



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5291-2014 (O&M)
Date of Decision: August 14, 2024

Rajo and others
...Appellants

VERSUS

Balveer Gurjar and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.S.S.Gill and Ms.Neha Bindal, Advocates
for the appellants.

Mr.H.S.Sandhu, Advocate
for respondents No.1 to 3.

Mr.Lalit Garg, Advocate
for respondent No.4.

ARCHANA PURI, J.

The present appeal has been filed by the appellants-claimants,
thereby, assailing the judgment of dismissal of the claim petition by learned
Motor Accident Claims Tribunal.

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

That, on 07.09.2008, Mam Raj alias Mom Raj was travelling with
other persons in TATA Sumo No.RJ-10T-0234, which was being driven by
Mangel Lal Suthar of village Napasar, District Bikaner. Said TATA Sumo
was proceeding from Ram Devara to Bikaner. At about 6.00 p.m., when they
reached near Badvo Ki Pyau, Hanumanpur, a truck bearing registration



No.HR-62-2047, being driven by respondent No.1-Balveer Gurjar, rashly and negligently, in zig-zag manner, came from opposite side and struck the above-said Sumo and the occupants of the same were injured. Mam Raj, was one of the occupants of the TATA Sumo and he was medically examined. FIR No.226 dated 07.09.2008 under Sections 279, 337, 304-A IPC, Police Station Phalodi, was registered against respondent No.1-Balveer Gurjar. The driver of the truck had fled from the spot, after causing the accident. After two days of the accident in question, Mam Raj had succumbed to his injuries. Later on, driver of the truck in question i.e. respondent No.1-Balveer Gurjar, was traced and now facing trial in the criminal case.

Respondents No.1 and 2-A, in their joint statement, had denied the accident in toto and it was asserted that a false case has been registered against respondent No.1-Balveer Gurjar. Respondent No.3 also filed a separate reply and therein, denied the accident. Also asserted that respondent No.1 was not driver of the truck in question, at the time of alleged accident. He was not holding valid and effective driving licence, at the time of accident and thus, the owner of the vehicle had violated the terms and conditions of the insurance policy.

Respondent No.2, who was initially impleaded, in the claim petition, was subsequently given up by the counsel for the claimants.

After framing of the issues, to substantiate their claim, the claimant-appellant No.1 Rajo had herself stepped into witness box as PW-2 and claimants also examined Dr.Ravinder Parmar as PW-1. Besides the same, copy of FIR Ex.P1, copy of report under Section 173 Cr.P.C. and copy



of post-mortem report of Mam Raj Ex.P3, were tendered into evidence.

On the other hand, respondent No.1-Balveer Gurjar, who was driver of the truck in question, had stepped into witness box as RW-1. Further, he also tendered into evidence, various documents and closed the evidence.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about the claimants, having failed to prove their version of rashness and negligence and ultimately, issue No.1 was decided against the claimants and as a result thereof, even the claim petition was dismissed, vide impugned judgment.

Feeling aggrieved, the appellants-claimants have filed the present appeal.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellants has assiduously submitted that even though, no eye witness, as such, has been examined by the appellants-claimants, but however, taking place of the accident in question, stands amply established from the contents of the FIR, which has been proved on record as Ex.P1, which was registered, at the instance of one Shankar Lal Soni s/o Laduram, r/o Dungargarh. Also, it is submitted that it was only, in pursuance of the due investigation, having conducted qua the accident, that challan was presented against driver Balveer Gurjar, copy whereof is Ex.P3. It is argued by learned counsel for the appellants that the documents, which, as such, have come on record, with regard to the initiation of criminal proceedings, against Balveer Gurjar, are more than sufficient to establish the plea of the appellants, that the accident



is the result of the rash and negligent driving of truck bearing registration No.HR-62-2047 by respondent No.1-Balveer Gurjar. Therefore, it is prayed that the findings of learned Tribunal, on issue No.1, as such, cannot be allowed to sustain.

On the other hand, learned counsel for the insurance company has resisted the claim of the appellants. It is in fact, submitted that since the claim petition was filed under Section 166 of the Motor Vehicles Act, it was required on the part of the appellants, to establish rashness and negligence, on the part of the driver of the alleged offending vehicle, but however, no sufficient evidence, to so substantiate, has been led. In fact, it is submitted that the report under Section 173 Cr.P.C., is not sufficient to record the finding that rashness or/and negligence in causing the accident, can be attributed to the driver of the alleged offending vehicle.

In fact, it is submitted that respondent No.1-Balveer Gurjar, in his reply, had categorically denied about taking place of the accident and his involvement in the same. Even, while in the witness box, he has deposed to this effect. In the light of the same, it is submitted that the documents, so relied upon, singularly, are not sufficient to conclude about the rashness and negligence, on the part of Balveer Gurjar.

In pursuance of the accident having take place, the persons affected, have the remedy to file claim petition to seek compensation under Section 163-A or under Section 166 of the ibid Act. In the eventuality of the persons knocking the door of the Court, by way of filing of the petition under Section 166 of the Act, then, it is incumbent upon the claimants to establish, rashness and negligence, on the part of driver of the offending



vehicle. The proof of imputation of rashness and negligence, on the part of driver of offending vehicle, is a sine quo non, for sustaining the plea for grant of compensation, while assessing the loss of dependency etc.

Undisputedly, in the case in hand, only two witnesses have been examined by the appellants-claimants. Appellant-claimant No.1 herself stepped into witness box as PW-2. However, she is admittedly not an eye witness to the accident in question. The other witness examined is Dr.Ravinder Parmar, who deposed about the admission of Mam Raj in hospital, soon after the alleged accident. Besides the same, FIR and copy of report under Section 173 Cr.P.C. have been brought on record.

Much emphasis has been laid upon the presentation of the report under Section 173 Cr.P.C. However, though this report, as such, may be taken into consideration, but however, some witness, ought to have been examined to prove the rashness and negligence, on the part of the driver of the said truck.

Much reliance has been placed upon ***Girdhari Lal vs. Radhey Shyam and others, 1993(2) PLR 109***, wherein, it was held that initiation of criminal proceedings, establish about taking place of the accident. But, the facts are distinguishable as therein, one of the eye witness to the accident was, in fact, examined. However, such is not the position in the present case. In fact, there is no eye witness examined.

Perusal of the FIR reveals that it was got registered at the instance of one Shanker Lal s/o Ladu Ram and it was got registered against the unknown driver. Since, the complete particulars of the author of the FIR are spelt out from the FIR only, it was required, on the part of appellants-



claimants to have summoned the said witness. Not only this, even, it is pertinent to make reference to the report under Section 173 Cr.P.C., which is Ex.P3. Close perusal of the same reveals that though the FIR was got registered against the unknown driver, but however, during the course of investigation, statements of Shanker Lal, Laxmi, Mangi Lal, Sunder, Sharda were recorded and also, it was stated that Balveer, during the course of interrogation, had admitted about taking place of the accident. In these circumstances, at least, appellants-claimants, ought to have examined the Investigating Officer, who recorded the statements of said witnesses and nominated respondent No.1, as accused in a criminal case, but however, no such steps have been taken. The aforesaid documents have been simply tendered into evidence.

Such being the factual position, it is pertinent to mention that rule of evidence to prove the charges in a criminal trial, cannot be used, while deciding the petition under Section 166 of the Motor Vehicles Act, which is summary in nature. It is required on the part of the appellants-claimants, in the petition under Section 166, to lead evidence of it own, with regard to the factum of accident and to establish the rashness and negligence, on the part of the offending vehicle. In the present case, no such, evidence has been led.

In the light of the same, no sustenance, as such, can be drawn from the contents of the FIR and report under Section 173 Cr.P.C. This alone is not sufficient to record a finding of rashness or/and negligence in causing the accident, on the part of respondent No.1-Balveer Gurjar.

In view of the aforesaid observations, learned Tribunal had



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correctly appraised the evidence, brought on record. Thus, the appeal sans merit and the same is hereby dismissed.

August 14, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No