



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4384-2023 (O&M)

Oriental Insurance Company Limited

. . . . Appellant

Vs.

Teressa Gill and Others

. . . . Respondents

FAO-4288-2023 (O&M)

Teressa Gill and another

. . . . Appellants

Vs.

Satnam Singh and Others

. . . . Respondents

Reserved on: 15.07.2024
Pronounced on: 24.07.2024

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Sandeep Suri, Advocate
for the appellant.

Ms. Nilaksh Joseph, Advocate
for respondent Nos.1 & 2.

Mr. Sunitt Chauhan, Advocate
for respondent Nos.3 & 4.

DEEPAK GUPTA, J.

In MACP No.380 of 2021 (*CNR No.CHCH01-003746-2021*) titled
“Smt. Teressa Gill and anr. v. Shri Satnam Singh and ors.”, filed under Section
166 of the Motor Vehicle Act, 1988 (*hereinafter referred as ‘the Act’*), compen-
sation of ₹28,42,600/- has been awarded by the Motor Accident Claims Tribunal,
Chandigarh on account of death of one Anuj Gill, against the driver, owner and

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insurer of cab bearing registration No.CH-02-AA-7754.

2.1 Insurer of the said car has filed FAO No.4384-2023 on the ground that involvement of cab No.CH-02-AA-7754 in causing the accident is not proved and in fact, it was a hit and run case; and that in collusion with the driver and owner of the vehicle, the claimants have filed the claim petition so as to extort the money from the insurance company.

2.2 On the other hand, the claimants have filed separate FAO bearing No.4288-2023 seeking enhancement in compensation.

3.1 As it emerges on perusal of the paper-book that on the night intervening 26/27.01.2021, Anuj Gill, a 25 year old unmarried young man was riding his bullet motorcycle No.CH-01-BQ-7754, when at about 02:00 a.m., he is stated to have met with a motor vehicular accident at Balongi cut near Minerva academy and lost his life.

3.2 As per the case pleaded by the claimants, on 26.01.2021 at about 02:00 a.m. Anuj was driving his motorcycle in question from Kharar towards his house in Chandigarh. As he reached near Minerva academy at cut Balongi, car No.CH-02-AA-7754 came from behind, being driven rashly and negligently and hit the motorcycle of Anuj, who fell on the road. Car ran over the motorcyclist Anuj, who died on the spot. The driver of the offending car fled from the spot. FIR No.12 dated 27.01.2021 was registered under Sections 279, 304-A, 427-A of the IPC at Police Station Balongi, District S.A.S. Nagar on the statement of Ashish Gill, the brother of deceased. Later on, complainant Ashish Gill, the brother of deceased came to know about the number of the offending car and informed the police vide a letter dated 29.05.2021. Claiming that Anuj Gill was 25



years of age at the time of his death and was doing service in a private company Tele-Performance, Phase- 8, Mohali, earning ₹4,00,000/- per annum, compensation on account of his death to the tune of ₹1 crore was claimed.

3.3 The respondent No.1 before the Tribunal i.e. owner in his written statement denied the claim by pleading that accident was not caused by his cab on 26.02.2021; that neither the driver of the car informed him in this regard nor police ever intimated him about the alleged accident. He further stated that Manjeet Kumar Malik was employed as a driver on the cab. Although it was admitted that said driver had gone to Kharar in the evening of 26.01.2021 for his personal work and had returned in the morning on 27.01.2021 but causing of any accident with the said vehicle while coming back from Kharar to Chandigarh was denied. The owner further controverted all the material averments and prayed for dismissal of the petition.

3.4 In separate written statement filed by respondent No.2 i.e. driver, he denied that any accident took place with his cab 26.01.2021 at about 02:00 a.m. He also admitted that he had gone to Kharar for some personal work on 26.01.2021 and returned in the morning but denied the accident.

3.5 Respondent No.2- Insurance company in its separate written statement opposed the claim petition to be not maintainable by denying the accident and alleged the claim amount to be highly exorbitant and without any basis. It was also pleaded that respondent No.2- driver was not holding a valid driving license.

3.6 Necessary issues were framed including issue No.1 on the point of negligence.



3.7 The Tribunal by taking into account the evidence produced by the parties, decided issue No.1 in favour of the claimants by holding that accident took place due to rash and negligent driving of respondent No.2 while driving cab No.CH-02-AA-7754 and then, went on to assess the compensation.

4. Assailing the finding of the Tribunal on issue No.1 pertaining to negligence, it is contended by learned counsel for the insurer- appellant of FAO-4384-2023 that though the FIR was lodged on 27.01.2021 by Ashish Gill but it was against unknown vehicle being driven by an unknown person. Attention is further drawn that for the first time, the police was informed on 29.05.2021 about involvement of the alleged vehicle and then it is on 16.03.2022 that statement of Ashish Gill, the brother of the deceased was recorded by the police. Learned counsel further contends that even from the testimony of Ashish Gill, it would emerge that he was not the eye-witness of the occurrence and that he was informed about the involvement of the cab in question by some non-Sikh gentleman on enquiry made by him from the spot. However, that non-Sikh gentleman has not been examined by the claimants in the evidence nor his name was ever disclosed either to the Tribunal or to the police during investigation. Learned counsel has drawn attention towards the testimony of PW-3 ASI Dilbag Singh, the Investigating Officer of the case in this regard. Learned counsel contends further that police never filed the challan against the respondent No.2- driver, as it did not find any evidence regarding the involvement of cab in question to have caused the accident.

With these submissions, learned counsel prayed for accepting its appeal and to dismiss the claim petition.



5. Ld. Counsel for the claimants, on the other hand, defended the finding of the Tribunal. It is contended that proceedings under Section 166 of the Act are summary proceedings and issue of negligence is required to be decided on the standard of 'preponderance of probabilities' and not 'beyond reasonable doubt' like a criminal case and that the Tribunal has taken into consideration all the circumstances emanating from the evidence on record to come to the conclusion that offending cab was involved in the accident. Prayer is made to dismiss the appeal of insurer and rather to enhance the compensation.

6. I have considered submissions of both the sides and with the able assistance provided by counsel from both sides, have perused the trial court record.

7. Out of 05 witnesses examined by the claimants, the testimony of only PW-3 ASI Dilbag and that of PW-5 Ashish Gill is relevant apart from the statement of RW-1 on the issue of negligence. Rest of the witnesses examined by the claimants are not on this issue, as PW-1 Pardeep Kumar Verma has testified about the income of the deceased. PW-2 Dr. Ranjit Randhawa has proved the post-mortem report; whereas PW-4 Smt. Teressa Gill, the mother of deceased deposed about the dependency on the deceased and about his income.

8. Before discussing the testimony of PW-3, PW-5 & RW-1, it is relevant to notice that accident allegedly took place on the night intervening 26/27.01.2021 at about 02:00 a.m. The FIR (Ex.PW3/1) was lodged on 27.01.2021 by Ashish Gill, the brother of deceased stating therein that his brother Anuj had gone on 26.01.2021 and did not return home and that in the morning, he (Ashsh) received call from his friend Garry informing him that his brother has



met with an accident. Both of them went to the spot and found that his brother Anuj had been hit by an unknown vehicle near Minerva academy cut, due to which the head of his brother was smashed resulting in his death. It was clearly stated in the FIR by Ashish Gill that the accident was caused by an unknown driver of an unknown vehicle. It is revealed further that on 29.05.2021 i.e., more than 4 months after the accident, Ashish Gill sent a letter (Ex.PW3/3) to SHO Police Station Balongi in respect of the FIR in question, stating that his family could not initially trace the offending vehicle but now they have been able to trace the vehicle, which was cab bearing registration No.CH-02-AA-7754. In the said letter, there is no reference about any source, from which the complainant Ashish Gill came to know about the involvement of cab bearing No.CH-02-AA-7754 in the accident. It is after another approximately 10 months i.e. on 16.03.2022 that statement (Ex.PW-3/2) was made by Ashish Gill before the police stating that he had been making inquiries regarding the offending vehicle from the spot and that a non-sikh gentlemen had informed him that on the night intervening 26/27.01.2021 at about 02:00 a.m., accident was caused by cab bearing registration No.CH-02-AA-7754.

9. Thus, what is quite vivid is that on 29.05.2021 i.e. more than 04 months after the accident, police was informed by Ashish Gill about the involvement of the offending cab in the accident and it is after another more than 10 months that on 16.03.2022 Ashish Gill made a statement before the police under Section 161 Cr.P.C. stating about his source to the effect that some non-sikh gentleman told him about the involvement of the offending car in the accident and that non-sikh gentleman divulged this information on the condition that he did



not want to get involved with the police.

10. PW-5 Ashish Gill in his affidavit Ex.PW-5/A tendered as examination-in-chief reiterated the aforesaid assertion. However, during his cross-examination, he categorically admitted that he did not witness the accident. He further disclosed that the unknown person, who had told him about the involvement of the offending vehicle did not make any statement before the police. He further stated that he did not know either the driver or the colour of the offending vehicle. He also admits that in the application Ex.PW3/3 dated 29.05.2021, he did not disclose the name or identity of the person, who had informed him about the alleged accident or the involvement of the car and that this application was made by him after 04 months of the accident. He further admitted that even in his statement dated 16.03.2022 made to the police, he did not disclose the name of the person, who informed him about the involvement of the car. He also admitted that he never made any complaint to the higher police authorities regarding non-recording of his statement prior to 16.03.2022 by the police.

11. PW-3 ASI Dilbag Singh, the Investigating Officer of the case, who proved documents Ex.PW-3/1 to PW-3/3 disclosed during his cross-examination that FIR was lodged against unknown driver of unknown person and that during his investigation, he never arrested the alleged accused nor impounded the vehicle i.e. cab bearing No.CH-02-AA-7734. He further disclosed that after recording statement of Ashish on 16.03.2022, he had investigated the matter at the spot of accident but did not find any relevant proof regarding the involvement of the car No.CH-02-AA-7754. He disclosed that though as per the statement of Ashish, there was some eye witness but neither address of the alleged eye-witness to the



accident was found nor there was any CCTV camera, which might have captured the accident. He stated further that from the date of accident till recording the statement of Ashish on 16.03.2022, he did not know about the alleged accident on the basis of said statement. He further admits that no challan had been filed till date.

12. Apart from above, RW-1 Satnam Singh, the owner of the alleged offending vehicle, in his affidavit tendered in examination-in-chief stated that on 27.01.2021 at 02:00 a.m. neither the driver of his car informed him about the alleged accident nor the police ever intimated him in this regard. However, during his cross-examination, he disclosed that at about 01:30 a.m. to 02:00 a.m. his driver Manjit Kumar Malik was driving a cab bearing No.CH-02-AA-7754 and was coming from Kurali side towards Chandigarh via Kharar. Although during his cross-examination being conducted by counsel for the claimants, he stated that on 27.01.2021 his cab taken by the driver had met with an accident with some animal as was told to him by his driver but in cross-examination by the counsel for insurance company, he admitted that he never got recorded the statement to the police regarding the accident with an animal on 27.01.2021 nor the said vehicle was ever impounded. It is also important to notice that it also came in the cross-examination of this witness that his cab had also met with accident on 07.03.2021 and for that accident, it was impounded by the police.

13. It is on the basis of aforesaid evidence that contention is raised by counsel for the claimants that on the principle of preponderance of probability, the accident is well proved on record to have been caused due to rash and negligent driving of cab bearing No.CH-02-AA-7754 being driven by respondent



No.2 Manjit Singh, resulting in the death of Anuj Gill.

14. After analyzing the entire evidence on record, this Court is of the considered view that Tribunal has wrongly appreciated the evidence by holding that rash and negligent driving of the cab driver was proved or even the involvement of the said cab was proved on the basis of preponderance of probability.

15. Let it be examined as to what is the principle of 'preponderance of probability'. The phrase "preponderance of probabilities" rests on a conjunction of two concepts viz "*preponderance*" and "*probability*". The noun *preponderance* mean "superiority in weight or significance." This meaning is particularly reflective of the word's Latin roots in the word *praeponderare*, which means "outweigh." The noun can also mean "superiority in influence or importance." The Merriam Webster Dictionary defines preponderance to mean "*a superiority in weight, power, importance or strength.*" It further defines it as the "*standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible or convincing than that presented by the other party or which shows that the fact to be proven is more probable than not*". The statistical concept of "*probability*" refers to "*the likelihood or otherwise of an event to occur*". Viewed conjunctively this legal principle would refer to the probability (possibility) of the existence of a state of events based on an analysis of the relative importance or weight attached to various attendant circumstances, of course, based on an independent, dispassionate and judicious exercise.

16. This principle of "*preponderance of probabilities*" was enunciated in *Charles R. Cooper v. F.W. Slade* [(1857-59) 6 HLC 746], wherein it was observed that preponderance of probabilities means a "*more probable and*



rational view of the case". Lord Denning in *Millers v. Minister of Pension* [[1947] 2 All ER 372)] described the principle in terms as "more probable than not" and then went on to elaborate, as follows:

"That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: We think it more probable than not, "the burden is discharged 'but if the probabilities are equal, it is not. "

17. In *re H (minors)*, (1996) AC 563 at 580, Lord Nicholls explained the law as follow:

"The balance of probability standard means that a court is satisfied with an event that occurred if the court considered that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind a factor, that whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established the balance of probability."

18. In Indian law, the term "preponderance of probability" refers to the standard of proof used in civil cases. This standard requires that the party bearing the burden of proof must establish that their version of events is more likely to be true than not. In other words, the evidence presented must show that there is a greater than 50% chance that the claim being made is true. In any civil case, the plaintiff must prove their case on a balance of probabilities, if they are to succeed. This means that the plaintiff must prove that his facts tip the scale in his favour even if it is only a 51 % probability that he is correct.

19. Section [3](#) of the Indian Evidence Act, 1872 recognizes the principle of preponderance of probabilities by stating that a



'A fact is said to be proved when, after considering the matters before it, the Court; either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.'

20. The concept has been very succinctly explained by Hon'ble Supreme Court in the case of **Narayan Ganesh Dastane v. Sucheta Narayan Dastane** [AIR (1975) (SC) 1534] by observing as follows:-

"The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities, the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies."

21. Thus, broadly speaking, the principle of "preponderance of probabilities", applied generally in civil matters, means the degree of certainty of belief in the mind of a tribunal or the Court by which it is convinced that the "existence of a fact is more-probable than its non-existence". To put it in other words, preponderance refers to an evidentiary standard, which while proving evidence requires demonstrating that the proposition is more likely than not true. The principle of preponderance essentially requires the plaintiff to introduce



more or even slightly better evidence than the defence. In other words, this principle could also refer to a more probable and rational view in adjudicating a specific fact/issue. Legally, it would refer to a situation, where a prudent man faced with conflicting probabilities covering a fact/situation will act on the supposition that the actual fact exists if on weighing the varied probabilities, he finds that the preponderance is in favour of the existence of the actual fact.

22. The courts in india have also universally recognized that within the standard of "preponderance of probabilities" there could be different degrees of probability. The law while recognizing that a proof of fact depends upon the probability of its existence, also would require that the ultimate decision be based on: (i) the test of a prudent person, who acts on under the supposition that a fact exists; and (ii) in the context and circumstances of a particular case.

23. By applying the aforesaid legal position, when the evidence on record of this case is analyzed, it is found that there is no legally admissible evidence whatsoever to support the case of the claimants even on the principle of preponderance of probability.

24. As has been noticed earlier that accident took place on the night intervening 26/27.01.2021. FIR was lodged on 27.01.2021 against unknown driver of unknown vehicle. It is after more than 04 months i.e. 29.05.2021 that police was informed by complainant Ashish Gill i.e. the brother of the deceased about the involvement of the vehicle, without disclosing the source from which he had come to know about its involvement and it is after another approximately 10 months i.e. on 16.03.2022 that statement was made by PW-5 Ashish Gill to the police to the effect that some non-sikh gentleman had informed him about the in-



volvement of the cab without disclosing the name or any other identity or the place of residence of that ghost non-sikh gentleman.

25. Statement of PW-5 Ashish Gill made before the Tribunal regarding the involvement of offending car is nothing but clearly a hearsay evidence, which is absolutely not admissible in evidence. PW-3 ASI Dilbag Singh has clearly stated during his statement that he did not find any evidence whatsoever regarding the involvement of the car. Neither the name or any other particulars of alleged eye-witness were disclosed by Ashish Gill nor any CCTV camera was found to be installed near the spot of accident, which might have captured the accident nor there was any other evidence in this regard.

26. In case, there was some legally admissible evidence showing involvement of the car, the same could have been balanced with the evidence of the respondents but in fact, except for hearsay evidence, there is no evidence on part of the claimants, which can be compared with the evidence of the respondents so as to strike a balance and to see the preponderance of probability.

27. The statement of RW-1 Satnam Singh, the owner of the vehicle does not help the case of the claimants, simply because his driver had gone towards Kharar side on 26.01.2021 and had come back in the morning of 27.01.2021. In fact, what it appears to this Court is that a friendly match was going on between the claimants on the one hand and respondent Nos.1 & 2 on the other hand. Since offending vehicle is a cab, so it was easy to trace the location of any such vehicle at a particular time and therefore, more than four months after the accident, the brother of the deceased was able to find such a cab, which had gone in the area of the accident and then with the help of the driver and



owner of the vehicle, named the said vehicle in his statement before the police. A story was concocted that some non-sikh gentleman was found at the spot and told him about the involvement of this vehicle. Though RW-1 says that his vehicle had met with accident with some animal on 27.01.2021 as was told to him by his driver but neither any report was made to the police nor there is any evidence that any compensation was claimed from the insurance company regarding the damage caused due to that alleged accident.

28. To be fair with learned counsel for the claimants, he has cited certain authorities in order to claim that principle of preponderance is applicable in his favour. First of all, he relied upon ***“Bimla Devi and ors. v. Himachal Road Transport Corporation and ors.” 2009 (13) SCC 530***, wherein one Jawala Ram, a police constable was posted at Police Station Dharampur. On 11.02.1997 at about 07-08:00 a.m. he was standing near a shop of one Chand Kishore, when a bus bearing registration No.HP-14-3596 owned by one of the respondent was parked there. The second respondent Vijay Kumar was the driver and third respondent Om Dutt was the conductor of the above mentioned bus. It was alleged that driver of the bus Vijay Kumar reversed the bus without blowing any horn as a result of which Jawala Ram died on the spot. Allegedly the conductor also did not bother to check whether any person was standing behind the bus. However, the respondents denied and disputed the occurrence of the accident. According to them, deceased died on the previous evening and finding the dead body of a person wrapped in a blanket lying at some distance from the bus, they had informed the police personnel, whereafter the driver was falsely implicated. After going through the evidence as produced on record, Hon’ble Supreme Court observed as



under:

“In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

No benefit can be given to the claimants of the aforesaid authority in this case because in the ***Bimla’s case (supra)***, the offending bus was found to be lying parked near the place, where the dead body of the deceased was found. There is no such evidence on record in this case. As has already been noticed that involvement of the offending car was informed for the first time after four months and that too without any material evidence.

29. Further reliance is placed upon ***“Sunita and ors. v. Rajasthan State Road Corporation and Anr.” Civil Appeal No.1665 of 2019*** arising out of S.L.P. (Civil) No.33757 of 2018 decided on 14.02.2019, wherein it was held that 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 analyze the evidence already on record to ascertain whether that is sufficient evidence to answer the matters in issue on the touchstone of the principle of probability to ascertain whether the claimants version is more likely than true. Similar view was taken in ***“Anita Sharma v. The New India Assurance Co. Ltd.” Civil Appeal No.4010-4011 of 2020*** arising out of S.L.P. No.32011-32012 of 2018 decided on 08.12.2020.

30. There can be no doubt about the legal position as laid down by



Hon’ble Supreme Court in the aforesaid cases but as has already been noticed that said ratio is not applicable to the facts of the present case, when there is no legally admissible evidence on the part of the claimant so as to compare it with the evidence of the respondent to see the balance and to find the preponderance of probability in favour of the claimants.

31. On account of entire discussion as above, it is held that finding on issue No.1 relating to accident as returned by Tribunal cannot be sustained in the eyes of law. The said finding is hereby set aside. It is held that claimants failed to prove that accident occurred due to involvement of cab No.CH-02-AA-7754 or due to alleged rash or negligent driving of respondent No.2 while driving the said cab.

32. Once it is found that involvement of the allegedly offending cab in the accident is not proved, the findings on the other issues granting compensation to the claimants, is also set aside. As such, the claim petition deserve to be dismissed and accordingly directed to be dismissed.

33. Consequent to the aforesaid discussion, the appeal as filed by the insurance company [*FAO N: 4384 of 2023*] is hereby accepted. Since the appeal of the insurance company has been accepted, obviously, the appeal [*FAO N: 4288 of 2023*] as filed by the claimants seeking enhancement of compensation has become infructuous and so, the same is dismissed having become infructuous.

24.07.2024
Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned? Yes/No

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Whether reportable?

Yes/No