



FAO-627-2005 (O&M)  
FAO-628-2005 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

203-s

1.

FAO-627-2005 (O&M)  
Decided on : 14.11.2024

Surta Ram

. . . Appellant(s)

Versus

Gurgiant Singh and others

. . . Respondent(s)

2.

FAO-628-2005 (O&M)

Jasmer Singh

. . . Appellant(s)

Versus

Gurgiant Singh and others

. . . Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH**

PRESENT: Mr. Pritam S. Saini, Advoate and  
Ms. Vamika Johar, Advocate,  
for the appellants(s).

Mr. Jasmer Singh, Advocate  
for respondents No.1 & 2.

Mr. Aseem Aggarwal, Advocate  
for respondent No.3 – Insurance Company.

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**SANJAY VASHISTH, J. (Oral)**

1. This common order shall dispose of aforementioned two appeals i.e. FAO-627-2005 (O&M) and FAO-628-2005 (O&M), filed by the appellants/claimants, as both the appeals are interconnected, and have arisen out of the same and common award.

2. FAO-627-2005 has been filed by the injured – Surta Ram, by challenging the award dated 06.10.2004, passed by the learned Motor



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Accidents Claim Tribunal, Ambala (for brevity, 'learned Tribunal'), whereby, his claim petition bearing MACT Case No.81 (DOI 23.10.2002), filed under Section 166 of the Motor Vehicles Act, 1988 (in short, 'MV Act'), has been dismissed.

Another, appeal i.e. FAO-628-2005, has been filed by the injured – Jasmer Singh, by challenging the award dated 06.10.2004, passed by the learned Tribunal, whereby, his claim petition bearing MACT Case No.82 (DOI 24.10.2002), filed under Section 166 of the MV Act, has also been dismissed.

3. Before deciding the claim petition, learned Tribunal framed following four issues, which are common in both the cases:-

- “1. Whether the claimants Surta Ram and Jasmer Singh suffered injuries due to rash and negligent driving of Bus No.UP-27-5950 by respondent no.1? OPP
2. Whether the claimants are entitled to compensation. If so, how much and from whom? OPP
3. Whether respondent no.1 was not holding a valid driving licence at the time of accident. If so, its effect? OPR.3.
4. Relief.”

4. Regarding issue No.3, learned Tribunal held in specific that *no evidence in support of this issue has been led by respondent No.3, onus to prove the same was upon him. Thus, same was decided against respondent No.3.*

However, claim petitions in both the cases were dismissed on account of deciding issue No.1 against the claimants.

5. While hearing appeal on 19.09.2024, following order was



passed:-

*“Present: Mr. Vamika Johar, Advocate for  
Mr. Pritam Singh Saini, Advocate  
for the appellant(s) (in both appeals).*

*Mr. Kamal Sharma, Advocate  
for respondents No.1 & 2.*

*Mr. Aseem Aggarwal, Advocate  
for respondent No.3 – Insurance Company (in both  
appeals).*

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1. *Counsel for the appellants submits that the claim petitions (both injury cases) have been **dismissed** by the learned Motor Accidents Claim Tribunal, Ambala (in short, ‘Ld. Tribunal’), primarily on the ground that the **claimants** after deposing before the Tribunal, **resiled from** their statements before the Criminal Court, where the respondent/driver of the offending vehicle was facing trial in criminal case. Accordingly, both the witnesses were declared hostile and the statements of the claimants before the Criminal Court were taken on record by Ld. Tribunal as Ex.RA and Ex.RB.*

*Considering it to be an attempt to mock the legal system, Ld. Tribunal recorded its finding regarding dismissal of the claim petitions.*

2. *While arguing in both appeals before this Court, Ms. Vamika Johar, Advocate appearing on behalf of Mr. Pritam Singh Saini, Advocate, submits that a due process required under the Evidence Act, has not been followed by the Ld. Tribunal, because, without there being any confrontation of the witnesses with their earlier statement(s) or the subsequently made statement(s), same cannot be taken against the interest of the witness, who is making the statement. It is more for the reason that had the statements given before the Criminal Court being put to the witnesses i.e. claimants in the present appeals, there would have been a possibility of giving some plausible explanation for making any such statements, and therefore, being taken adversely would*



*amount to violation of principles of natural justice i.e. taking notice of the same for declining the relief, without even giving any opportunity of hearing to the affected person.*

*Counsel further relies upon the order dated 22.08.2019, passed by the Coordinate Bench of this Court in FAO-4426-2019 (O&M), titled as, “Oriental Insurance Company Ltd. vs. Malkiat Kaur alias Malkiyat Kaur and others”, wherein, the factum of witness turning hostile before the Criminal Court was noticed, still, claimant was held entitled for the compensation by considering the evidence led in the claim petition, where the claimant has to prove his case on the touchstone of the preponderance of probabilities and not beyond the reasonable doubt.*

3. *At this stage, Mr. Aseem Aggarwal, counsel for respondent No.3 – Insurance Company, seeks an adjournment to study the position of law.*

4. *List on 30.09.2024.*

*Photocopy of this order be placed on the file of other connected case.”*

6. Continuing with the submissions, Mr. Pritam Singh Saini, Advocate, relies upon judgment of this Court rendered in FAO-1778-2016 (O&M), titled as, “Bajaj Allianz General Insurance Company Limited vs. Ranjit Kaur and others”, decided on July 18, 2016, and also upon judgment of the Hon’ble Apex Court rendered in Janabai wd/o Dinkarrao Ghorpade & ors. vs. M/s I.C.I.C.I Lambord Insurance Company Ltd., 2022 LiveLaw (SC) 666. He submits that the deposition in the criminal case or the fate of the criminal case cannot have any impact over the jurisdiction of the Motor Accidents Claim Tribunal for deciding the claim petition, which in fact, is to be decided summarily in conjunction with the aims and objects of this beneficial legislation, and as per the evidence available on record before the



learned Tribunal.

7. On the other hand, Mr. Aseem Aggarwal, Advocate, appearing for respondent No.3 – Insurance Company, is not in a position to controvert the findings recorded by this Court as well as the Apex Court in the cited judgments. However, submits that at the time of recording of statement before the learned tribunal, the statements in the criminal case were not available, as proceedings in regard to the statement of prosecution witnesses in the criminal case commenced later in time i.e. after recording of the statements of the claimants and witnesses before the learned Tribunal. Thus, this situation did not allow the Company/respondent No.3 to exercise its right to the earlier statement.

8. I have considered the averments addressed by both the sides and also gone through the cited judgments.

9. Legal position regarding hostile witnesses, whether they are claimants or witnesses in the claim petition, has already been discussed by this Court on the previous date of hearing i.e. 19<sup>th</sup> September, 2024 (as *ibid*). In another cited judgment i.e. **Bajaj Allianz General Insurance Co. Ltd.'s case (supra)**, argument raised by the Insurance Company regarding the non-involvement of the offending vehicle in the accident claiming, it to be a manipulated version of the claimants, was rejected.

While going through the observations made by the Rajasthan (Jaipur) High Court in the case i.e. **Geeta Devi and others v. Rajesh and Others 2011(7) R.C.R (Civil) 2097**, has examined the issue where the acquittal was on the ground of the witness turning hostile. It was held that the Tribunal is not to be influenced by the fact that the eyewitnesses who had



deposed before the Tribunal had turned hostile during the course of criminal proceedings. The Tribunal is required to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the Criminal Court.

The relevant findings therein is as under:-

*“6. A bare perusal of the impugned order clearly reveals that there are two witnesses. While A.W. 2, Satish, has been produced as an eye- witness, NAW-2 Satish has been produced as the person who lodged the F.I.R. before the police. According to the learned Tribunal, while A.W. 2 Satish was produced as an eye- witness, NAW-2 Satish was not an eyewitness. However, the learned Tribunal has relied more upon the testimony of NAW-2, Satish, and has totally ignored the testimony of NAW-2 Satish, and has totally ignored that in the criminal trial, A.W. 2 Satish was not produced as an eyewitness of the prosecution. Interestingly, NAW-2 Satish has turned hostile before the learned Tribunal, although he had supported the case of prosecution in the criminal trial.*

*7. Surprisingly, the learned Tribunal has also overlooked the testimony of A.W. 3, Mahaveer. The learned Tribunal is also swayed by the fact that there was some delay in lodging of the F.I.R. before the police. But it has ignored the fact that after the death of Satyaveer, there was no one left in the family except the present appellant, an old woman, who could not have lodged the F.I.R. To say the least, the learned Tribunal has made much out of the delay in lodging of the F.I.R., meanwhile forgetting the fact that a woman who has lost her son may not be in physical or mental position to immediately lodge the F.I.R.*

*8. A bare perusal of impugned award also reveals that the very approach of the learned Tribunal is misplaced. Instead of analyzing the testimonies of A.W. 2 Satish and*



*Mahaveer, the learned Tribunal is influenced by the fact that those witnesses who were produced as an eye- witness have turned hostile during the course of criminal proceedings itself. It is also more influenced by the testimony of NAW 2 Satish. It is, indeed, trite to state that while the finding of a Civil Court is binding on the Criminal Court, the finding of a Criminal Court could not and should not influence the decision of the Tribunal. The Tribunal is supposed to adjudge the case on the basis of evidence produced before it and not on the basis of testimonies given before the Criminal Court. In this view of the matter, the award is hereby quashed and set aside and the case is remanded back to the concerned Tribunal. The learned Tribunal is directed to decide this case within a period of three months from the date of receipt of certified copy of this judgment.”*

*Thus there is no merit in this argument of the appellant – Insurance Company.”*

10. In the case of Janabai wd/o Dinakarrao Ghorpade's case (supra), factual position, discussed by the Courts was that, with regard to the accident, an FIR was lodged against an unknown vehicle and an unknown driver. However, on the basis that the car was ceased and the driver Sanjay (respondent No.3 therein) was charge-sheeted. Learned Tribunal held that the offending vehicle i.e. Maruti car was involved in the said accident.

From the judgment above, this Court has noticed the finding recorded by the Hon'ble Apex Court in its paragraph No.10, which says as under:-

*“10. We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of*



*the statement of appellant No.1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable.”*

11. Considering all the aforementioned circumstances, and the cited law by the appellant, this Court is of the view that that parameters for evaluating standard of evidence in criminal case and the claim petition in MV Act, are altogether different. It is a settled proposition of law that, in a claim petition, claimant has to prove the pleadings on the touchstone of the preponderance of probabilities and not beyond reasonable doubt.

On the other hand, in the criminal cases, the prosecution agency is always required to discharge its responsibility to prove the guilt of the accused beyond the shadow of a reasonable doubt.

12. Needless to say that in the claim petitions, only the evidence, available before the learned Tribunal on record is to be evaluated. Evidence which has neither been recorded by it nor has been got confronted by the affected party, cannot be considered negatively against the other-side. The arguments advanced by Mr. Aseem Aggarwal, Advocate, for respondent No.3 that, at the time of recording of the statement before the learned Tribunal, the prosecution witnesses, who are yet to depose, would not be of much weight because under the law, still remedy is available to the affected party to move an application for re-calling the witnesses, or to lead additional evidence whose statement is required to be confronted with earlier statement. However, no such efforts were made by the Insurance Company



in the proceedings before the learned Tribunal. Merely, by placing the statements on record either by learned Tribunal itself or by the Insurance Company, would not be of any significance until an opportunity is afforded to the person, who has actually given that statement in the criminal case. In the case in hand, even the application for re-examination of the witnesses or the additional evidence was admittedly never moved by the Insurance Company.

13. It is not the case of the respondents that at any point of time, during the proceedings before the learned Tribunal; any such application was moved by them. Thus, in view of the observations recorded here-above, **the findings *qua* issues No.1 & 2, are hereby reversed and set-aside.**

In view of the law discussed and findings recorded thereon by this Court, learned Tribunal is required to take decision afresh.

14. The parties are directed to appear before the learned Motor Accidents Claims Tribunal, Ambala, on **09.12.2024**. Claimants and respondents who are already present before this Court are instructed to ensure their appearance on the aforementioned date.

The issues shall be re-evaluated by the learned Tribunal on the basis of the evidence already available on record. However, regarding Issue No. 2, the parties will be granted three effective opportunities to submit additional arguments or evidence. These opportunities must be concluded within a period of two months.

The claim petitions must be finally adjudicated within six months from the date of appearance before the learned Tribunal.

It is clarified that the finding on Issue No. 3, already recorded



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by the learned Tribunal against the Insurance Company, shall remain final and will not be reopened.

15. Both the appeals are disposed of accordingly.

Misc. application(s), if any, also stands disposed of.

A photocopy of this order be placed on the file of other connected case.

(SANJAY VASHISTH)  
JUDGE

November 14, 2024  
*J.Ram*

*Whether speaking/reasoned:*      *Yes/No*  
*Whether Reportable:*                *Yes/No*