

**FAO-4308-2006 and
FAO-4309-2006**

2024:PHHC:154769



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

208

FAO-4308-2006

Date of Decision: November 21, 2024

Devi Ram and another

.....Appellant(s)

Vs.

Davinder Kumar and others

.....Respondent(s)

208-A

FAO-4309-2006

Smt. Poonam and another

.....Appellant(s)

Vs.

Davinder Kumar and others

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Ashish Gupta, Advocate and
Mr. Divyam Singh, Advocate
for the appellant(s).

Mr. Karan Singh, Advocate and
Mr. Vikas Dholra, Advocate
for respondents No.1 and 2

Mr. Vinod Gupta, Advocate
for respondent No.3-Insurance Company.

Mr. Suraj Bhan Panchal, Advocate
for respondent No.4

SUDEEPTI SHARMA J. (ORAL)

Vide this common order, the aforesaid two appeals are being
decided as the same has been arisen out of the common award dated
10.08.2006 passed by the Ld. Tribunal, Karnal and the common question of law



is involved in both the appeals. For brevity, facts have been taken from **FAO-4308-2006**.

Main appeals

The present appeals have been preferred against the award dated 10.08.2006 passed in the claim petition filed under Section 166/140 of the Motor Vehicles Act, 1988 (for short 'the Act') by the learned Motor Accident Claims Tribunal, Karnal (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants, who are the family members of the deceased, was dismissed.

2. The brief facts of the case as mentioned in the claim petition are that on 8.12.2004 Anil Kumar and Rajinder Kumar (since both deceased) were coming towards Indri side from Ladwa road. Anil Kumar was driving the maruti car at a very slow speed and on left hand side of the road. When they reached near village Batehri, Tehsil Indri, District Karnal, then from the side of Indri, one tractor trolley bearing registration No.HR-05-L-9705 came there being driven by its driver in a very rash and negligent manner. Without blowing any horn, the driver hit against the said Maruti car driven by Anil Kumar. Due to this impact, Anil Kumar and Rajinder Kumar sustained serious, multiple and grievous injuries on their respective bodies. The Maruti Car No.HR-05-K-8483 was badly damaged. After the accident Anil Kumar and Rajinder Kumar were taken to CHC Indri where Anil Kumar succumbed to the injuries and Rajinder Kumar was referred to General Hospital, Karnal as his condition was critical. From there he was referred to PG1, Chandigarh and he succumbed to the injuries on 17.12.2004. It is alleged that the accident took place due to rash and



negligent driving of tractor trolley No. HR-05-L-9705 being driven by respondent No. 1 rashly and negligently.

3. Upon notice of the claim petition, respondents appeared and denied the factum of accident/compensation.

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

(1) Whether the accident in question took place due to rash and negligent driving of tractor No. HR-05-L-9705 by respondent No. 1? OPP.

(2) Whether the petitioners are entitled to compensation, if so to what amount and from whom? OPP.

(3) Whether the tractor in question was being driven against the terms and conditions of insurance policy, if so to what effect? OPR3.

(4) Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petitions. Hence the claimants/appellants filed the present appeals for grant of compensation.

SUBMISSIONS OF THE COUNSELS FOR THE PARTIES

6. The learned counsel for the claimant-appellant contends that the claim petition of the appellant was dismissed only on the ground that no accident took place with tractor trolley.

7. *Per contra*, Ld. Counsel for respondents argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Tribunal. Therefore, he prays for dismissal of the appeals.



8. I have heard learned counsel for the parties and perused the whole record of this case.

9. A perusal of the record show that Pardeep Kumar, Additional Ahlmad of the court of Additional Chief Judicial Magistrate, Karnal was examined as PW-1, who produced the record of case titled as ***State Vs. Davinder Kumar*** in FIR No.243 dated 8.12.2004, police station Indri under Sections 279/304-A of Indian Penal Code. He also produced the copy of report under Sections 173 Cr.P.C. Ex.PA and copy of site plan Ex.PB. Ex.PJ is the copy of memo regarding taking of tractor trolley into possession by the police and also report of mechanic.

10. As per statement of Sukhbir @ Chander Bhan on oath on 8.12.2004, he alongwith Sunder Lal had gone to Village Garhi Jattan on their motor-cycle No. HR-05-H-9587. Sunder Lal was pillion rider and when they were returning from Garhi Jattan and were on Indri Ladwa Road at about 7.00 p.m. near village Batehri a Maruti Car bearing registration No. HR-05-K-8483 was going ahead of them. In the mean time from the side of Indri one tractor trolley came being driven rashly and negligently by its driver without blowing any horn and the said tractor trolley hit the car from a side. The car driver drove the car towards the katcha portion of the road but the tractor driver again hit the car after coming on the wrong side of the road. After the accident the tractor driver escaped with the tractor trolley from the spot. The occupants of the car received injuries. He further deposed that he followed the tractor trolley on the motor-cycle and noted down the number of the tractor as HR-05-L-9705 and tractor driver disclosed his name as Davinder Kumar. During the course of cross-examination he deposed that Anil Kumar and Rajinder Kumar were not



known to him and the police met him on 10.12.2004 and on that date his statement was recorded by the police.

11. A perusal of the record shows that Ex. A is report under Section 173 Cr.P.C., copy of site plan Ex.PB and copy of recovery memo Ex. PK which proves that respondent No.1 was facing trial relating to the accident and the tractor trolley in question was taken into possession by the police in the said case. Further, the accident took place on 8.12.2004 and FIR was lodged on the same date on the statement of one Ashok Kumar son of Dayal Chand, resident of Indri, who is cousin of deceased Anil Kumar. Ashok Kumar is also eye witness to the accident.

12. Ld. Tribunal held that no doubt during the investigation the police reached at the conclusion that accident took place with the tractor trolley in question but since in the First Information Report, which was the first and prompt version of an eye witness to the accident proves that the accident did not take place with the tractor trolley in question, rather some other vehicle, so the report under Section 173 Cr.P.C. and the fact that respondent No.1 is facing trial, are not sufficient to prove that the accident took place due to rash and negligent driving of tractor trolley No. HR-051-9705 by respondent No.1. This reasoning given by Ld. Tribunal is not acceptable to this Court, since it is proved by PW-1-Pardeep Kumar, Additional Ahlmad in the Court of Additional Chief Judicial Magistrate, Karnal, who produced record of the case titled as ***State Vs. Davinder Kumar*** relating to FIR No.243 dated 08.12.2004, Police Station Indri, under Sections 279/304-A of Indian Penal Code.

13. On the one hand, the Ld. Tribunal has noted down that though mechanic report had proved that the mechanical examination of the tractor was



conducted on 26.12.2004 and that the head-light of the tractor was broken and there was a dent on the bonnet of the tractor and there was also a scratch on the tractor trolley whereas on the other hand, it has been held that this report itself is not sufficient to connect this tractor trolley with the accident in question as tractor was mechanically examined after about 17 days. Further, it is referred to in the award itself that during investigation by the police and the disclosure statement of Davinder Kumar-respondent No.1, the involvement of tractor trolley in the accident came to light. It is further held by Ld. Tribunal that had the accident taken place with the tractor trolley in question then respondent must have got his tractor trolley repaired in order to destroy the proof of accident. This reasoning given by the Ld. Tribunal is not acceptable to this Court. This is a clear case where factum of accident is proved and rash and negligent driving on the part of driver Davinder Kumar-respondent No.1 is also proved.

14. Therefore, the finding given by the Ld. Tribunal on issue No.1 is set aside. The present appeals are allowed. Issue No.1 is decided in favour of the appellants and against the respondents. Since this matter pertains to the year 2006 and no finding is given by the Ld. Tribunal on Issues No.2 and 3, therefore, the matter is remanded back to the Ld. Tribunal to decide the claim petition on Issues No.2 and 3 on day to day basis within a period of three months from the date of receipt of certified copy of this order.

15. The parties are directed to appear before the Tribunal on 02.12.2024.



- 16. The Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Vinod Gupta, Advocate, within a period of ten days from the date of receipt of the copy of this judgment.
- 17. Registry is directed to send a copy of this order to the Ld. Tribunal.
- 18. Disposed of accordingly.
- 19. All the pending applications also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

November 21, 2024
sonia arora

Whether speaking/reasoned:	Speaking
Whether reportable	Yes