

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

**F.A.O No. 1992 of 2006 (O&M)
Date of decision:- 22.03.2024**

Pataso and another

...Appellants

Versus

Vinod Kumar and anr.

...Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present:- Mr. Kulvir Narwal, Advocate
for the applicant-appellants.

Mr. Vipul Sharma, Advocate with
Mr. Paul S. Saini, Advocate
for the respondent-Insurance Co.

SUDEEPTI SHARMA, J. (Oral)

C.M. No. 15148-2007

The present application has been filed under Order 41 Rule 27
CPC for additional evidence.

After hearing learned counsel for the parties and after going
through the contents of the application, the same is allowed. Accordingly,
the certified copy of Post Mortem Report is taken on record.

F.A.O No. 1992 of 2006

1. The present appeal has been preferred by the appellants, against
award dated 08.02.2006 passed by the learned Motor Accident Claims
Tribunal, Jhajjar (for short, 'the Tribunal') under Section 163-A of the Motor
Vehicles Act whereby the claim petition filed by the claimants/appellants
was dismissed.

FACTS NOT IN DISPUTE

On 04.09.2001, Brijesh Kumar (driver of the offending truck)

along with Laxman (conductor of the offending truck) started their journey from Jhajjar to Calcutta on the truck bearing registration No. HR-55-4906. When they reached near village Taranori on G.T Road, P.S. Bagodar, District Girdih on 09.09.2001, the front tyre of the above mentioned truck suddenly got burst. Due to this, the truck turned turtle and the driver-Brijesh Kumar burried under the truck and lateron succumbed to his injuries. On the basis of statement of Laxman-conductor, F.I.R No. 164/2001 dated 10.09.2001 was registered in Police Station Bagodar, District Girdih, Jharkand.

3. On notice of the claim petition, respondents filed their written statement and resisted the claim petition on the ground that the claim petition is not maintainable as no accident took place with the vehicle of respondent No. 1. On merit, the factum of the accident was denied. Further it has been stated that the Tribunal has no jurisdiction to try the petition as the same does not fall under Motor Vehicles Act and the petitioners should have filed a petition under Workman Compensation Act.

4. From the pleading of the parties, the Tribunal framed the following issues:-

1. *Whether Brijesh Kumar died in a motor vehicular accident as caused by the truck bearing registration No. HR-55-4096 owned by respondent No. 1, as alleged? OPP*
2. *If issue No. 1 is proved in affirmative, whether the petitioners are entitled to compensation, if so to what amount and from which of the respondents? OPP*
3. *Whether this petition is not maintainable in the present form? OPR*
4. *Whether the petitioners have no locus standi to file this petition? OPR*

5. *Whether the petitioners have not come to the Court with clean hands, if so its effect? OPR.*

6. *Whether this Tribunal has no jurisdiction to try and decide this petition, as alleged? OPR-2*

7. *Relief.”*

5. However, the learned Tribunal decided issue No. 1 against the petitioners and in favour of the respondents and accordingly, issue Nos. 2 to 7 were held to be redundant.

6. The learned counsel for the claimants-appellants contends that the learned Tribunal has erred in law in dismissing the claim petition of the claimants/appellants on the ground that the author of the F.I.R was not examined and further Post Mortem Report of the deceased-Brijesh Kumar was not placed on record to prove his death.

7. Learned counsel for the appellants has argued that it is well settled law that the Motor Vehicles Act is a beneficial legislation and the Indian Evidence Act is not strictly applicable to the claim petition, thus the learned Tribunal has erred in law in dismissing the claim petition.

8. To give force to his contention, learned counsel for the appellants has placed reliance on the judgment of Hon'ble the Supreme Court of India in a case of ***United India Insurance Co Ltd vs. Sunil Kumar and others***, 2018 (1) RCR (Civil) 680 wherein it has been held that grant of compensation under Section 163-A on the basis of structured formula is in nature of a final award and adjudication thereunder is required to be made without any requirement of any proof of negligence of driver/owner of vehicle involved in the accident. The relevant portion of the judgment is reproduced as under:-

“8. From the above discussion, it is clear that grant of

compensation under [Section 163-A](#) of the Act on the basis of the structured formula is in the nature of a final award and the adjudication thereunder is required to be made without any requirement of any proof of negligence of the driver/owner of the vehicle(s) involved in the accident. This is made explicit by Section 163A(2). Though the aforesaid section of the Act does not specifically exclude a possible defence of the Insurer based on the negligence of the claimant as contemplated by Section 140(4), to permit such defence to be introduced by the Insurer and/or to understand the provisions of [Section 163A](#) of the Act to be contemplating any such situation would go contrary to the very legislative object behind introduction of [Section 163A](#) of the Act, namely, final compensation within a limited time frame on the basis of the structured formula to overcome situations where the claims of compensation on the basis of fault liability was taking an unduly long time. In fact, to understand [Section 163A](#) of the Act to permit the Insurer to raise the defence of negligence would be to bring a proceeding under [Section 163A](#) of the Act at par with the proceeding under [Section 166](#) of the Act which would not only be self-contradictory but also defeat the very legislative intention.

9. For the aforesaid reasons, we answer the question arising by holding that in a proceeding under [Section 163A](#) of the Act it is not open for the Insurer to raise any defence of negligence on the part of the victim.”

9. On the other hand, learned counsel for respondent No. 2-Insurance Company contends that since the Post Mortem Report of the deceased-Brijesh Kumar was not produced by the claimants, therefore, the claim petition was rightly dismissed by the learned Tribunal. Thus, the present appeal is liable to be dismissed.

10. I have heard learned counsel for the appellant and perused the record.

At the very outset, reference can be made to the impugned

award whereby the Tribunal observed as under:-

“13. Both the respondents No.1 and 2 have denied the factum of accident. This petition initially was filed under section 166 of Motor Vehicles Act, but later on, it was converted into section 163-A of M.V. Act, by the petitioners. Under section 163-A of Motor Vehicles Act it was incumbent upon the petitioners to prove on file that deceased Brijesh Kumar had died while was in use and occupation of the truck in question. Orally Prikshit father of deceased has deposed about the death of Brijesh Kumar in a motor vehicular accident, which was caused flue to bursting of front tyre of the truck. Besides it, claimants have also placed on file copy of FIR Ex.P2, though objected to. On the contrary, though no rebuttal evidence is led by the respondents, but petitioners are required to stand on their own legs and the weaknesses of the respondents are immaterial. On the other hand, to prove this occurrence the claimants were at least required to examine Laxman, who was conductor on the ill-fated truck and it was he who had reported the occurrence, but he has not been examined.

14. The matter does not rest here. The post-mortem report has also not placed on file and no reason for the same has been assigned. The law is now well settled that mere exhibition of a document does not dispense with its proof a document ought to be. Since Laxman, the lodger of the FIR and the MHC of the concerned police station have not been called to prove the FIR. Similarly, post-mortem report is not placed on file, nor any cogent reason put forth on file and so oral deposition of the claimants, who are interested witnesses and are not the eye witnesses of the occurrence, cannot be held sufficient to prove the occurrence or the death of Brijesh Kumar while driving the ill-fated truck and thus the claimants have failed to discharge the burden lied on them in proving the occurrence and death of deceased Brijesh Kumar through clear and cogent explanation in a motor vehicular accident. Hence, this issue is decided against the petitioners; and in favour of the respondents.

Issues No.2 to. 7.

15. In view my findings recorded under issue No.1 aforesaid, other issues have become redundant and hence, they are not called for any decision. Hence, all these issues are decided accordingly.”

12. A perusal of the above award shows that the Tribunal has held that the claimants failed to prove the death of the Brijesh Kumar (since deceased) and thus, issue No. 1 was decided against the appellants and in favour of the respondents.

13. In the present case, it is not in dispute that the accident had taken place, as F.I.R had been duly registered. As per Post Mortem Report, the injuries were ante mortem in nature. Further the cause of death was due to shock and hemorrhage.

14. This Court is of the view that the present appeal is liable to be allowed on the ground that as per post mortem report, it is clear that the deceased died due to the injuries suffered by him. The only requirement under Section 163-A of the Motor Vehicles Act was that it was upon the claimants to prove on record that deceased had died while he was in use and occupation of the truck in question. As per Post Mortem Report, whichias placed on record by the claimants/appellants now, the deceased had died due to injuries suffered by him.

15. The accident had taken place on 09.09.2001 and F.I.R was registered on 10.09.2001. The Post Mortem Report is dated 10.09.2001, which clearly shows that immediately after the accident, F.I.R was registered and the Post Mortem was conducted. All this material was sufficient enough to conclude that the accident had taken place and the deceased died due to

the injuries suffered by him in the accident.

16. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Sunita and others vs. Rajasthan State Road Transport Corporation and another***, 2019 (2) RCR (Civil) 209, wherein it was held that non-examination of witness/pillion rider would not be fatal to the case of the claimants. The relevant portion of the judgment is reproduced as under:-

“31. Similarly, the issue of nonexamination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to find fault with non examination of some “best” eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This court, in [Dulcina Fernandes](#) (supra), faced a similar situation where the evidence of claimant's eyewitness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepting the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident.”

17. Keeping in view the aforesaid judgments and the fact that as per Post Mortem Report, the deceased-Brijesh Kumar died due to the injuries suffered by him, the present appeal is allowed. Accordingly, the award dated 08.02.2006 passed by the Tribunal is set aside. With respect to issue No. 1, the same is decided in favour of the appellants and against the respondents.

With regard to rest of the issues, the matter is remanded back to the Tribunal to determine the case afresh, by giving opportunity of hearing to the parties, who can lead their evidence before the Tribunal. This exercise shall be done expeditiously preferably within a period of 06 months from the date of receipt of certified copy of this order.

22.03.2024
G Arora

(SUDEEPTI SHARMA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>