



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

264

FAO-1542-2012 (O&M)
Date of Decision : 19.11.2024

BHANO DEVI AND ANR Appellants

VERSUS

KAPIL AND ORS Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Abhinav, Advocate for the appellants.

Service of respondent No.1 dispensed with
vide order dated 29.11.2012.

Respondent No.2 proceeded against *ex parte*
vide order dated 29.11.2012.

Mr. Vinod Chaudhri, Advocate for respondent No.3.

ALKA SARIN, J. (ORAL)

1. The present appeal has been preferred by the claimant-appellants aggrieved by the dismissal of their claim petition by the Motor Accident Claims Tribunal, Karnal (hereinafter referred to as 'the Tribunal') vide award dated 11.11.2011.
2. Brief facts relevant to the present case are that on 10.04.2010 Jagdish (since deceased) was going to his Village Padha from Karnal on his motorcycle bearing registration No.HR-05-X-0587 on the correct side of the road. At about 12 O'clock when he reached near school of Village Jundla, in the meantime, a Santro car bearing registration No.HR-25-C-0092, which was being driven by its driver in a rash and negligent manner, came from

Assandh side and struck against his motorcycle and he thereafter fled from the scene. As a result Jagdish (since deceased) fell on the ground and eventually succumbed to his injuries. FIR No.216 dated 10.04.2010 was registered under Sections 279, 304-A of the Indian Penal Code, 1860 against an unknown driver on the statement of the son of the deceased, namely, Sanju. Claim petition was preferred by the wife and the minor son of the deceased. Respondents No.1 and 2 i.e. the driver and the owner of the Santro car filed their joint written statement and completely denied the factum of the accident. It was averred that respondents No.1 and 2 have falsely been implicated in the case and the case had been filed only to grab money from them. Respondent No.3-Insurance Company filed a separate written statement denying the factum of the accident as also the fact that the accident took place with the Santro car bearing registration No.HR-25-C-0092. Further the objection regarding holding of a valid driving licence and other pleas were also raised. On the basis of the pleadings of the parties the following issues were framed :

- (1) Whether accident in question took place due to sole rash and negligent driving of respondent No.1 as alleged ? OPP
- (2) Whether claimants have no *locus standi* and cause of action to file and maintain the claim petition ? OPP
- (3) Whether the claim petition is bad for mis-joinder and non-joinder of necessary parties ? OPR

- (4) Whether the claim petition is not legally maintainable ? OPR
- (5) Whether the claimants have not come to the Court with clean hands ? OPR
- (6) Whether driving licence of respondent No.1 was not valid and effective at the time of the accident. If so its effect ? OPR3
- (7) Whether the vehicle in question was being driven in violation of the terms and conditions of the insurance policy as alleged. If so its effect ? OPR-3
- (8) Whether the claimants are entitled to compensation, if so how much and from whom ?
OPP
- (9) Relief.

3. The Tribunal dismissed the claim petition vide award dated 11.11.2011. Hence, the present appeal.

4. Service of respondent No.1 was dispensed with vide order dated 29.11.2012. Respondent No.2 was duly served. However, since none had appeared on his behalf, he was proceeded against *ex parte* vide order dated 29.11.2012.

5. Learned counsel for the claimant-appellants would contend that Sanju i.e. the son of the deceased, on whose statement the FIR was lodged, specifically stated in the FIR that the car number could only be disclosed by Brijesh and Mohinder. It is further the contention that Mohinder stepped into

the witness box as PW-2 and stated that he had witnessed the accident and that he had disclosed the same to Sanju. It was further stated by Mohinder that he had noted down the Santro car number. Learned counsel has further pointed out that in the cross-examination of Mohinder there is not even a suggestion that Mohinder was not an eye-witness of the accident and hence the Tribunal erred in dismissing the claim petition.

6. *Per contra*, learned counsel for respondent No.3-Insurance Company would contend that the car number was introduced at a later stage and that it is a totally false and fabricated case was planted only to grab money.

7. Heard.

8. It is trite that in a motor vehicular accident the case is to be decided by the Tribunal on the touch stone of probabilities. The Hon'ble Supreme Court in the case of **Sunita & Ors. Vs. Rajasthan State Road Transport Corporation & Anr. [(2020) 13 SCC 486]** has held that 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. It was 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.”

9. In the present case PW-2, namely, Mohinder, who is stated to be one of the eye-witnesses of the accident, had stepped into the witness box and had stated that he had narrated the manner in which the accident had taken place to Sanju and had also noted down the Santro car number. In his cross-examination not even a suggestion was put to the said witness that he was not the eye-witness of the accident. The Tribunal has erred in holding that Mohinder (PW-2) was not an eye-witness and in dismissing the claim petition on the said ground as well as on the ground that the FIR was recorded on the statement of the son of the deceased, namely, Sanju who did not step into the witness box. Once the eye-witness had stepped into the witness box and there was no suggestion put to the said witness that he was not an eye-witness of the accident, the Tribunal erred in holding that the accident was not proved or that the involvement of the Santro car was not proved.

10. In view of the above, the present appeal is allowed and the impugned award dated 11.11.2011 is set aside. The matter is remanded back

to the successor Presiding Officer of the Tribunal concerned for a decision afresh in accordance with law after affording opportunity of hearing to the parties concerned.

11. The parties shall appear before the successor Presiding Officer of the Tribunal concerned at Karnal on **10.12.2024** at 10:00 am.

12. Pending applications, if any, also stand disposed off.

19.11.2024
Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No