



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(i) **FAO-4792-2010 (O&M)**

Satwinder Kaur
...Appellant

VERSUS

Gurpreet Singh alias Gopi and another
...Respondents

(ii) **FAO-4793-2010 (O&M)**

Amanpreet Kaur
...Appellant

VERSUS

Gurpreet Singh alias and another
...Respondents

Date of Decision: September 24, 2024

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Nishant Arora, Advocate for
 Mr.Gourav Mohunta, Advocate
 for the appellants.

 Mr.B.S.Jaswal, Advocate
 for the respondents.

ARCHANA PURI, J.

These are two appeals filed by appellants-claimants to assail the judgment of dismissal of two claim petitions, filed by Satwinder Kaur and Amanpreet Kaur, to seek compensation, on account of death of their

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respective sons, in a motor vehicular accident.

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

That, on 18.07.2007, Jasnoor Singh, son of Satwinder Kaur along with Parminder Singh @ Bhupinder Singh, son of Amanpreet Kaur, was going on motorcycle and when they reached near link road of village Musse, one tractor trolley bearing registration No.PB-63A-2658, came from the side of village Musse, without blowing horn, at fast speed, which was being driven by respondent No.1-Gurpreet Singh @ Gopi, in a rash and negligent manner and struck into the motorcycle of Jasnoor Singh. As a result of this accident, both the boys, namely, Jasnoor Singh and Parminder Singh @ Bhupinder Singh sustained multiple serious injuries and died instantaneously. The driver of the tractor trolley ran away from the spot.

The matter was enquired into and thereupon, FIR was lodged, after a period of 51 days of taking place of the accident.

The respective mothers of both the deceased had filed the claim petitions to seek compensation, on account of death of their sons, in the accident in question.

In pursuance of the notice issued, respondents made appearance. Respondent No.1-Gurpreet Singh @ Gopi made appearance through guardian i.e. his father Harjinder Singh and filed the reply, wherein, preliminary objections were taken, thereby, asserting about the claim petition to be false and frivolous. The date of birth of Gurpreet Singh @ Gopi was stated to be 11.11.1995 and therefore, the claim petition is liable to be dismissed on this ground. The petition is bad for mis-joinder and non-joinder of the parties. False FIR was got registered on 07.09.2007 i.e. after

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51 days of the alleged occurrence. No post-mortem examination on the dead bodies was conducted. Even, in the FIR, there was no mention as to who was driving the tractor, at the time of alleged accident nor registration number of the alleged tractor, was mentioned in the FIR.

On merits, the factum of accident, as such, had been denied. Also, it was asserted about respondent No.1 to be 11 years old, at the time of accident. Even, both the deceased were in the group of 13-15 years, so they were not competent to drive the motorcycle. On the similar lines, respondent No.2 had also filed separate reply.

After framing of issues, the evidence was adduced by the rival parties. On appraisal of the same, vide impugned judgment, learned Tribunal had held that the claimants failed to prove on record that any such accident had taken place with the tractor trolley bearing registration No.PB-63A-2658 and that tractor trolley was being driven by respondent No.1-Gurpreet Singh @ Gopi, on 18.07.2007. Consequently, issue No.1 was decided against the claimants and in favour of the respondents and thereupon, both the claim petitions were dismissed vide impugned judgment.

Feeling aggrieved by the judgment of dismissal, the appellants-claimants have filed the respective appeals. FAO-4792-2010 filed by appellant-claimant Satwinder Kaur, relates to the death of Jasnoor Singh whereas, FAO-4793-2010 filed by Amanpreet Kaur, relates to the death of Parminder Singh @ Bhupinder Singh.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellants has submitted that learned Tribunal has not appraised the eye witness account in

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proper perspective. In fact, it overlooked the version of the FIR, having been registered, after conducting of the enquiry and the fact of challan having presented in the Court.

However, to counter the claim of the appellants-claimants, learned counsel for the respondents submits that in fact, false version was set up by the claimants. The sole eye witness examined by the claimants is AW-4 Swaranjit Singh. However, his testimony is not above board and precisely, on this account, learned Tribunal had correctly appraised the same and concluded about the accident to have not taken place, as pleaded by the claimants and no incriminating role was assigned to respondent No.1-Gurpreet Singh @ Gopi. In fact, it is submitted that though much emphasis has been laid upon the FIR as well as the challan having been presented, but however, it is submitted that FIR was got lodged after 51 days. Though, enquiry was conducted by the police officials, but however, in first enquiry, the version put forth by the claimants was held to be false one and subsequent enquiry was thereupon conducted, by not following due process and false FIR was got registered.

Moreover, it is submitted that what was the fate of the criminal case, ought not to be taken into consideration. Rather, learned Tribunal had correctly appraised the testimony of AW-4 Swaranjit Singh, who is an alleged eye witness in the case and therefore, correctly had reached the conclusion about the version of accident to be not probable, as asserted by the claimants. Even, the judgment of acquittal has been passed by the criminal Court, qua the trial faced by respondent No.1-Gurpreet Singh @ Gopi. During the course of arguments, learned counsel for the respondents

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has also placed on record the copy of the judgment dated 28.10.2013 passed by Principal Magistrate, Juvenile Justice Board, Tarn Taran, thereby, recording acquittal of Gurpreet Singh @ Gopi.

In view of the rival submissions made by learned counsel for the parties, at the very outset, it is pertinent to mention that it has been consistently held by the Courts that the Tribunal is to adjudge the case, only on the basis of evidence, produced before it and not to rely, solely on account of material put forth, before the criminal Court, on the basis, whereof, judgment of acquittal is passed. Of course, fundamental facts, ought to be established. Basically, the test is whether a prudent man, under the peculiar circumstances of a case, assume the existence of certain facts, as true or disbelieve it.

Thus, there is requirement of independent appraisal of evidence, as coming forth, before the Tribunal. The mere acquittal of the driver of the offending vehicle in a criminal case, cannot weigh against the evidence and the manner of appreciation, made by the Tribunal, keeping in view that the standard of proof required, being different in the two proceedings.

In this backdrop, proceeding further, at the very outset, it be noted that from the material coming forth, it stands established that both the deceased i.e. Jasnoor Singh and Parminder Singh @ Bhupinder Singh were falling in the age bracket of 13-15 years. Also, it stands established that the date of birth of respondent No.1-Gurpreet Singh @ Gopi is 11.11.1995 and he was also minor, at the relevant time. Moreover, he faced trial before Juvenile Justice Board. Further, it stands established that the date of accident pleaded is 18.07.2007. FIR No.140/07, relating to the accident in

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question, was got registered on 07.09.2007, after a period of 51 days.

During the course of arguments, much emphasis has been laid upon there to be delay in registration of the FIR, but however, may it be so. It should be noted that by the very nature of things, an FIR 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, the Court ought to take into consideration, the circumstances, under which the FIR was got registered, after such a delay.

The version put forth by the claimants in both the claim petitions is that the accident was witnessed by AW-4 Swaranjit Singh. However, he did not get lodged the FIR instantly. It was only after conducting of two enquiries that FIR was got registered. Even, in the first enquiry, copy whereof was tendered into evidence by the respondents, which is Ex.R4, it was concluded that the version of accident, as projected by the claimants, is not plausible and then, subsequent enquiry was conducted, on the basis whereof, FIR was got lodged.

However, it should be noted that both the enquiry reports have not been proved in due process and the same have been simply tendered into evidence by the claimants as well as the respondents. No effort has been made to call the investigating officer to prove the same, so that there was an opportunity given to the rival parties to conduct cross-examination qua the said enquiries. But anyhow, it should be noted that the sole eye witness examined is AW-4 Swaranjit Singh. In his affidavit, he deposed about having witnessed the accident in question and also deposed about respondent No.1-Gurpreet Singh @ Gopi, to have caused the accident and that he ran

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away from the spot. However, the version so put forth by the said witness has been correctly appraised by learned Tribunal.

Even though, if we begin with the presumption that Swaranjit Singh had witnessed the taking place of the accident, then also, his testimony is not above board. He submitted that he had witnessed the accident, while he was working in his fields, but however, he did not disclose about the same to anyone. Even, there is contradiction coming forth, which has been rightly observed by learned Tribunal that he was working in the fields, at the relevant time and when he came at the place of the accident, he saw two boys to have died. If this be so, it cannot be believed that Swaranjit Singh had witnessed the accident. Being so, his conduct thereafter, is also far away from the expected normal human behaviour.

Had he seen the two boys to have died, this witness would not have gone home and maintain silence qua the manner of taking place of the accident, as now deposed by him. This is all the more important, when PW-1 Manjit Singh, who is uncle of both the deceased, was co-villager of AW-4 Swaranjit Singh. In cross-examination, this witness had also stated that he had neither seen the registration number of the motorcycle nor registration number of the tractor trolley at the spot. Thereafter, also he had an opportunity to interact with the Manjit Singh, while paying his condolence, regarding death of both the boys, but he did not disclose about the accident to him nor he disclosed about the accident to any other person.

Very true, as now pointed out that Swaranjit Singh, was also examined during the course of enquiry conducted by the police officials, but however, it is pertinent to mention that in what manner, he was associated in

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the enquiry, has not been disclosed anywhere. The enquiry reports Ex.A2 and Ex.R4, reveals that the accident was allegedly witnessed by Amarjit Singh s/o Dalip Singh and Sukhbir Singh s/o Santokh Singh, besides Swaranjit Singh. But however, both the aforesaid witnesses have also not been examined. What made Swaranjit Singh to disclose about the manner of accident, only during the course of enquiry, has also not been disclosed by this witness. Not only this, even in the first enquiry report, though, author of the same has not been examined, but even, the version, was disbelieved at first instance and it was subsequently, the enquiry was conducted and the FIR was got registered.

Thus, learned Tribunal, in the given circumstances, considering the conduct of Swaranjit Singh to be not above board and more particularly, when he deviated from the normal expected human behaviour, discarded his testimony and so done, the factum of accident, involvement of tractor trolley and blameworthiness upon Gurpreet Singh @ Gopi, as such, does not stand established.

Besides the aforesaid, another important aspect is that no post-mortem examination, on the dead body of deceased Jasnoor Singh and Parminder Singh @ Bhupinder Singh was conducted, to establish about the death to have taken place, on account of motor vehicular accident. Even, the mechanical test report proved by RW-2 HC Attar Singh, which is Ex.R1, reveals there to be no dent on both tractor or trolley. Even, its headlights were intact and there was no sign of any accident, allegedly having taken place with the said tractor trolley.

It is pertinent to mention that the claim petition under Section



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163-A of the Motor Vehicles Act, does not obligate to plead or prove the accident being result of rashness and negligence. However, the factum of accident ought to be established. Such being the material coming forth, as observed aforesaid, the factum of accident, as such, does not stand established.

Considering the same, the impugned judgment of dismissal of the claim petition, warrants no interference, from this Court. Hence, both the appeals sans merit and the same are hereby dismissed.

September 24, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No