

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

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FAO No. 4224 of 2017 (O & M)

Date of decision : 1.2.2023

*Rinka Devi and another**.....Appellants**Vs.**Gurinder Pal Singh and others**.....Respondents***CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

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

Mr. S.S. Sidhu, Advocate, for respondent no. 2

TRIBHUVAN DAHIYA, J. (Oral)

The appellants/claimants are in appeal against the award passed by the Motor Accident Claims Tribunal, Chandigarh (for short 'the Tribunal') dated 16.12.2016, whereby their petition claiming compensation on account of death of Awdesb Yadav @ Avdesb Yadav has been dismissed. The grounds of dismissal were two fold; firstly, the claimants failed to establish that the cause of accident was rash and negligent driving of the offending vehicle by respondent no.3-driver; secondly, they failed to establish their relationship with the deceased.

2. Learned counsel for the appellants has argued that there is evidence on record which duly establishes that the accident in question has been caused by negligence of respondent no.3, and that claimants no.1 and 2 are widow and father of the deceased respectively. In that regard, he has relied upon the FIR, statements of eye witnesses and owner of the offending vehicle.

Per contra, learned counsel for respondent no.2/Insurance company has argued

that the award passed by the Tribunal is well reasoned and does not call for any interference by this Court.

3. Learned counsel for the parties have been heard and records of the Tribunal perused.

4. The following issues were settled for adjudicating the claim petition by the Tribunal:

1. Whether accident dated 1.9.2013 causing the death of Awdesh Yadav @ Avdesh Yadav has occurred due to rash and negligent driving of truck bearing no. HR-68-5910 by respondent no.3? OPP
2. If Issue no.1 is proved in favour of claimants, whether the claimants are entitled for compensation, if so, how much and from whom? OPP
3. Whether respondent no.3 was not holding any valid and effective driving license at the time of accident? OPR2
4. Whether there was no valid and effective route permit of the truck in question at the time of accident? OPR2
5. Relief.

5. Issue no.1 has been decided against the claimants on the ground that they failed to examine any witness to prove as to how they came to know the name of driver-respondent no.3 at a later date, as his name was not mentioned in the first statement made by them to the police on the basis of which the FIR in question was registered. A perusal of the record, however, establishes that all relevant facts in this regard have been duly proved on record by the claimants. Firstly, a reference can be made to the statement of Subhash, PW-3, eye witness of the accident, on whose statement FIR in question was registered. In his examination-in-chief, the witness has clearly stated that the offending vehicle bearing registration no. HR-68-5910 was being driven by respondent no.3. He has also stated that the accident occurred on 1.9.2013 at

2:45 p.m. while he was going from Chandigarh to Zirakpur on motorcycle. When at the traffic lights he was waiting for the green signal, a cyclist, who was also waiting for the signal to cross the light point, was hit by a truck bearing registration no. HR-68-5910 which came on a fast speed from behind. The truck was being driven rashly and negligently. As a result, the cyclist fell on the road, and he was dragged by the truck to some distance along with his cycle. After causing the accident, driver of the offending truck crossed the light point, stopped his truck on the road and ran away from the spot. The cyclist was taken to Government Medical College and Hospital, Sector 32, Chandigarh (GMCH-32) immediately. He expired during the course of treatment the same day at 3:40 p.m. His post-mortem report (Ex.P-3) dated 3.9.2013 has been proved on record which also records the deceased's death in the road accident as aforementioned. The FIR (Ex.P-1) was registered on the date of accident itself which stands duly proved on record. Registration number of the offending vehicle was also mentioned in the FIR. The eye-witness, PW-3, was cross-examined on all these aspects at length, wherein he stated that name of the driver, whose negligence caused the accident, was told to him next day by the police. Secondly, driver himself did not step into the witness box to rebut the evidence against him. Thirdly, owner of the offending vehicle, RW-2, in his cross-examination, admitted that FIR no. 339, dated 1.9.2013, under Sections 279, 337, 304A IPC, Police station Sector 31, Chandigarh (Ex.P-1) was registered against his driver-respondent no.3, and no application was filed by him regarding any false registration of the case. He also admitted that the accident in question between the offending vehicle, owned by him, and the cyclist, did take place. And that his truck was taken in possession by the police

after the accident. He further testified that the deceased or his family members were not known either to him or his driver.

6. In view of the aforesaid evidence on record, it cannot be said that the accident in question did not take place due to rash and negligent driving by respondent no.3. The eye-witness has duly proved registration of the FIR (Ex. P-1) on the date of accident itself, mentioning registration number of the offending vehicle. Negligence of the driver in causing the accident also stands proved by his testimony. Besides, testimony of RW-2, owner of the offending vehicle, establishes not only involvement of the vehicle in the accident but also the fact that respondent no.3 was employed by him for driving the vehicle. Merely because the driver's name was not given by the complainant to the police at the time of registration of the FIR, it is no ground to hold that the accident was not due to negligent driving of offending vehicle by respondent no.3. It has come in evidence that immediately after the accident, the driver ran away from the spot. Therefore, in all probabilities his name could not have been known to the complainant at that time. Foremost attention after the accident would obviously have been on saving the injured, and not on finding name or whereabouts of the driver. It was natural that the driver's name would come to notice later, after investigation by the police. Therefore, non-disclosure of his name to the police initially, is not a circumstance which in itself could create any doubt about the accident, or it's having been caused by negligence of respondent no.3, that too when he himself has not contested the fact. Rather, it is acceptable that the eye-witness, a stranger, will not be aware of the driver's name at time of accident. The Tribunal's findings on the Issue are unrealistic and in derogation of the credible material evidence on record. The same are liable to be set aside, accordingly.

7. On Issue no.2 it was held that the claimants were not entitled to compensation as they failed to satisfy they were genuinely related to the deceased. They failed to place on record any document to establish their relationship with him. Accordingly, the Issue was decided against them, and the amount of compensation and liability to pay the same were not determined. This finding by the Tribunal is also not sustainable in the light of evidence on record establishing that claimants no.1 and 2 were related to the deceased, being his widow and father, respectively. Firstly, a reference in that regard can be made to the post-mortem report (Ex.P-3), dated 3.9.2013, wherein claimant no.2 has been recorded as father of the deceased. Secondly, the identify of claimant no.2, deceased's father, has been duly established on record by way of his voter identify card issued by the Election Commission of India, proved on record as Ex.P-4, wherein his name, parentage, age and address are duly recorded. Thirdly, pleadings to the effect that claimants no.1 and 2, are widow and father of the deceased respectively, have not been specifically denied in the written statements filed by the respondents. Further, it has been clearly mentioned in the claim petition that the claimants are legal heirs of the deceased. This fact has also not been specifically denied by the respondents. There is only general denial to the averments of paragraphs no.1 and 9 where these facts have been specifically pleaded, which only amounts to admission on the respondents' part. Fourthly, a reference can be made to the cross-examination of claimant no.2, PW-2, the deceased's father, wherein a suggestion was put to him that his son, the deceased, was not doing any work and that he was not earning Rs.10,000/-per month. The next suggestion put to him was, whether he and claimant no.1, the deceased's wife, were dependent upon the deceased's income. In the light of this evidence on record, it stands

duly established that there is no dispute about the claimants no.1 and 2 being related to the deceased as his widow and father, respectively. The Tribunal was, therefore, wrong in holding that relationship of the claimants to the deceased was not established on record, and they were not entitled to award of compensation on that account.

8. It is a settled preposition of law that the Tribunal has to decide the issues based on the preponderance of probabilities rather than proof beyond reasonable doubt. This has been laid down by the Supreme Court in a number of judgments; a reference can be made to the latest judgment rendered in *Anita Sharma and others v. The New India Assurance Co. Ltd. and another*, 2021 (1) SCC 171. The ratio of the judgment is reflected in paras no.21 and 22, which read as under:

21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.

22. A somewhat similar situation arose in [Dulcina Fernandes v. Joaquim Xavier Cruz](#), (2013) 10 SCC 646, herein this Court reiterated that:

“7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (*Bimla Devi v. Himachal RTC* [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC

(Cri) 1101])” (emphasis supplied).

9. In view of the aforesaid, findings of the Tribunal recorded on Issues no.1 and 2 as also the award dated 16.12.2016 are set-aside by holding that the accident in question was a result of rash and negligent driving of the offending vehicle by respondent no.3, and that claimants no.1 and 2 were related to the deceased as his widow and father, respectively. By so holding, the claim petition is remanded to the Tribunal for fresh adjudication on Issues no.2, 3, 4 and 5.
10. Since the claim petition in question was filed on 14.10.2013, the Tribunal is directed to decide the same expeditiously, preferably within a period of six months from the date of receiving a certified copy of this judgment. The parties are directed to appear before the Tribunal on 22.2.2023.
11. The petition stands disposed of in the aforesaid terms.
12. Pending miscellaneous application(s), if any, stands disposed of as having been rendered infructuous.

(TRIBHUVAN DAHIYA)
JUDGE

1.2.2023
Ashwani

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