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

FAO-2928-2012 (O&M)

Date of Decision : 25.11.2024

Narinder Pal Singh & Anr

... Appellant(s)

Versus

Bhajan Singh & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashok Bector, Advocate for the appellants.

Mr. V.K. Garg, Advocate for the respondent No.3.

ALKA SARIN, J. (Oral)

1. The present appeal has been preferred by the claimants challenging the order dated 20.03.2012 passed by the Motor Accident Claims Tribunal, Rupnagar (hereinafter referred to as 'Tribunal') whereby the claim petition has been dismissed.

2. Learned counsel for the claimant-appellants would contend that the deceased was a pillion rider and that Bhajan Singh was riding the motorcycle. It is further the contention that the claim petition has been dismissed only on the ground that the eye-witness had not been examined and that there was a delay in lodging the DDR, copy of which had been placed on record as Ex.P1. It is further the contention of the learned counsel that the claimant-appellants examined PW1 - HC Kuldeep Singh who proved on record the DDR (Ex.P1), statement of the claimant-appellant –

Narinder Pal (Ex.P2) and post-mortem report of deceased - Krishan Lal - Ex.P3 and this witness was duly cross-examined on behalf of the respondents. However, there was not even a suggestion put to him that the deceased did not die as alleged in the DDR (Ex.P1). He has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** to contend that in motor accidents claim cases, it is not necessary to produce an eyewitness and that the said cases are to be decided on the touchstone of preponderance of probabilities.

3. *Per contra*, learned counsel for the respondent No.3-Insurance Company would contend that no eyewitness was produced and, hence, the claim petition has rightly been dismissed. It is further the contention that the deceased was riding the motorcycle and not Bhajan Singh.

4. Heard.

5. In the present case the claimant-appellants filed the claim petition under Section 163-A of the Motor Vehicles Act, 1988 and the accident is stated to have taken place when a stray animal came in front of the motorcycle. A perusal of the DDR (Ex.P1) proved on record by PW1 - HC Kuldeep Singh - reveals that the factum of the accident and the deceased having died in the accident stand duly recorded in the same. The contents of the DDR (Ex.P1) further stands fortified with the post-mortem report of the deceased proved on record by the said HC Kuldeep Singh as Ex.P3 wherein DDR No.6 under Section 174 CrPC stands recorded and the dead body of the deceased was stated to have been brought to the mortuary by the PW1 –

HC Kuldeep Singh - himself from the place of the accident and further cause of the death is stated to be a head injury. Further, in his statement, PW1 HC Kuldeep Singh also proved on record the police report as Ex.P4, copy of the statement of Bhupinder Kumar as Ex.P5 and copy of the statement of Krishan Gopal as Ex.P6, besides copy of the driving license of Bhajan Singh as Ex.P7. This witness was cross-examined at length by the respondents but there is nothing in his statement to conclude that no accident as stated in the DDR had taken place. There was not even a suggestion put to PW1 that the deceased did not die with the use of the motor vehicle i.e. motorcycle bearing registration No.PB-12-M-4668.

6. The Tribunal has dismissed the claim petition on the ground that no eyewitness had been examined and that there was a delay in lodging the DDR. Hon'ble the Supreme Court in the case of **Sunita** (supra) has held as under :

“It is thus well settled that in motor accident claim cases, once the foundational fact, namely, the actual occurrence of the accident, has been established, then the Tribunal’s role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver of a motor vehicle and, while doing so, the Tribunal would not be strictly bound by the pleadings of the parties. Notably, while deciding cases arising out of motor vehicle accidents, the standard of proof to be borne in mind must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.”

7. Further, Hon'ble the Supreme Court in the case of **Anita Sharma & Ors. Vs. The New India Assurance Co. Ltd. & Anr. [2021 (1) RCR (Civil) 200]** has held as under :

"22. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eyewitnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true. A somewhat similar situation arose in Dulcina Fernandes v. Joaquim Xavier Cruz (2013) 10 SCC 646. wherein this Court reiterated that:

"7. It would hardly need a mention that the plea of negligence on the part of the first respondent who was driving the pickup van as set up by the claimants was required to be decided by the learned Tribunal on the touchstone of preponderance of probabilities and certainly not on the basis of proof beyond reasonable doubt. (Bimla Devi v. Himachal RTC [(2009) 13 SCC 530 : (2009) 5 SCC (Civ) 189 : (2010) 1 SCC (Cri) 1101])"

(emphasis supplied)

23. The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of the contesting respondents in the Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof."

8. Still further, in the present case though the respondents in their written statements have denied the factum of the accident as mentioned in the DDR (Ex.P1), however, respondent No.1 - Bhajan Singh - who was the rider of the motorcycle, did not appear as a witness in support of his case. The least he could have done was to have appeared as his own witness and supported his case subject to cross-examination. The non-appearance of Bhajan Singh cannot be held against the claimants.

9. In view of the above, the findings of the Tribunal on issue Nos.1 and 2 are set aside and the matter is remanded to the successor

Presiding Officer of the Tribunal concerned for determining the compensation and a decision on the claim petition afresh on merits in accordance with law. The parties shall appear before the Tribunal concerned on **16.12.2024** at 10:00 am.

10. Disposed off accordingly. Pending applications, if any, also stand disposed off.

25.11.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO