



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

**FAO-2929-2023 (O&M)
Decided on: 15.05.2024**

Nagar Council Maur Bathinda

...Appellant

Versus

Amarjit Kaur and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Gian Chand Garg, Advocate, for the appellant.

Mr. P.K.S.Phoolka, Advocate, for the
respondent No.1-caveator.

RITU TAGORE, J.

1. This appeal is filed by Nagar Council Maur, District Bathinda, against the award dated 28.02.2023, passed by learned Motor Accident Claims Tribunal, Bathinda partly allowing the petition filed by respondents No.1 to 4, under Section 166 of The Motor Vehicle Act, 1988 on account of death of Jaimal Singh in motor vehicular accident dated 09.11.2016. The learned Tribunal granted Rs.14,20,000/- and made petitioner and proforma respondent No.5 (respondents No.1 and 2 before learned Tribunal) jointly/severally liable to pay the assessed compensation.
2. For the sake of convenience, parties are referred to as per their original status before the learned trial Court.



3. Relevant facts for adjudication of this appeal are as under:-

On 09.11.2016, Jaimal Singh (deceased) along with his brother Mela Singh (CW-2), was walking towards his house, when they reached near the house of Sukhjinder Singh s/o Gulab Singh, at that moment, offending Eicher Tractor bearing No.PB-45-6916 with a water-tank attached, came from behind. The tractor was driven by respondent No.1 in a rash and negligent manner and without blowing horn, hit Jaimal Singh. As a result, Jaimal Singh sustained multiple injuries and died at the spot. The driver/respondent No.1 fled from the spot along with the offending vehicle.

4. The accident was reported by Mela Singh to the Police where upon FIR No.0219 dated 09.11.2016 under Section 304-A and 279 IPC (Ex.C-6) was registered against respondent No.1 at Police Station Maur, District Bathinda.

5. The claimants, filed the petition for grant of compensation claiming age of deceased 33 years at time of his death and pleaded his income at Rs.20,000/- per month from the labour work and loss of their livelihood, love and affection of the deceased, on account of his untimely death.

6. Upon notice, from the learned Tribunal, respondent No.1, the driver, appeared and filed the reply and denied the accident and involvement of the offending vehicle. By denying the other averments of the petition prayed for its dismissal, for having filed on false facts.

7. Respondent No.2 Nagar Council, Maur also filed the reply and denied the accident and involvement of the vehicle in question by pleading false implication of the vehicle just to grab the compensation. By disputing



the entitlement of the claimants regarding compensation, pleaded to dismiss the petition.

8. The claimant did not file replication. From the pleadings of the parties, learned Tribunal framed following issues:-

“1. Whether Jaimal Singh died due to accident caused by respondent No.1, while driving Tractor No.PB-45-6916 rashly and negligently? OPP

2. Whether claimants are entitled to claim any compensation, if so, to what extent and from whom? OPP

3. Whether the claim petition is not maintainable in the present form? OPR

4. Whether the claimants have got no cause of action and locus standi to file the present claim petition? OPR

5. Relief.”

9. The learned Tribunal invited the parties to lead evidence. The parties led their evidence as detailed in the award. Thereafter, on appraisal of the facts, pleadings and evidence of the parties learned Tribunal concluded that the accident in question was caused by respondent No.1, who drove the offending vehicle in a rash and negligent manner, leading to the death of Jaimal Singh. By considering the age, income of deceased and dependency of claimants upon deceased, allowed the petition and awarded Rs.14,20,000/- along with 9% interest from date of filing of petition, till its realization, and made respondents No.1 and 2, jointly and severally liable to pay the compensation.

10. Being aggrieved by the award, respondent No.2, Nagar Council, Maur, District Bathinda, has preferred this appeal.



11. Learned counsel for the appellant submits that learned Tribunal grossly erred in appreciating the evidence and wrongly attributed negligence of the driver-respondent No.1 for causing the accident. In fact, the testimony of Mela Singh (CW-2), sole eye witness to the accident, is not worthy of credence for reasons that; firstly, he is the real brother of the deceased, obviously an interested witness. Secondly, his statement does not suggest that he saw the accident. Highlighting his contentions, learned counsel referred to statement of Mela Singh (CW-2), stating that according to him, he was following the deceased at a distance of ½ killa away, which means he was approximately 220/440 feet away from the deceased at the time of accident. In the circumstances, it is urged by the learned counsel that it is difficult to comprehend that he had indeed seen the accident, in the manner projected by him. It is stated that learned Tribunal failed to appreciate the aforesaid crucial aspect, while relying upon his statement.

12. Further, assailing the statement of Mela Singh (CW-2), counsel submitted that during his testimony in the criminal case registered against the driver-respondent No.1, he failed to identify both the driver and the vehicle, pleading his illiteracy and inability to read English language. He also failed to substantiate the place of accident. Learned counsel stated that given these circumstances, where this witness provided contradictory evidence in present case and turned hostile before the Court in criminal case; his claim of witnessing the accident caused by respondent No.1 with the offending tractor becomes highly doubtful and reliance upon, on his statement by learned Tribunal is certainly misplaced.

13. Learned counsel further stated that on the other hand, appellant examined Neeraj Kumar, Sanitary Supervisor of Municipal Council, Maur as



RW-1, who proved that respondent No.1 was not the employee of respondent No.2, nor was ever engaged as driver by respondent No.1. Therefore, the question of respondent No.1 driving the offending vehicle and causing the accident is not established on the record. The learned counsel submitted that evidence adduced by claimants on accident, regarding the involvement of the offending vehicle is not worthy of reliance and learned Tribunal thus erred in answering the issue in favour of the claimants.

14. Contrary to it, learned counsel for the claimants/caveator supported the findings of learned MACT, stating that same are based on sound appreciation of evidence. The respondents' side failed to discredit the evidence of Mela Singh (CW-2), who maintained his version, stating that he was accompanying the deceased at the time of the accident, caused by respondent No.1 by driving the offending vehicle in rash and negligent manner. The learned counsel stated that statement of this witness has to be assessed in the light of the facts and circumstances in which he has deposed, as well his understanding of the situation. His entire statement, in the backdrop of the whole conspectus of the case, has to be read and analyzed. It is stated that when his testimony is adjudged in the light of the above principles, it passes the test of credibility. The learned Tribunal has assessed his testimony in detail and found him worthy of reliance after considering in the light of other evidence on record. Learned counsel stated that because Mela Singh (CW-2) is brother of deceased, it does not by itself suggest that he is an interested witness, particularly, when he passed the searching and grueling test of his cross-examination. It is stated that evidence led on record established that deceased died in the accident caused by respondent No.1.

The findings of learned Tribunal are based on correct appreciation of facts



and law, and should not be interfered with. A prayer is made to dismiss the appeal.

15. I have heard learned counsel for the parties and with the able assistance of the learned counsel for the parties, gone through the record.

16. In present appeal, findings on issue No.1 with respect to the accident and negligence of respondent No.1 are alone in question. The findings of assessment of compensation are thus not in dispute.

17. As per the pleaded version of claimants on 09.11.2016 at about 2:15 pm, deceased Jaimal Singh and his brother Mela Singh (CW-2) were going on foot, towards their house, when reached near the house of Sukhjinder Singh son of Gulab Singh, respondent No.1 came on the offending vehicle, with water tank attached to it, driving in a rash and negligent manner and at high speed, struck into the deceased. As a result, he sustained injuries and died at the spot. Further, it is the case of claimants, that Mela Singh (CW-2), saw the accident and reported the same to the Police, whereupon FIR bearing No.0219 dated 09.11.2016 under Section 304-A and 279 IPC was registered against respondent No.1 at Police Station Maur, District Bathinda. However, respondents denied the accident and the involvement of the offending vehicle.

18. To prove the accident, the claimants relied upon the statement of Mela Singh (CW-2) and copy of FIR (Ex.C-6) proved by MHC Dilbag Singh (CW-6) and PMR (Ex.CW-4/A), proved by Dr. Ravinder Singh (CW-4).

19. On the contrary, driver-respondent No.1 did not step into the witness box to rebut the evidence of the claimants.



20. It is settled principle of law that, unlike criminal matters, the evidence in civil matters is to be adjudged on preponderance of probabilities, not to be proved beyond a reasonable doubt. It is also settled position of law that in compensation cases, the evidence is to be assessed independently, shorn of the evidence led in a criminal case. The fact of presenting the change sheet, framing of charge against the driver of the offending vehicle, or his conviction or acquittal is not to be taken as preliminary piece of evidence, while evaluating the evidence led before the Tribunal. With this governing principle of law in mind, let the statement of Mela Singh (CW-2), the star witness of the claimants, be assessed.

21. From the evidence of Dr. Ravinder Singh (CW-4), and the PMR report CW-4/A he prepared, it stands established that deceased suffered ante-mortem injuries on his person, leading to his death, in ordinary course of time. According to him, the time between death and injuries was few minutes. His statement has not been put to challenge by the appellant. This establishes that deceased suffered injuries and died as a result thereof. The aforementioned evidence corroborates the version of Mela Singh (CW-2), that deceased suffered multiple injuries and died at the spot in the accident. Respondents led no evidence to controvert the above evidence and to establish that deceased died from other causes.

22. Further, from the copy of FIR (Ex.C-6) proved by MHC Dilbag Singh (CW-6), it is established that the accident was immediately reported to the police, and an FIR (Ex.C-6) was registered at the instance of Mela Singh (CW-2), detailing the manner of accident and particulars of the offending vehicle and the driver. This stamps the presence of Mela Singh (CW-2) at the spot. Moreover, perusal of his entire statement does not reveal that he



was not present at the spot. He stated that immediately after causing the accident, driver ran away from the spot and on information, Police reached at the spot.

23. Although in cross-examination, this witness stated that he was $\frac{1}{2}$ killa behind his deceased brother, when accident took place. However, this does not suggest that he did not see the accident. No evidence has been presented by the appellant/respondent No.2 to show that he could not have seen the accident from that distance. It was daytime, so an incident like the accident in question could reasonably be observed from a distance. His specific version is that respondent No.1-driver, came from behind driving offending vehicle at high speed and negligently struck the deceased, who was walking on the side of the road. Therefore, the distance has not affected his account of the cause of accident as projected by the learned counsel for the respondents.

24. Further, why a victim, herein, the brother of deceased, would falsely involve the respondent No.1 and allow real culprit to go scot free. No enmity has either been suggested by the respondents against this witness or claimants. Rather, respondent No.1 did not come into the witness box to explain the facts and his false implication in the case. Undoubtedly, other material witness in accident cases, is the driver concerned, and if he keeps away from the witness box without any reasonable cause, an adverse inference, needs to be drawn against him, and whatever is stated by the claimants or his witness(es) need to be taken as correct against him and whatever is pleaded by him as incorrect.

25. Regarding his admission of having given a statement in the criminal case, in which he acknowledging that respondent No.1 was not



driving the offending vehicle and that he did not see at the spot, as to who was driving the vehicle belonging to respondent No.2; his aforesaid statement needs to be construed in the light of fact that driver of the offending vehicle ran away from the spot with the vehicle after causing the accident and his brother was lying dead at the spot having sustained fatal injuries. In such circumstances, expecting such a person to register and vividly remember all the details of the offending vehicle is too much to expect from such a witness.

26. Further it is rightly noted by learned Tribunal that the respondent No.1 in his reply, admitted that he was driving the vehicle in question. Neeraj Kumar (CW-5) also admitted that offending vehicle was taken into possession by the police. He admitted tractor in question was on duty and Raj Kumar and Sukhpal were drivers with the Municipal committee. Based on given evidence, the learned Tribunal rightly concluded that respondents failed to establish their version, denying the involvement of vehicle and respondent No.1 as driver of the offending vehicle. Thus, statement of Mela Ram (CW-2) made before the Court in criminal case that respondent No.1 was not driving the offending tractor, cannot be taken as fatal to the claimants and also is no ground to discard his testimonial account. The acquittal or conviction of the driver in criminal case registered against him cannot be made basis to reject the evidence led by the claimants presented in the claim petition. Needless to state that learned Tribunal has to assess and evaluate the evidence independently from the evidence led in criminal case for arriving at conclusion of facts, pleaded in the petition. Per discussion, it is held that claimants established that deceased died due to the



injuries sustained in the accident caused by respondent No.1 by driving the offending vehicle.

27. For the reasons recorded above, it is held findings of the Tribunal are based on proper and sound appreciation of evidence, not result of any misreading or misinterpretation or misunderstanding of evidence, concerning the issue.

28. Since, in the present appeal, no challenge has been raised on assessment of quantum of compensation, therefore, the findings of the Tribunal on this matter have been not dilated upon.

29. For the reasons stated above, appeal stands dismissed.

30. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

15.05.2024
Rimpal

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