

2024:PHHC:071417



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-885-2005 (O&M)
Date of Decision: May 20, 2024

Pardeep Kaur and others

...Appellants

VERSUS

Mohan Lal and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Inderjeet Sharma, Advocates
for the appellants.

Mr.K.S.Brar, Advocate
for the respondents.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants, thereby, assailing the judgment dated 22.11.2004 passed by learned Motor Accident Claims Tribunal, whereby, the claim petition filed by the claimants was dismissed.

The essential facts to be noticed are as herein given:-

That, on 28.09.2002, Sukhdev Singh and Kewal Singh had gone from Mandi Kalan to Rampura, in connection with domestic work, on motorcycle bearing registration Nno.PB-03D-5087. The motorcycle was driven by Sukhdev Singh and Kewal Singh was pillion rider of the same. On their return journey, when they reached near side of brick kiln and crossed village Rampura, a truck bearing registration No.PJD-7238, came from the side of



Rampura, being driven by Mohan Lal in rash and negligent manner. It was loaded with wheat and struck against the motorcycle, as a result of which, Sukhdev Singh received simple as well as grievous injuries and fracture on various parts of his body. Even, Kewal Singh had also sustained injuries. Sukhdev Singh was removed to Civil Hospital, Phul, from where, he was referred to DMC Ludhiana, where he succumbed to the injuries. The accident was caused due to rash and negligent driving of respondent No.1- Mohan Lal.

Further, it was averred in the claim petition that deceased Sukhdev Singh was 25 years old, at the relevant time. He was an agriculturist and also running a dairy farm and his annual earnings were Rs.2 lakh. As such, the claimant had sought compensation to the extent of Rs.20 lakh, on account of death of Sukhdev Singh, in a motor vehicular accident.

In pursuance of the notice issued, respondents had made appearance. They raised legal objections, thereby, disputing the locus standi and cause of action of the claimants to file the claim petition and also denied about taking place of the accident. Further, they asserted that claimants are estopped by their act and acquiescence and the claim petition is highly misconceived and they have not come to the Court with clean hands. On merits, taking place of the accident, as such, has been denied and involvement of truck bearing registration No.PJD-7238 has also been denied. Rather, they took the plea that on 28.09.2002, the offending truck along with other 30-40 trucks, was engaged in loading and unloading of wheat. The truck bearing registration No.PJD-7238, driven by Mohan Singh, son of Amar Singh, loaded the wheat at about 4.30 p.m. and it was the last trip at Rampura and



the tyre got punctured and the truck remained in garage for repair. No accident had taken place of the offending truck with motorcycle bearing registration No.PB-03D-5087. The driver engaged by respondent No.2 is Mohan Singh, son of Amar Singh. The respondents had met higher officers to cancel the FIR, as the truck in question was not involved in the accident, but no fruitful result came forth. On subsequent enquiry, it came to the notice that Sukhdev Singh and Kewal Singh were under the influence of liquor and while driving the motorcycle, rashly and negligently at about 8.30 p.m., the motorcycle slipped because of some heavy stone struck with the motorcycle and both of them fell down and Sukhdev Singh suffered injuries. It is further the plea that false FIR has been registered. As such, a prayer was made for dismissal of the claim petition.

Replication was filed, thereby, reiterating the averments earlier made in the claim petition.

From the pleadings of the parties, following issues were framed:-

- 1) Whether death of Sukhdev Singh took place due to rash and negligent driving of truck No. PJD-7238 being driven by respondent No. 1 Mohan Lal in the area of Rampura on 28-9-2002 as alleged? OPA.*
- 2) Whether the claim petition has not been filed in accordance with the Motor Vehicles Act? OPR.*
- 3) Whether the claimants have no locus-standi and cause of action to file the present suit? OPR.*
- 4) Whether in fact driver employed on Truck No.PJD-7238 is Mohan Singh @ Mohan Lal son of Amar Singh and not respondent No. 1. If so to what effect? OPR*
- 5) Whether the claimants are estopped by their act and acquiescence to file the present claim petition? OPR*



6) Whether claim petition is highly mis-conceived untrue, full of malice and if so to what effect? OPR.

7) Whether the claimants have not come to the court with clean hands and have concealed the true facts if so its effect? OPR.

8) Whether the claimants are entitled for compensation if so how much and from whom? OPA

9) Relief.

To so substantiate their claim, claimant Pardeep Kaur herself stepped into witness box as PW-2 and also examined PW-2 Dr.Devinder Pal Bansal, Medical Officer, Civil Hospital, Rampura and PW-3 Jagsir Singh, and thereafter, the evidence was closed.

To rebut the claim of the claimants, respondent No.2-Harpal Singh stepped into witness box as RW-1 and also further examined Jit Singh as RW-2 and thereafter, closed the evidence.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about statement of alleged eye witness Jagsir Singh to be not inspiring confidence and thereupon, had decided the material issues against the claimants and thus, consequently, dismissed the claim petition vide impugned judgment.

Feeling aggrieved by the aforesaid dismissal of the claim petition, the appellants-claimants have filed the present appeal.

In pursuance to the notice issued, the respondents made appearance.

I have heard learned counsel for the parties and perused the lower Court record.

At the very outset, learned counsel representing the appellants-



claimants has submitted that before learned Tribunal, the appellants-claimants were required to prove their case by preponderance of probabilities and to so substantiate the fact of accident and manner of taking place of the same, which resulted into death of Sukhdev Singh, the claimants have examined PW-2 Pardeep Kaur, who is widow of the deceased and who has deposed about death of Sukhdev Singh, in a motor vehicular accident. Furthermore, also the claimants examined PW-3 Jagsir Singh, who is an alleged eye witness to the accident in question. In fact, it is submitted that the FIR was also got registered at the instance of Gurmail Singh and challan was presented. In the light of such evidence, coming on record, it is submitted that learned Tribunal had erroneously reached the conclusion about fact of accident and involvement of the truck bearing registration No.PJD-7238, to be not established.

Per contra, learned counsel representing the respondents vehemently contends that the appellants-claimants neither proved the fact of accident and involvement of the truck in question, nor proved that respondent No.1-Mohan Lal was rash and negligent in driving the vehicle in question. Learned counsel has critically referred to the testimony of PW-3 Jagsir Singh, an alleged eye witness to the accident and also made reference to the various documents, coming forth, to establish the hollowness of the claim of the claimants.

In fact, it is submitted that when the evidence, as a whole is read, it stands amply established that the accident has been wrongly projected to have been caused by truck bearing registration No.PJD-7238, driven by Mohan Lal, in a rash and negligent manner and that the same resulted into



death of Sukhdev Singh. In fact, it is submitted that learned Tribunal had appraised the evidence in correct perspective and reached the right decision of dismissal of the claim petition and the said conclusion, calls for no interference and as such, appeal sans merit.

During the course of arguments, learned counsel for the appellants-claimants has made reference to the judgment passed in *Sunita Vs. Rajasthan State Road Transport Corporation, AIR 2019(SC) 994*, wherein, it was held by the Hon'ble Supreme Court that in motor accident claim cases, the Tribunal is required to examine the case on the preponderance of probabilities and should not insist upon proving the case on strict standard of proof i.e. beyond all reasonable doubt. However, this Court does not dispute about the manner of appraisal of the evidence, in the motor accident claim cases, as held in the aforesaid case law.

However, beneficial reference ought to be made to Section 3 of the Indian Evidence Act, 1872, which defines the expressions, '**proved**', '**disproved**' and '**not proved**', as herein given:-

"Proved". — 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.

"Disproved". — A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its nonexistence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

"Not proved". — A fact is said not to be proved when it is neither proved nor disproved."



A careful reading of the aforesaid three clauses indicate the degree of certainty, which is required to treat a fact as **proved**. Basically, the test is whether a prudent man, under the peculiar circumstances of the case, assume the existence of a certain fact as true or disbelieve it. The proof of effect of the evidence adduced, depends not upon the accuracy of the statements, but upon the probability of their existence. As per the Indian Evidence Act, 1872, the anvil of testing “**proved**” “**disproved**” and “**not proved**” is the same in both civil and criminal cases, which is that of a prudent man. The Presiding Officer is required to test every evidence in this light before relying upon it, in both civil and criminal proceedings.

Considering the civil and criminal cases, the difference lies only in the standard of proof, which is higher in criminal cases i.e., the facts must be proved beyond all reasonable doubts, but in civil cases, the party only has to convince the Court by preponderance of probabilities in his favour.

Further, Section 101 of the Indian Evidence Act, 1872, deals with the burden of proof, which provides that ‘whosoever desires any Court to give judgment in his favour, on the basis of certain facts, must establish the existence of those facts. Even, Section 103 of the aforesaid Act, provides that burden of proof of particular fact, lies on the person, who wishes the Court to believe in it.

All the aforesaid provisions, form a part of one binding thread, which calls upon the plaintiff/claimant, an undisputed burden to believe the foundational facts of the case and bring evidence for all the facts, which he relies upon to convince the Court, that in the mind of a reasonable man, such facts should be believed to be true. It is only, thereupon, that the doctrine of



preponderance of probabilities will come into picture and the Court, after being reasonably satisfied, will not demand strict proof of evidence or any further evidence, to prove the same fact, in case of civil proceedings. However, so far as, criminal cases are concerned, such facts may be required to be proved/endorsed, by way of additional evidence or corroboration. In the light of the same, the difference, therefore, lies in the probative force, attached to the evidence and not in the test of its proof (degree of proof).

The Court in a civil trial, applies a standard of proof, governed by a preponderance of probabilities. This standard is also described sometimes, as a balance of probability or the preponderance of the evidence. Proof of a fact, depends upon the probability of its existence. The findings of the court must be based on:

1. The test of a prudent person, who acts under the supposition that a fact exists and;
2. In the context and circumstances of a particular case.

Thus, it is evident that the doctrine of preponderance of probabilities of evidence, does not mean that the Civil Court/Tribunal is not required to apply basic test, that whether a particular fact is proved or not. Even, if the standard of proof in civil cases is lower, such requirement is not dispensed with.

In this backdrop, now adverting to the case in hand. As already observed aforesaid, it is the pleaded case of the appellants-claimants that on the ill-fated day Sukhdev Singh and Kewal Singh, while on their return journey on motorcycle bearing No.PB-03D-5087 from Rampura to Mandi Kalan, had reached near brick kiln and crossed village Rampura, that truck



bearing registration No.PJD-7238, came from Rampura side, which was driven by Mohan Lal, in a rash and negligent manner. It is the pleaded case that Sukhdev Singh was driving the motorcycle and Kewal Singh was pillion rider on the same. As result of the injuries sustained, Sukhdev Singh was firstly taken to Civil Hospital, Phul and thereafter, referred to DMC.

To so substantiate their claim, besides the widow of the deceased, namely Pardeep Kaur, stepping into witness box as PW-2, even Dr.Davinder Pal Bansal, Medical Officer of Civil Hospital, Rampura has been examined as PW-1. He has categorically deposed about Sukhdev Singh and Kewal Singh to have come to the hospital. He proved the bed-head ticket of Sukhdev Singh, which is Ex.PA and he also proved the bed-head ticket of Kewal Singh, which is Ex.PB. Thus, from his testimony and from the bed-head tickets, so proved by him, it stands established that Kewal Singh was accompanying deceased Sukhdev Singh, at the relevant time, meaning thereby, he was an eye witness to the accident. However, Kewal Singh, as such, has not been examined by the claimants, for the reasons, best known to them. This is all the more essential to note as in the report under Section 173 Cr.P.C. Ex.PD, there is categoric mention made about the DDR No.38 having earlier got recorded, at the instance of Kewal Singh. Said DDR has not been proved. The bed-head ticket of Kewal Singh Ex.PB reveals that an application was filed before the Medical Officer, Civil Hospital, Rampura by the police official, thereby, seeking fitness of injured Kewal Singh to give statement. It also contains the recitals by the doctor concerned, about the patient to be fit to give statement. Meaning thereby, while the victim was admitted in the hospital, Kewal Singh was stated to be fit to make statement,



but however, there is nothing, as such, coming on record, that any statement was recorded, at that time.

Very close to the same, it is pertinent to mention that FIR was got registered on 04.10.2002 by Gurmail Singh, who is brother of deceased Sukhdev Singh. The copy of the said FIR is Ex.PA. Close perusal of this FIR reveals that Gurmail Singh is author of the FIR, but however, nowhere, he states about the accident to have been witnessed by him. Though, he mentioned about the truck involved in the accident bearing registration No.PJD-7238, but however, he does not state about the manner, in which he came to know about the number and make of the offending vehicle.

Furthermore, it should be noted that report under Section 173 Cr.P.C., which is coming on record is Ex.PD and perusal of the same reveals that after recording of the FIR, there is also mention made in the said report under Section 173 Cr.P.C., about DDR No.38, having got recorded, at the instance of Kewal Singh. However, what was the DDR, there is no mention made and even, the claimants have not bothered to bring this DDR on record or examine author of the same. This DDR was got recorded on the day of accident and that too by Kewal Singh, who as accompanying the deceased, at the relevant time. In these circumstances, this was the important piece of evidence, which has not been produced by the claimants. In this context, even Kewal Singh, was the important witness, who could have been examined, but however, he has not been examined.

But anyway, the appellants-claimants have examined PW-3 Jagsir Singh, whom they alleged that he is an eye witness to the accident in question. Though, he has deposed about having witnessed the accident, but



however, it is pertinent to mention that nowhere, prior recording of his statement before learned Tribunal, there is anything, as such, spelt out, about said Jagsir Singh to have witnessed the accident, at any time. There is no mention made of his presence and having witnessed the accident, in the report under Section 173 Cr.P.C. Besides the same, report under Section 173 Cr.P.C. is also totally silent, as on what basis and in what manner, Gurmail Singh came to know about the manner of taking place of the accident.

To so establish, besides Kewal Singh, even, Gurmail Singh was important link, who could have straightened the things, but however, he has not been examined. In the light of the same, learned Tribunal had rightly discarded the testimony of Jagsir Singh, more particularly, after registration of the criminal case, respondent No.1-Mohan Lal has died, but this witness, while facing cross-examination, which was recorded on 07.01.2004, had stated that he daily meets respondent No.1-Mohan Singh @ Mohan Lal. However, as per the death certificate, coming on record, said Mohan Lal had died on 25.11.2003. Meaning thereby, he was not alive, at the time when Jagsir Singh had made this statement, which also points towards falsity of his claim about knowing Mohan Lal.

Such being the fact situation, there are definitely important omissions in the chain of evidence, as produced by the claimants, to establish about taking place of the accident, as asserted and about involvement of the offending truck, driven by respondent No.1-Mohan Lal, at the relevant time.

Though, it is the version of the respondents about the truck to



be present in the garage on the day of accident and in this regard, besides respondent No.2-Harpal Singh, even, Jit Singh, Mechanic has also been examined, but however, the fact of the truck in question, being in garage, at the relevant time, does not stand established from their testimonies. In these circumstances, learned Tribunal had rightly discarded testimonies of the respondents’ witnesses, with regard to the version, so put forth.

But anyhow, the initial onus was upon the appellants-claimants to establish the fact of accident and involvement of truck bearing registration No.PJD-7238, driven by respondent No.1-Mohan Lal, which caused the accident. However, as observed aforesaid, the testimony of alleged eye witness set up, does not inspire confidence. In the light of the same, simply on the score of criminal case having been registered, more particularly, when there is nothing coming on record about the investigation having conducted and on what basis, the FIR was got registered and about the source of information, having collected about the involvement of the truck in question, in the accident, the manner of taking place of the accident and involvement of truck bearing registration No.PJD-7238, driven by respondent No.1-Mohan Lal, as such, does not stand established. Consequently, learned Tribunal had correctly dismissed the claim petition.

As such, the appeal sans merit and the same is hereby dismissed.

May 20, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No