing accident upon an innocent person while trying to screen the actual wrongdoer. She faced the test of cross-examination well and does not come out to be a tutored or false witness. I do not see any reason to discard her testimony and rather act upon the assertions in the FIR and on the conclusion arrived at by the investigating agency. The claimants had examined Sh.Dev Raj Sharma, who had lodged the report regarding the accident as PW7. He in his examination-in-chief itself stated that he was not present at the place of accident on 2.9.2013 and had not seen the accident. He had not submitted any complaint to the police of Police Station Ganaur and the complaint was got written by police officials. He stated that Honey Matta was residing near the house of claimants Neeti Sharma and was a commercial driver and further family of Neeti Sharma used to hire his services as a driver. When the first informant having stated on oath in the Court that he was not present at the spot and had not seen the accident, there was no reason to disbelieve him and to presume him to be an eye-witness of the accident merely because he had submitted a written application to the police as claimed by the

police of Police Station Ganaur.

17. One more thing, which shows that Dev Raj Sharma was not present at the spot and had not seen the accident is the explanation given by him in his cross-examination that he had gone to Civil Hospital for taking all dead bodies of the deceased twins and at that time police officials had written the complaint of their own obtaining his signatures without explaining the contents of the FIR. The explanation seems to be natural and plausible considering the shoddy manner of working of the police in this region. Even otherwise, as mentioned in the final report under Section 173 Cr.P.C., Dev Raj Sharma had come to the spot after the accident and submitted written application regarding the accident to the police does not come out to be convincing. Dev Raj Sharma is a resident of Delhi. The accident had taken place near Ganaur. After the accident, the injured/deceased had been taken to the hospital. Dev Raj Sharma going to the site of accident under the circumstances does not come out to be natural conduct and rather comes out that the police is coming up with a wrong story of Dev Raj Sharma coming to the spot after the accident and submitting a written application with regard to manner of accident. Once it comes out that Dev Raj Sharma was not present at the spot and had not seen the accident, the report said to have been lodged by him loses its significance and it cannot be given undue importance, when the eye-witness account of the accident provided by Neeti Sharma is otherwise.

18. As regards the evidence adduced by the respondent, RW1 ASI Sumer Singh, who had investigated the matter had stated that as a result of his investigation, he found that accident was caused due to

negligence of some unknown vehicle, however that vehicle could not be traced. His testimony does not come out to be convincing. At times the police officers do not carry out the investigation in criminal cases especially in cases relating to road accidents with all the seriousness and efficiency. The instances are not rare when cases are closed by stating that some unknown vehicle had hit the victim. The interest seem to be in solving the case and closing the file rather than making sincere attempt to catch hold of the actual culprit. The investigation in the case does not appear to have been carried out in a professional, efficient and scientific manner. ASI Sumer Singh in his cross-examination admitted that Dev Raj Sharma, had came later on at the spot and given his statement on the basis of which FIR was recorded. The version in the FIR is not claimed to be based upon personal knowledge of the first informant. If he was not present at the spot and had not seen the accident, he could not possibly have given eye-witness account of the mishap. The investigating agency does not seem to have made any sincere effort to examine Neeti Sharma, who was travelling in the car at the relevant time and rather went on to investigate the case on the version provided by the complainant, which at best was based upon what might have been told to him by the others. ASI Sumer Singh admitted in his cross-examination that Neeti Sharma had also received injuries in the accident. He stated that he tried to obtain statement of Neeti Sharma 2-3 times but she was unfit for making statement. His cross-examination goes to show that no sincere effort was made by the police to record statement of Neeti Sharma and to find out as to how actually the accident had taken place. From the mechanical report

of the Ex.RW1/A, it cannot be concluded that it had been hit by any vehicle from side.

19. Learned counsel for the appellants has referred to judgment i.e. **Virat Sama Versus Mohan Lal and others**1994(1) PLR 82 wherein a Single Judge of this Court had observed that FIR is often lodged in haste and the same cannot be substituted for the evidence giving exhaustive version of the occurrence and furthermore the statements before the Tribunal are made on solemn affirmation whereas the FIR is never lodged on solemn affirmation.

He has further referred to judgment **Smt.Mahendri and others Versus Tanjit Singh and another**, 2006(2) PLR 621 by a Single Judge of this Court wherein while dealing with claim petition under Section 166 of the Act discussing the aspect of negligence, it was observed that no doubt a case has been registered against the driver of the truck but the Tribunal cannot draw any inference from the contents of the FIR to foist liability as the Tribunal has to give decision on strength of the evidence led in the case.

Counsel for the appellants has further pressed into service judgment **Anita Sharma and others Versus The New India Assurance Co. Ltd. and another**, 2021 AIR (Supreme Court) 302 wherein it was stated that standard of proof in motor accident matters is one of the preponderance of probabilities rather than beyond reasonable doubt.

20. Therefore, the verdict given by the Tribunal on issue No.1 is based upon misappraisal of evidence and wrong interpretation of law. The same is not sustainable and is reversed. Resultantly, issue No.1 is decided

in favour of the claimants and against the respondents holding that the accident in question took place due to rash and negligent driving of car bearing registration No.DL-8-CU-5746 by its driver respondent No.1 on 2.9.2003 within the jurisdiction of Police Station Ganaur resulting into death of Rahul Sahdev, Ananya and Aradhya and injuries to Madhav and Neeti Sharma.

21. Now coming to issue No.2.

Since in view of the fact that the finding of the Tribunal on issue No.1 has been reversed and issue has been decided in favour of the claimants, the claimants are found entitled to get compensation on account of death of Rahul Sahdev in the motor vehicular accident.

22. According to the appellants/claimants deceased Rahul Sahdev was aged about 34 years and was earning Rs.82,187/- per month by working as Engineer with Computer Science Corporation India Pvt. Ltd., Noida (UP). From the record, his date of birth comes out to be 2.8.1979, in that way on the date of accident i.e. on 2.9.2013, his age was about 34 years. As per the evidence adduced by the claimants in the form of examining PW4 Jatin Rawal, Legal Counsel of Computer Sciences India Pvt. Ltd., the deceased Rahul Sahdev was working as Senior Engineer System Administration in permanent capacity and was getting a total salary of Rs.6,50,000/- at the time of joining, though the cost to the company was Rs.6,81,162/-. He proved copy of documents containing the basic information as Ex.P17, salary certificates as Ex.P20 for the month of August 2013 and Ex.P21 for the month of September, 2013. He further stated that his last pay drawn being Rs.82,187/-, whereas the salaries

drawn by the deceased for 8 months happened to be Rs.3,94,395/-. In his cross-examination, he stated that the net monthly salary of the deceased was Rs.66,495/- after standard deduction.

23. Thus, in view of the ratio of authority **National Insurance Company Limited Versus Pranay Sethi and Ors., 2017(4) RCR(Civil)1009**, in such an eventuality 40% of the amount is to be added towards future prospects. Doing that the monthly income of the deceased is taken as Rs.66,495 + 26,598 = Rs.93,093/-.

24. In terms of the ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr., 2009(3) RCR(Civil)77** where the number of dependent family members are 4 to 6, deduction towards self-expenses is to be taken as 1/4th. Doing that the dependency of claimants comes out to Rs.69,820/- per month, annual dependency comes out to Rs. 69,820 x 12 = Rs.8,37,840/-.

25. In view of ratio of ratio of authority **Smt.Sarla Verma and others Versus Delhi Transport Corporation and Anr.(supra)** keeping in view the age of the deceased Rahul Sahdev to be 34 years, multiplier of 16 should be applied. Doing that the compensation payable to appellants/claimants comes out to Rs. 8,37,840 x 16 = 1,34,05,440/-.

26. The Apex Court in judgment i.e. **Magma General Insurance Co.Ltd. Versus Nanu Ram alias Chuhru Ram & Ors., 2018(4) RCR(Civil) 333**, has observed that amount of Rs.40,000/- each is to be awarded to every claimant for filial consortium and in view of judgment **National Insurance Company Limited Versus Pranay Sethi and Ors.(supra)**, which provides that while working out the compensation

payable under the conventional heads, namely, loss of estate, loss of consortium and funeral expenses, amount of Rs.15,000, Rs.40,000/- and Rs.15,000/-, respectively should be awarded.

27. Doing that the compensation comes out to be Rs.1,35,95,440 (1,34,05,440+40000+40000+40000+40000+15000+15000) payable by all the three respondents jointly and severally.

Thus, issue No.2 is decided in favour of the claimants.

28. Issue No.3 was decided by the Tribunal against the respondents. No interference therewith is called for. Even otherwise this is a claim petition by legal representations of a person, who had perished in a road side accident and is perfectly maintainable under Section 166 of the Motor Vehicles Act.

29. Now coming to issues No.4 and 5. The onus of proving these issues was upon respondent No.3 insurance company. To prove that it examined RW2 Pankaj Bhardwaj, Manager Legal ICICI Lombard, Ambala Cantt., who deposed that the car driver was not having an effective driving licence at the time of accident and owner of the car had willingly allowed him to drive the vehicle violating the terms and conditions of the insurance policy. He had proved copy of notice Ex.R1 sent to respondent No.2 owner of the car asking such owner to produce the driving licence of respondent No.1 but it was not produced, therefore adverse inference is to be drawn against the petitioners/claimants. The Tribunal clearly fell in error in deciding these issues in favour of respondent No.3 – insurance company. The driver of the car having died in the accident and other occupants having received injuries, three of t

hem having expired. It is too much to accept the legal representatives of the driver to search for the driving licence of the driver and to produce it before the Tribunal or supply copy thereof to the insurance company. Basically, the onus of proving that the car driver was not possessing a legal and valid driving licence, resulting violation of terms and conditions of the insurance policy, was upon respondent No.3 insurance company. Though it has tried to discharge the onus by examining RW2 Pankaj Bhardwaj but his testimony is not enough to discharge the onus and verdict as regards these issues cannot be given against the petitioners. The findings given by the Tribunal deciding issues No.4 and 5 in favour of respondent No.3 insurance company are reversed holding that it has failed to prove that the car driver was not holding a valid and legal driving licence at the time of accident or that any violation of the terms and conditions of the insurance policy took place which might have absolved the insurance company of its liability to pay compensation to the claimants.

30. Accordingly, the appeal is accepted with costs throughout. The award in the appeal is set aside and compensation of Rs.1,35,95,440/- with interest @ 7.5% per annum from the date of filing of claim petition till actual realization besides cost of the petition is awarded to claimants payable by all the three respondents jointly and severally.

31. Of the compensation awarded, the amount shall be apportioned as follows:

1. Appellant/Petitioner No.1 – Smt.Gorika Sahdev(wife) - 50%
2. Appellants/Petitioners No.2 and 3(Parents) – 10% each

3. Appellant/Petitioner No.4(daughter) - 30% each

The share of the minor claimant Mrs.Aaina be kept deposited in the form of an FDR with some nationalized bank till she attains majority. However, interest payable on the amount may be released to her mother/natural guardian to bear expenses for her education and bringing up.

11.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No