IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on: 27.08.2024
Pronounced on: 03.09.2024

I. FAO-646-2017 (O&M)

ICICI LOMBARD GENERAL INSURANCE COMPANY

. . . . APPELLANT

Vs.

SMT. MONI AND OTHERS

. . . . RESPONDENT

II. FAO-7529-2017 (O&M)

SMT. MONI DEVI AND OTHERS

. . . . APPELLANTS

Vs.

HEMANT BHARDWAJ AND ANOTHER

. . . . RESPONDENTS

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present:- Mr. Rajbir Singh, Advocate,
for the applicant-appellant/Insurance Company,
in FAO-646-2017 and for respondent No.2 in FAO-7529-2017.

Mr. Sanjay Kaushal, Sr. Advocate, with
Mr. Sylvester Stephen and Mr. Ojaswini Gagneja, Advocates,
for respondents No.1 to 4/Claimants in FAO-646-2017 and
for the appellants in FAO-7529-2017.

Mr. Raman Chawla, Advocate,
for respondent No.5-Driver and owner of the offending vehicle in
FAO-646-2017 and for respondent No.1 in FAO-7529-2017.

DEEPAK GUPTA, J.

This order shall disposed of two appeals tilled above, as both of them have arisen against same award dated 18.10.2016 passed by Ld. Motor Accident Claims Tribunal, Jhajjar (in short *'the Tribunal'*).

2.1 In MACP No.103 of 2016 titled '*Smt. Moni and others Vs. Hemant Bhardwaj and others'* filed under Section 166 of the Motor Vehicles Act,

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compensation of ₹79,15,184/- has been awarded by the Tribunal on account of death of one Vijaypal, an ITBP Constable, against the driver-cum-owner & insurer of Swift car bearing Registration No.DL-13CA-8486.

2.2 Insurer of the car has filed FAO-646-2017 alleging that involvement of the car No.DL-13-CA-8486 in causing the accident is not proved and in fact, it was a hit & run case and that the claimants have filed the claim petition in collusion with the driver-cum-owner of the vehicle, so as to extort the money from the insurance company. On the other hands, the claimants have filed separate FAO-7529-2017 seeking enhancement in compensation amount.

3. Trial Court record was called and with the assistance provided by counsels for both the filed, the same has been perused.

4.1 As per the case pleaded by the claimants, on 06.02.2016, Vijaypal *(since deceased)* was going to his duty on his Motor Cycle No.HR-14F-8469, followed by his brother Satpal on a separate motorcycle. At about 5.15 AM, as Vijaypal reached in the area of village Badli while driving his motorcycle at moderate speed & correct side of the road and was crossing the chowk of Gurgaon road, the offending car bearing registration No.DL-13CA-8486 came at very high speed, being driven rashly and negligently by respondent No.1 and hit the motorcycle of Vijaypal directly. Vijaypal sustained multiple grievous injuries. Respondent No.1 i.e. driver-cum-owner of the offending vehicle fled away from the spot along with his vehicle. Satpal, the brother of Vijaypal along with Sandeep son of Rajpal resident of village Badli and other passerby brought Vijaypal to General Hospital, Jhajjar, whereas, he was declared dead. It was further claimed in the petition that Sandeep, the eyewitness had noted down the registration number of the offending car and also saw respondent No.1. It was alleged that accident had taken place due to sole rash and negligent driving of respondent No.1. The income and age of the deceased was also disclosed in the petition and compensation of ₹60 lakh was claimed. Insurer of the vehicle was impleaded as respondent N: 2.

4.2 The respondent No.1 i.e. driver-cum-owner of the offending car in his written statement alleged that a false FIR had been lodged against him in collusion with the police and in fact, there was no fault on his part in causing the

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accident, as it was caused due to own negligence of the deceased. It was further pleaded that he was having a valid and effective driving license to drive the car. The car was duly insured with respondent No.2 and so, in case the Tribunal comes to the conclusion that petitioners are entitled for any compensation, then it is the insurance company/respondent No.2, who is liable to pay the same.

4.3 The Respondent N: 2 - insurance company in its written statement raised some preliminary objections. On merits, it pointed out that FIR was lodged on the date of accident itself against unknown driver of an unknown vehicle and so, there was great probability of implantation of the vehicle in collusion with the respondent No.1 and the police. It was further alleged that there was no eye-witness to the alleged accident and that offending vehicle had been later on planted. Further alleging the claimed amount to be highly exorbitant and without any basis, prayer was made for dismissal of the petition.

4.4 Necessary issues were framed including the issue No.1 on the point of negligence.

4.5 The Tribunal by taking into account the evidence produced by the parties, decided the issue of negligence in favour of the claimants by holding that accident took place due to rash and negligent driving of respondent No.1 while driving car No.DL-13CA-8486 and then went on to assess the compensation.

5.1 Assailing the finding of the Tribunal on issue No.1 pertaining to negligence, it is contended by ld. counsel for the appellant of FAO-646-2017 i.e. the insurance company that though the FIR was lodged on the date of accident itself i.e. 06.02.2016, but it was lodged by Satpal, the brother of deceased against unknown driver of an unknown vehicle. It is pointed out that in the FIR, there is no reference of Sandeep son of Rajpal, the alleged eyewitness. Neither the statement of said Sandeep son of Rajpal was recorded by the Police nor did he approach the police to get his statement recorded. It is further pointed out that as per the newspaper cutting mark 'A', the accident was caused by an unknown vehicle at about 5.15 AM and that dead body kept lying on the road for about 1½ hour and it is the passersby, who informed the Police and then the body was taken to the Hospital. In this regard, ld. counsel has also drawn

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attention towards Ex. R2, as proved by an official of the Govt. Hospital, Jhajjar, who proved that dead body was brought to the Hospital at 8.10 AM, which contradicts the statement of PW2 Satpal.

5.2 Ld. counsel then pointed out towards the final report under Section 173 CrPC *Ex.P9,* as per which respondent No.1 Hemant was arrested on 16.04.2016 i.e. more than two months after the date of accident and on the same date i.e. 16.04.2016, the alleged offending car was taken into possession vide recovery memo *Ex.P11 /Ex.R6*. Ld. counsel contends that had the registration number of the offending car was informed to the police on the date of accident or immediately thereafter, the same must have been taken into possession accordingly but the same was taken into possession after more than 2 months of the accident.

5.3. Apart from above, the appellant – Insurance Company has also moved an application (CM-5700-CII-2024) under Order 41 Rule 27 CPC to place on record the testimony of Satpal, who appeared before SDJM, Bahadurgarh in the criminal case titled as 'State of Haryana Vs. Hemant' arising out of the same FIR pertaining to the accident and in which he did not depose anything against respondent No.1 and based thereon, respondent No.1 was acquitted from the charge. Ld. counsel sought permission to place on record the judgment of the trial Court as Annexure A1 and that of the statement of Satpal as Annexure A2.

5.4 It is argued by ld. counsel that both the statements of Satpal i.e. one made before the Tribunal and the other made before the Criminal Court are on oath and both of them are completely contradictory. It is argued that in fact, respondent No.1/driver-cum-owner was clearly colluding with the claimants and it is because of this reason that he in his written statement impliedly admitted the involvement of the car by denying the rash and negligence driving and later on, the alleged eye-witness i.e. brother of the deceased obliged him by making a somersault and denying the accident to have been caused in his presence and further denying the involvement of respondent No.1 in the accident and thus, helped him in getting acquittal.

5.5 By referring to ***United India Insurance Company Ltd. Vs. Kamla Devi and others, 2010 (53) RCR (Civil) 651***, it is argued by Ld. Counsel that both

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the statements of PW Satbir, one made before the Tribunal and other before the criminal court, being on oath, he is not worthy of credence because of material contradictions.

5.6 Reliance is also placed upon ***The Oriental Insurance Co. Ltd. Vs. Kamla and others, Law Finder doc ID # 778163*** to contend that in similar circumstances, the judgment of acquittal recorded by criminal court, during pendency of appeal against award of Tribunal, was allowed to be taken on record and it was held by this court that court/Tribunal cannot be regarded as powerless to pass appropriate orders in case it is convinced that order was wangled through fraud or misrepresentation of such a dimension, as would affect the very basis of the claim.

5.7 By further making reference to ***National Insurance Company Limited Vs. Smt. Billo Devi and others [FAO No.5613 of 2017 decided on 22.05.2018],*** it is argued that court/tribunal can not shut their eyes to the friendly match between the claimants and alleged driver/owner of the vehicle, under which driver/owner helps the claimants in getting compensation payable by the Insurance Company; and in return, claimants ensures acquittal of the driver by turning hostile of the complainant/eye witness.

5.8 Ld. Counsel further refers to ***United India Insurance Co. Ltd. and others Vs. Gurmeet Singh and others, 2021 (4) RCR (Civil) 625*** to contend that insurance company cannot be made liable to pay compensation in cases, where accident is either staged or insured vehicle is replaced in place of uninsured vehicle actually involved in the accident.

5.9 With these submissions, prayer is made for setting aside the award passed by the Tribunal and to dismiss the claim petition.

6.1 Refuting the aforesaid contentions, it is argued by ld. Senior advocate for the claimants that as far as the issue relating to involvement of the offending car is concerned, the respondent No.1 i.e. driver-cum-owner in his written statement has impliedly admitted the involvement of the car, though he denied the rash and negligent driving on his part. Ld. counsel then contends that PW2 Satpal as well as PW3 Sandeep examined before the Tribunal had specifically deposed that accident was caused due to rash and negligent driving

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of the offending car and that despite their lengthy cross-examination, nothing could be elicited to disbelieve them. Learned counsel further contends that PW2 Satpal in his cross-examination has clearly stated that he had noted the incomplete number of the car, though the complete number was later on disclosed to him by PW3 Sandeep and that he kept on visiting the police station to initiate the investigation on the basis of information provided by him but due to the Jat reservation agitation, the police was busy and took time in taking into possession the offending car and arresting the respondent No.1.

6.2 Ld. Senior advocate submits further that there is no rebuttal on the part of the respondent No.2/insurance company so as to controvert the statement of Sandeep and Satpal. It is further argued that judgment of acquittal recorded by the trial Court or the statement of Satpal made during the Criminal Court, cannot be taken into consideration in the additional evidence, as the standard of proof before the criminal Court is entirely different than the standard of proof as is required before the Claims Tribunal.

6.3 With these submissions, ld. Senior advocate prayed for dismissal of the appeal filed by the Insurance Company.

6.4 Reply to the application for additional evidence was also filed by respondents-claimants and same is opposed by contending that acquittal in criminal proceedings does not exonerate the accused from civil liability. Prayer is accordingly made to reject the application.

7. Statement is also made by ld. Senior advocate for the claimants that he does not press his appeal for seeking enhancement in the compensation amount.

8. No separate submissions have been made by Ld. counsel on behalf of the driver-cum-owner of the vehicle.

9. I have considered submissions of both the sides and have appraised the record carefully.

10. Since statement of Satbir *(Annexure A2*) before criminal court was recorded, and judgment (*Annexure A1)* was passed by the court of Ld. SDJM, Bahadurgarh on 14.09.2023 i.e., after passing of the award by the Tribunal, so these are permitted to be taken on record, as both these documents pertain to

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the same accident, regarding which impugned award has been passed by the Tribunal. CM-5700-CII-2024 is accordingly allowed.

11. The initial version of the manner of accident is reflected in the FIR (*Ex.P8*). Perusal of the same would reveal that it was recorded on the basis of statement of Satpal son of Dharampal i.e. brother of the deceased, as per which on 06.02.2016 at about 05.15 AM, he and his brother Vijaypal started from their house on separate motorcycles. His brother was ahead of him driving motorcycling No.HR-14F-8469 and that he (Satpal) was behind him on separate motor cycle. As they reached at Gurgaon Chowk Badli and his brother was crossing the chowk, a Swift car came from the side of Badli being driven in rash and negligent manner and gave a direct hit to the motorcycle of his brother, due to which his brother Vijaypal sustained multiple injuries. It was further narrated in the FIR that the car driver fled away from the spot and that due to darkness, he (Satpal) could not notice the registration number of the offending car. With the help of passersby, he took his brother to Government Hospital, Jhajjar, where he was declared dead. Satpal prayed for taking necessary action against unknown driver of the unknown vehicle.

12. The FIR also contains endorsement of Head Constable Jagdish, the Investigating Officer of the case, made at 10:30 AM, as per which after receiving information regarding the accident from control room, he reached Gurgaon Chowk, where Satpal met him and got recorded the aforesaid statement and that during that process, Satpal received information on his mobile from Government Hospital, Jhajjar to the effect that Vijaypal had been declared brought dead.

13. It is clear from the aforesaid narration in the FIR that the same was lodged by Satpal i.e. brother of deceased Vijaypal, against unknown driver of an unknown vehicle. The only description of the offending vehicle as given in the FIR is that it was a swift car, which had come from the side of Badli chowk Gurgaon. There is no mention of any person by the name of Sandeep son of Rajpal to have witnessed the accident or to have helped Satpal in taking Vijaypal to the hospital. The endorsement of Head Constable Jagdish, the Investigating Officer of the case made below the statement of Satpal also reveal that it is at

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about 10:30 AM that Satpal received information on his mobile from Government Hospital, Jhajjar to the effect that Vijaypal had been declared brought dead.

14. Next came the version of the manner of accident in the claim petition, in which registration number of the offending Swift car is mentioned to be DL-13CA-8486 and it is alleged that the same was being driven by respondent No.1 of the petition i.e. Hemant Bhardwaj. It is further stated in the claim petition that Vijaypal was taken to the hospital by Satpal along with Sandeep son of Rajpal resident of village Badli and some nearby persons. It was also stated that Sandeep, the eyewitness had noted down the registration number of the offending car.

15. Thereafter, statement of Satpal, the author of FIR was recorded by the Tribunal as PW2 on 24.08.2016. In his affidavit Ex.PW2/A tendered as examination-in-chief, he supported the version as made in the claim petition. However, certain facts disclosed by him during his cross-examination are material, which are as under: -

- It is correct that I know Sandeep and that said Sandeep son of Rajpal never went to the police post for giving his statement.
- I went to the police post several times after 06.02.2016, but did not make any supplementary statement.
- I had reached the General Hospital at about 7:00 AM. Police had reached the spot at 10:00 AM. Police reached the hospital from the spot at about 11:00 AM.
- I was informed on telephone by the Doctor about the death of Vijaypal at about 10:30 AM and at that time, I was getting my statement recorded in the police post.
- I had visited police post several times for expeditious investigation but the police people were busy because of the Jat Andolan.
- I had seen respondent No.1 i.e. the driver by face at the spot itself and that police had got identified said respondent No.1 from me on 16.04.2016 at Police post.
- It is incorrect to suggest that registration number of the car was not noted by Sandeep son of Rajpal or that he was not an eyewitness of the

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accident.

16.1 At this stage itself, it is relevant to take note of the statement *(Annexure A2)* made by Satbir *(author of the FIR – brother of the deceased)* before the criminal court on 14.09.2023. As per this testimony, about 7 years ago in the morning time, he and his elder brother Vijaypal were going on their separate motorcycles from their village. His brother was a head of him. When they reached near Badli Chowk, an unknown car hit the motorcycle of his brother, due to which the motorcycle of his brother fell down. He (PW Satbir) was engaged to take care of his brother and in the meantime, the car driver fled away from the spot. He did not see the driver or the registration number of the car. With the help of passersby, he took his brother to Govt. Hospital, Jhajjar for treatment, where his brother died. Police reached there and recorded his statement. Later on, he came to know that motorcycle of his brother was hit by car No. DL-13CA-8486. This information was provided to him by a passerby, who had seen the car at the spot. He further stated that accused present in the Court *(referring to Hemant facing trial)* was not seen by him nor he was known to him nor he can say that he was the person, who had hit the motorcycle of his brother.

16.2 At the request of the ld. Public prosecutor, PW Satbir was declared hostile and during his cross examination by the prosecution, he stated that he disclosed the number of the car to the police, which he had come to know later. He denied the suggestion that he had told the police that swift car No. DL-13CA-8486 was being driven by accused Hemant. He further denied that he had verified at his own about the involvement of driver Hemant. He admitted that when police reached the hospital and his statement was recorded, he neither disclosed the number of the car nor the name of the driver and volunteered to explain that he was not aware about the same. He also stated that he did not remember the name or address of the passerby, who had told him the car number.

16.3 In this statement, made before the criminal Court, Satbir neither disclosed that at the time of accident, Sandeep was present there, who had

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helped him in taking care of his brother in shifting him to hospital nor PW Satbir told before the criminal Court that the name of the passerby, who had told him the registration number of the offending car was Sandeep. Perusal of the Challan as well as the judgment (*Annexure A1*) would indicate that Sandeep was not even cited as a witness by the prosecution, due to which his statement was not recorded before the Criminal Court.

17. PW3 Sandeep during his testimony made before the Tribunal on 01.09.2016 stated that on 06.02.2016 at about 5-5:15 AM, he was going for a morning walk from Village Badli towards bypass of the village and as he reached near the Badli Bypass, he noticed a person named Vijaypal going on his motorcycle at moderate speed and by following traffic rules, when a Swift car bearing Registration No. DL-13CA-8486 came from the Badli side at very high speed, driven rashly and negligently by respondent No.1 and hit the motorcycle of Vijaypal, causing multiple injuries to him. He testified further that he noted the registration number of the offending Swift car. At the time of accident, Satpal s/o Dharampal was coming on another motorcycle behind the motorcycle of the Vijaypal and that he (Sandeep) along with Satpal and other passerby took care of Vijaypal, but in the meantime, respondent No.1 fled away along with Swift car from the spot. Satpal took Vijaypal to the Government Hospital, Jhajjar, whereas he (Sandeep) left the spot. He further deposed that later on Satpal approached him and that he told him the registration number of the offending car. He also stated that police never approached him to record his statement despite the fact that he is the eyewitness of the accident. During cross-examination, following facts were disclosed by him: -

- I did not know Vijaypal deceased and Satpal.
- Neither Police asked me to make the statement nor I went to the police station.
- I did not tell registration number of the Swift Car to Satpal at that time, as he thought that Satpal might have noticed the number.
- At the spot, I did not have any talk with Satpal, as we became busy in taking care of deceased Vijaypal.
- I stayed at the spot for 40-45 minutes.

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- My residence is at the distance of 1-1½ km from the spot of accident and the Jhajjar Hospital is at a distance of 18-20 kms.
- It is incorrect that I was pillion rider on the motorcycle of Satpal or that I am relation of Satpal.
- It is incorrect that I did not witness the accident and have been planted later on.

18. Although, respondents examined RW1 Dr. Naveen of GH, Jhajjar, to prove PMR Ex.P4; and RW2 Ravinder, Store Keeper of the said hospital, who proved that on 6.2.2016, dead body of Vijaypal was brought to the hospital at 8:10 AM, but on the issue of negligence, there is no evidence on the part of respondents in rebuttal to the evidence of claimants. So much so, respondent No.1 i.e. driver of offending vehicle did not enter the witness box so as to controvert the statement of PW2 Satbir & PW3 Sandeep regarding the manner of accident. In these circumstances, an adverse inference is liable to be drawn against the respondents that had respondent No.1-driver entered the witness box, he could not withstand the test of cross-examination.

19. What should have been the criteria for the Claims Tribunal to evaluate the above evidence produced by the parties on the issue of negligence. Whether, evidence should have been scrutinized to find out that claimants were able to prove the negligence of the offending vehicle beyond reasonable doubt and that same was being driven by respondent N: 1 at the relevant time; or whether, the evidence was required to be scrutinized to decide issue of negligence on the basis of 'preponderance of probability'.

20. Let us take note of the legal position in this regard:

- In ***Minu B. Mehta and another Vs. Balkrishna Ramchandra Nayan 1977 A.C.J. 118,*** it has been held by Hon'ble Supreme Court that it is incumbent upon the claimants to prove negligence before the owner or insurance company could be held liable for compensation because the liability of owner of vehicle to compensate the victim is based on law of Tort. Hon'ble Supreme Court held further that if compensation is awarded

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without proof of negligence, it would lead to strange results. Further, the concept of vicarious liability without any negligence is opposed to the basic principles of law.

- At the same time, it has been held by Hon'ble Supreme Court in ***Kusum Lata Vs. Satbir 2011(2) RCR (Civil) 379 (SC)*** by relying upon ***Bimla Devi and others v. Himachal Road Transport Corporation and others, (2009) 13 SCC 530*** that it is to be kept in mind that it is well settled preposition of law that requirement of proof in a MACT case is not so stringent as in criminal case. In a case relating to motor accident claims, the claimants are not required to prove the case as is required to be proved in criminal trial. Said distinction must be kept in mind. The claimants are merely to establish their case on the touchstone of 'preponderance of probability'; and the standard of proof 'beyond reasonable doubt' cannot be applied.

- In ***Kamlesh and others v. Attar Singh and others 2016(1) RCR (Civil) 24,*** the Hon'ble Apex Court has held that though the police has registered a case against the driver of the vehicle and filed the charge sheet but the same cannot be said to be conclusive.

- In ***Chameli Devi Vs. Mukesh 2016 ACJ 27 (P&H),*** it has been held by this court that the fact of driver facing trial in a criminal case in relation to the accident and the finding arrived therein would not ipso facto establish any negligence on the part of driver.

- In ***Mukesh Devi Vs. Sandeep 2018 (2) RCR (Civil) 629 (P&H),*** it was held by this court that in a petition filed under Section 166 of Motor Vehicles Act, initial onus is always upon the petitioners to prove the negligence of the offending vehicle. Mere filing of the challan against respondent no.1, facing of the trial by him or even the conviction recorded in criminal proceedings, cannot be sufficient to hold him responsible for causing the accident in the absence of any evidence produced in the petition. Even the result of criminal proceedings should not affect claim proceedings under the Motor Vehicles Act and rather, it is to be established on the evidence

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produced. Same view was taken in ***Ram Karan Vs. Zile Singh, 2001 (3) RCR (Civil) (P&H) 582.***

- In ***Anguri Devi v. Lakhvinder Singh, 2017(3) PLR 86 (P&H HC),*** this court held that it is settled principle of law that mere registration of the FIR and filing of the challan by the police in the criminal case does not establish the negligence of the driver as the Tribunal is required to act upon the evidence adduced before it.

21. Thus, following legal principles emerge:

- It is incumbent upon the claimants to prove negligence of the offending vehicle before the owner / insurance company can be held liable for compensation, as the liability of owner of vehicle to compensate the victim is based on law of Tort.

- Initial onus is always upon the petitioners to prove the negligence of the offending vehicle.

- The claimants are not required to prove the case as is required to be proved in criminal trial, as the claimants are merely to establish their case on the touchstone of 'preponderance of probability'; and the standard of proof 'beyond reasonable doubt' cannot be applied. Thus, the requirement of proof in a MACT case is not so stringent as in criminal case.

- Mere filing of the challan against the driver; facing of trial by him or even the conviction recorded in criminal proceedings, cannot be sufficient to hold him responsible for causing the accident in the absence of any evidence produced in the petition.

- The result of criminal proceedings should not affect claim proceedings under the Motor Vehicles Act and rather, it is to be established on the evidence produced before the Tribunal.

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22. It is, thus, clear that in a claim petition under Section 166 of the Motor Vehicles Act, 1988, standard of proof is not like criminal case i.e. beyond reasonable doubt but still the claimants are duty bound to produce such evidence, which would show on the basis of preponderance of probability that the accident was caused due to rash & negligent driving of the offending vehicle as implicated by them in the petition.

23. It is in the light of afore-said legal principles that it is required to be seen as to whether claimants were able to prove the negligence of the offending vehicle in the accident or not.

24. The statement of PW2 – Satbir to have witnessed the accident caused by the offending vehicle on account of rash and negligent driving of its driver, is supported by the testimony of another eye witness PW3-Sandeep. Though PW2-Satbir could not notice the registration number of the offending vehicle at the time of accident, due to which it was not disclosed to the Police at the time of registration of the FIR but the same was told to him by PW3 – Sandeep, as has come in the testimony of both these witnesses. The Court cannot ignore the fact that at the time, when accident occurred, PW2-Satbir was following his brother i.e. deceased - Vijay Pal. Immediately after the accident, the first priority of Satbir was to take care of his injured brother and to shift him to the hospital, rather to note down the registration number of the offending vehicle and to take note of the fact as to who was helping him in taking care of his brother in shifting him to the hospital. In these circumstances, in case he could not record the presence of PW Sandeep in the FIR, the presence of Sandeep at the time of accident as testified by him cannot be doubted. Similar were the facts before Hon'ble Supreme Court in the case of ***Kusum Lata Vs. Satbir (supra),*** wherein also in such circumstances, it was held that presence of the eye witness at the spot of accident could not be doubted, merely because his presence was not got noted in the FIR by brother of the deceased.

25. Further, no doubt it is true that offending vehicle has been taken into custody by the Police after more than two months of the accident but due

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explanation is given by PW2-Satbir to the effect that he had been visiting the Police Station frequently so as to make expeditious investigation, but the Police was busy because of the Jat Agitation. The said testimony is not rebutted by any evidence on the part of the respondents. Respondents did not even examine the Investigating Officer of the criminal case so as to refute the statement of PW2 in this regard or to refute the claim of the petitioners regarding the involvement of the offending vehicle, which is duly testified by PW2 & PW3. These statements of PW2 and PW3 are further supported by the fact that after concluding the investigation, the Police filed challan against respondent No.1 and the said respondent No.1 faced trial, though ultimately he was acquitted of the charge by way of judgment passed dated 14.09.2023 *Annexure A1* placed on record by counsel for the Insurance Company in the additional evidence.

26. It is also important to notice that in his written statement, respondent No.1 i.e. driver-cum-owner of the offending vehicle has not denied the involvement of his vehicle in the accident. He merely denied the rash and negligent driving on his part by blaming the deceased to be himself responsible in causing of the accident. Once the involvement of the car in the accident was impliedly admitted by respondent No.1 and there were testimonies of PW2 and PW3 regarding the negligence of respondent No.1 in causing the accident, it was for respondent No.1 – driver to rebut the said evidence. However, respondent No.1 did not dare to appear in the witness box to refute the testimony of PW2 and PW3 regarding his negligence in causing the accident. In these circumstances, inference is required to be drawn against respondent No.1 that had he entered the witness box, he could not face the cross-examination.

27. Further, though certain contradictions in the statements of PW2 and PW3 are pointed out by counsel for the Insurance Company, but these are not so material so as to disbelieve the testimony of these witnesses, once their statements are found to be materially the same regarding the involvement of the offending car and the rash and negligent driving of respondent No.1 in causing the accident resulting into the death of Vijay Pal.

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28. It has been vehemently argued by learned counsel for the appellant/Insurance Company that respondent No.1-owner-cum-driver of the offending vehicle was colluding with the claimants. However, merely because the said respondent No.1 in his written statement impliedly admitted the involvement of his car in the accident, though denying the negligence on his part, it does not mean that he was colluding with the claimants. No such evidence to prove the collusion is brought on record.

29. As far as the testimony of Satbir *(Annexure A2)* made during criminal trial is concerned, it is important to notice that this statement was made by Satbir in 2023 i.e. more than seven years from the date of his testimony before the Tribunal. Not only this, this statement *(Annexure A2)* is materially the same as made before the Tribunal, except that he could not disclose the name of passerby i.e., Sandeep, who had told him the registration number of the offending vehicle. He specifically stated in *Annexure A2* also that registration number of the offending car as DL-13CA-8486 was told to him by a passerby and he himself could not note the same. More importantly, during the statement of PW Satbir during the criminal trial, he was not confronted with the statement made by him before the Tribunal. In the absence of any confrontation to the witness of his prior statement, no weightage can be given to the statement made by Satbir during the criminal proceedings, which was made more than seven years after the accident and the statement made before the Tribunal.

30. Further, no doubt that as per the statement of RW2, the dead body of Vijay Pal was received in the hospital at 08.10 AM but it does not mean that death was immediately informed to the brother of the deceased i.e. Satbir. As per the testimony of PW2-Satbir, it is at about 10:30 AM that he was informed by the doctor about the death of Vijay Pal. It is a normal practice in the hospital that death of a patient is not immediately informed to the relatives to avoid any shock.

31. Apart from above, it has already been noticed that as per the legal position, the issue of rash and negligent driving is to be proved by the claimants

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on the touch-stone of preponderance of availability and not on the standard of beyond reasonable doubt.

32. On the face of the afore-said discussion, it is held that learned MACT did not commit any error in coming to the conclusion that accident was caused due to rash and negligent driving of respondent No.1, which resulted in the death of Vijay Pal.

33. On account of entire discussion as above, it is held that there is no merit in the appeal as filed by the Insurance Company. As already noticed that only the issue of negligence was argued by the Insurance Company. The assessment of compensation by the Tribunal has not been disputed before this Court. It has already been noticed that the statement has already been made by by the Senior counsel for the claimants withdrawing the second appeal filed by the claimants for seeking enhancement.

34. On account of the entire discussion as above, **FAO-646-2017** filed by the Insurance Company is hereby dismissed; whereas the **FAO-7529-2017** filed by the claimants seeking enhancement is hereby dismissed as withdrawn.

A photocopy of this order be placed on the file of another connected case.

(DEEPAK GUPTA)
JUDGE

03.09.2024
Vivek

Whether speaking/reasoned? Yes
Whether reportable? No

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