

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **FAO-2910-2009 (O&M)**

Balwant
...Appellant

VERSUS

Om Parkash and others
...Respondents

(ii) **FAO-3023-2009 (O&M)**

Mahesh
...Appellant

VERSUS

Om Parkash and others
...Respondents

(iii) **FAO-3028-2009 (O&M)**

Arun
...Appellant

VERSUS

Om Parkash and others
...Respondents

Date of Decision: December 11, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

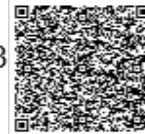
Present: Mr.S.S.Khurana, Advocate
 for the appellants.

 None for respondents No.1 and 2.

 Mr.Neeraj Khanna, Advocate for
 Mr.Ravinder Arora, Advocate
 for respondent No.3-insurance company.

ARCHANA PURI, J.

These are three appeals filed to assail the judgment of dismissal

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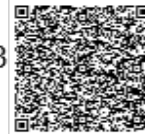
of three claim petitions, filed by appellants-claimants, to seek compensation, on account of injuries sustained by them, in a motor vehicular accident.

The facts germane, to be noticed, are as follows:-

That, on 11.02.2007, claimants Balwant, Mahesh and Arun had started from village Subhaheeri for their village Bhados, on motorcycle bearing registration No.HR-26S-5421, which was driven by Balwant. At about 7.00 p.m., when they reached near tubewell of Raje s/o Banshi, in the area of village Dulhera, a max bearing registration No.HR-47A-4227, came from opposite side, in a rash and negligent manner, at a high speed. It was driven by respondent No.1-Om Parkash and the driver struck the aforesaid vehicle into the motorcycle of the claimants, on account of which, the claimants fell down and suffered injuries. Relating to the accident in question, FIR No.22 dated 12.02.2007 under Sections 279, 337 and 338 IPC was got registered.

Thus, on account of injuries, the claimants filed respective claim petitions, which were consolidated and common judgment was passed in all the three claim petitions, as they arose from the same accident.

However, on appraisal of the evidence, learned Tribunal concluded that the claimants had failed to establish about the accident to have been caused, on account of rash and negligent driving of max bearing registration No.HR-47A-4227, driven by Om Parkash-respondent No.1. Hence, issue no.1, with regard to the factum of accident and manner of taking place of the same, was decided against the claimants. Even though, assessment of compensation was made, but however, on account of involvement of vehicle and driving not being established, the claim petitions were dismissed.

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Feeling aggrieved by the judgment dated 07.01.2009, the appellants-claimants have filed the aforesaid appeals.

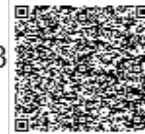
In pursuance of the notice issued, respondent No.3-insurance company made appearance through counsel. However, none appeared on behalf of the respondents No.1 and 2, who are driver and owner of the offending vehicle and as such, they were proceeded against ex-parte.

Learned counsel for the appellants as well as learned counsel for respondent No.3 heard.

To establish the factum and manner of taking place of the accident, as well as involvement of the vehicle in the accident in question, all the three claimants stepped into witness box. PW-1 is Mahesh, PW-2 is Arun Kumar and PW-3 is Balwant Singh. As per version put forth by the claimants in the pleadings is that all the three were travelling on motorcycle bearing registration No.HR-26AS-5421 and when they reached near the tubewell of Raje, a max bearing registration No.HR-47A-4227, came from the opposite side, which was driven in rash and negligent manner and struck into their motorcycle, as a result whereof, they fell down and sustained injuries. All the three aforesaid claimants, also in their respective affidavits, stated about the detail of the injuries sustained by them.

Besides the claimants, EHC Daya Nand had been examined as PW-4, who had proved the copy of the FIR, which is Ex.P1. He had also deposed that challan in this case was filed and accused Om Parkash was convicted on 15.09.2007, on confession.

PW-5 is Dr.Ashok Saini, Medical Officer, General Hospital, Rewari, who deposed about having assessed the extent of disability of the appellants

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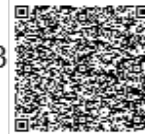
and proved the disability certificates of all the three claimants, which are Ex.P2, P3 and P4. PW-6 Dr.Neeraj Aggarwal, brought the treatment record of Balwant Singh and proved various medical bills. Thereupon, counsel representing the claimants, tendered into evidence various documents and closed the evidence. Ex.P59 is the certified copy of the challan.

To rebut the claim of the claimants, counsel for respondent No.1, tendered into evidence, copy of Registration Certificate of the vehicle, which is Ex.R3 and counsel for respondent No.3-insurance company tendered into evidence copy of the insurance cover note Ex.R1 and copy of driving licence Ex.R2 and closed the evidence.

Keeping in view the version coming forth in the FIR Ex.P1 and also considering the testimonies of all the three claimants, learned Tribunal had concluded about the factum of accident, having not established, as asserted by the claimants and non-involvement of max bearing registration No.HR-47A-4227.

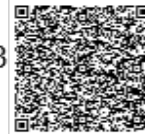
It is pertinent to mention that Ex.P1 is the FIR, got recorded at the instance of Balwant Singh PW-3. The said witness, in his affidavit, had stated about the accident to have taken place, on account of rash and negligent driving of max bearing registration No.HR-47A-4227, which was driven by respondent No.1-Om Parkash. To the similar effect, is the testimonies of PW-1 Mahesh and PW-2 Arun Kumar, who brothers of Balwant Singh, who is author of the FIR.

However, in the backdrop of the testimonies of the aforesaid witnesses, it is pertinent to mention that in the FIR, which is the first version qua the accident, Balwant Singh claimant had stated that offending vehicle

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was max bearing registration No.HR-47A-4226 and it was driven by Dillu s/o Jai Singh, in a rash and negligent manner. This first version has not been explained away, in any manner by any of the claimants. Though, during the course of arguments, learned counsel for the appellants had assiduously submitted that challan has also been presented and therein, the number of the vehicle and name of the driver has been correctly mentioned, as projected in the claim petition, but however, it is not so. Close perusal of the copy of the challan Ex.P59 reveals that the said case was got registered at the instance of Balwant Singh. In the said statement got recorded on 12.02.2007, Balwant Singh had categorically stated about the vehicle causing the accident to be bearing No.HR-47A-4727 and it was driven by Dillu s/o Jai Singh. However, in the later portion of the challan, it is again mentioned that the name of the driver was Om Parkash s/o Bharat Singh and the max bearing No.HR-47A-4727 was taken into custody. Considering recitals of this challan, even then, the vehicle involved does not bear No.HR-47A-4227, as asserted in the claim petitions.

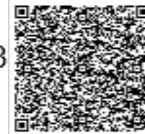
Very true, as pointed out during the course of arguments, FIR is not sine qua non for adjudicating the question of compensation and that it is only aimed at intimating of the occurrence to the police. It cannot and does not purport to be a complete encyclopedia of all the attending circumstances. However, at the same time, once the FIR has been got registered, the recitals of the same, ought to be taken into consideration and simultaneously, one should not overlook the fact that on account of accident, the author of the FIR also is expected to be in traumatic state of mind, soon thereafter and therefore, it is nothing unnatural of his mentioning the vehicle number, while

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giving amiss to important fact, relating to the detail of the number or of the person, driving the vehicle. However, if it be so, it is incumbent upon the litigant, so asserting, to satisfactorily explain the same. As observed aforesaid, all the three claimants, had stepped into witness box as PW-1, PW-2 and PW-3, but they have not explained the recitals of the FIR. PW-3 Balwant Singh, who is author of the FIR, though categorically stated that the accident was caused due to rash and negligent driving of max bearing No.HR-47A-4227, driven by Om Parkash, but however, in the FIR, he stated about the accident to have been caused by max bearing No.HR-47A-4226, driven in rash and negligent manner by Dillu s/o Jai Kishan. In what manner, the number of the vehicle and the name of driver was replaced, has not been explained away by PW-3 Balwant Singh, in his affidavit. Likewise, even his other two brothers, PW-1 Mahesh and PW-2 Arun Kumar, have also stated about the accident to have been caused, while max bearing No.HR-47A-4227, driven by Om Parkash. They have also kept mum about the number of the vehicle, having changed and name of the driver having replaced.

Furthermore, it should also be noted that Mahesh and Arun Kumar have stated that the number of the vehicle was told to them by Balwant Singh, whereas, PW-3 Balwant Singh had stated that Mahesh, his brother, had noted the number of the offending vehicle and he told the same to the police. Therefore, there is confusion between the claimants, as to who noted down the number of the vehicle.

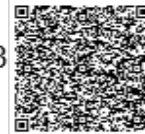
Even if it be so, things could have been straightened, had the claimants examined Investigating Officer. However, he has not been

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examined. EHC Daya Nand of Police Station Bawal, had stepped into witness box as PW-4. On the basis of the record, he had proved FIR Ex.P1 and he categorically stated that Om Parkash s/o Bhagat Singh was convicted in the present case on 15.09.2007. His statement was recorded on 12.08.2008. While recording his statement also, the claimants did not bother to explain the manner in which, Om Parkash was replaced as driver and the manner of change of number of the vehicle. The copy of the challan has simply been tendered into evidence. Even, the recitals of challan do not come to rescue of the claimants. This, copy of challan, as observed aforesaid, do not explain away about the change in the number of the vehicle and of the driver of the same. Rather, it states of number of the vehicle to be HR-47A-4727 and its driver being Dillu s/o Jai Singh and in the later portion, the name of Om Parkash has been entered. In what manner, there was change, regarding the same, the challan is absolutely silent. This position, ought to have been explained away by the Investigating Officer, but he has not been examined.

Not only this, it is pertinent to mention that list of witnesses, which is part of the challan, coming on record, states about the vehicle number involved in the accident to be HR-47A-4727, which is nowhere the case of the appellants. Such being the position and more particularly, considering the testimonies of all the three claimants, the involvement of max bearing No.HR-47A-4226, driven by Om Parkash, at the relevant time, does not stand established.

Such being the position, learned counsel for the appellants has also laid much emphasis upon the judgment delivered by the criminal Court.

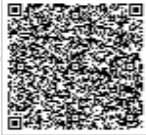
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Though, this judgment, as such, has not been tendered into evidence, but however, during the course of arguments, it has been produced before this Court.

Before dealing with the judgment of the criminal Court, it should be taken care of that the parameters of appraisal and the extent of evidence, to be brought on record, to establish a case, is entirely different in criminal proceedings, as compared to the tortious claims/proceedings in the motor accident claims. It has been consistently held by the Courts that the Tribunal is to adjudge the case, only on the basis of the evidence, produced before it and not to rely solely, on account of material put forth before the criminal Court, on the basis whereof, the judgment is passed by the criminal Court. Of course, fundamental facts, ought to be established. Basically, the test is whether a prudent man, under the peculiar circumstances of the case, assume the existence of certain facts, as true or disbelieve it.

Yet such being the position, if the judgment, so placed on record, is also taken into consideration, it is pertinent to mention that opening sentence of the judgment, states about the number of the vehicle, involved in the accident to be HR-47A-4226. Furthermore, it states only about the confession having made by Om Parkash and imposition of fine upon him, on the basis of the confession made. It does not state about the manner of initiation of the criminal proceedings as well as change of number of the vehicle and replacement of name of the driver and that in what manner, Om Parkash came into picture, once it was so stated that the offending vehicle was driven by Dillu s/o Jai Singh.

This judgment does not come to the rescue of the appellants-



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claimants, to connect Om Parkash with the accident in question and also about the involvement of max bearing No.HR-47A-4226, in the accident in question.

In the light of the same, learned Tribunal had correctly concluded about the accident to be not an outcome of rash and negligent driving of max bearing No.HR-47A-4226, driven by Om Parkash-respondent No.1. Precisely, on this account, findings on issue No.1, with regard to manner of taking place of the accident and involvement of the vehicle, as asserted and driven by Om Parkash-respondent No.1 are hereby affirmed. Consequently, the appellants-claimants have rightly been denied the compensation, as assessed by learned Tribunal.

Hence, all the aforesaid appeals are bereft of merits and are hereby dismissed.

December 11, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No