



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

204

FAO-349-2006 (O&M)

Date of Decision: January 31, 2025

Manjit Kaur and others

.....Appellants

Vs.

Gurdev Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Punchhi, Advocate
for the appellants.

Mr. Lalit Garg, Advocate
for the respondent-Insurance Company

SUDEEPTI SHARMA J. (ORAL)

The present appeal has been preferred against the award dated 02.12.2005 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 passed by the learned Motor Accident Claims Tribunal, Sirsa (for short, 'the Tribunal') vide which the claim petition filed by the appellants/claimants for grant of compensation, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case as mentioned in the claim petition are that on 10.06.2003, Dalip son of Banwari (brother of the deceased) got recorded his statement that about one month back, his brother Mohinder Singh, aged about 30/32 years went to Mangtu Ram Gorahhiya, resident of village Peeli Mandori and Mohinder Singh was employee on a wine shop (Liquor vend) at village Nathusari Chopta on a monthly salary of Rs.1200/- per month and in that Liquor vend also, Mangtu Ram Gorchhiya was also employed as a



Munim (Clerk). On 10.6.2003, he received a telephonic message from the Police Station at about 11.00 a.m. regarding the death of his brother Mohinder Singh as a result of accident caused by some unknown motor vehicle and the dead body was lying on the road. Dalip Singh alongwith his cousin Om Parkash son of Tara Chand rushed to the place of occurrence and they found the dead body of Mohinder Singh lying on the road and according to them, Mohinder Singh was not dead due to the accident but it was a case of murder. Mangtu Gorchhiya is responsible for this murder of Mohinder Singh. They also made enquiries from village Darba and then from village Nathusari Chopta and chopta chowk and their enquiries revealed that firstly Mohinder Singh was murdered and after causing his death, a vehicle run over the dead body of Mohinder Singh. The occurrence took place on 10.6.2003 at night time. On the basis of the statement of Dalip Singh, a case under section 302,201 read with section 34 of IPC was registered at Police Station Nathusari Chopta. It has been further alleged by the petitioners that on further enquiries made from many persons including Sohan Lal and Subhash, residents of village Rampura Bishnoian and from the place of occurrence, injuries, on the person of Mohinder Singh, were found accidental injuries but the complainant Dalip stated that it was a murder case. Thereafter, the dead body was taken to G.H.Sirsa where autopsy was conducted on the dead body. During investigation by the police, it was found by the police that on 10.6.2003 at about 5.00 A.M., the dead body of Mohinder Singh was found at Nathusari Kalan. Mangtu Ram Gorchhiya and other people were also joined in the investigation by the police including Sh. Kuldeep Singh, Dy.S.P.Ellenabad and the police investigation revealed that it was an accident case and the accident was caused by respondent



No.1 while driving his truck bearing registration No. RJ-31G-3573. This accident was witnessed by Ram Chand alias Ram son of Sodagar Ram and his statement was also recorded by the police on 14.7.2003 and he also identified Gurdev Singh (respondent no.1) driver of the offending truck No.RJ-31G-3573 and therefore, respondent no.1 was challaned under Sections 279 and 304-A of the Indian Penal Code, who is facing trial now.

3. Upon notice of the claim petition, respondents appeared and filed written reply denying the factum of accident/compensation.

4. From the pleadings of the parties, the Tribunal framed the following issues:-

1-Whether the death of Mohinder Singh had taken place in the use of Truck No.RJ-31G-3573 being driven by respondent no.1 as alleged? OPP.

2-Whether the petitioners are entitled to receive any compensation amount? If so, how much and from whom? OPP.

3-Whether the petition is not maintainable in the present form? OPR.

4-Whether the petition is bad for mis-joinder and non-joinder of necessary parties? OPR

5-Whether the petition is a result of collusion between the petitioners and respondents no.1 and 2? If so, to what effect? OPR

6-Relief.

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal dismissed the claim-petition. Hence the claimants/appellants filed the present appeal for grant of compensation.

SUBMISSIONS OF THE LEARNED COUNSELS FOR THE PARTIES

6. The learned counsel for the claimants-appellants contend that the claim petition was dismissed only on the ground that initially the FIR was registered under Section 302 IPC and afterwards it was converted to 279/304-



A. He further contends that Ld. Tribunal has wrongly dismissed the claim petition on the ground that the claimant failed to prove involvement of the offending vehicle in the accident.

He further contends that Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) and compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act.

He further contends that the present case is covered by the judgment rendered by this Court in **FAO No.4301 of 2006, titled as "Akaljit Kaur and Others Vs. Parveen Kumar and Others."** wherein the claim under Section 163-A of the Motor Vehicles Act, 1988 was converted to Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) by relying upon the judgment of Hon'ble Supreme Court in the case of **Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738]** wherein it was held that Section 164 of the Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022) provides for payment of compensation in case of death in the amount of Rs.5 lakhs and in the case of grievous hurt of Rs.2.5 lakhs.

Therefore, he prays that the present appeal be allowed and compensation be granted to the appellants/claimants as per settled law.

7. *Per contra*, Ld. Counsel for the respondents argues on the lines of the award and contends that the award has rightly been dismissed by the Ld. Tribunal since there is no evidence to show how the FIR which was registered under Section 302 IPC was converted to 279/304 IPC. He further contends that the driver was very much examined and he further stated neither he nor his



vehicle is involved in the accident. Therefore, they pray for dismissal of the appeal.

8. I have heard learned counsel for the parties and perused the whole record of this case.

9. Relevant portion of the award passed by the Ld. Tribunal is reproduced as under:-

“ISSUE NO.1

9. In order to prove this issue, the petitioners have examined Dalip Singh, brother of Mohinder Singh deceased as PW5 who when stepped into the witness box has deposed on oath that his brother deceased Mohinder was employed as a servant at Liquor vend, Nathusari Chopta on a monthly salary of Rs.1200/- and Mangtu Ram was also working as a Munim on that liquor vend. On 10.6.2003, he received a telephonic message that the dead body of his brother is lying on the road due to accident and then he and his cousin Om Parkash rushed to the spot and found his brother Mohinder lying dead due to accidental injuries. He observed that his brother Mohinder Singh has not died due to injuries received in an accident, rather, his brother has been murdered and then his dead body has been run over by a vehicle and therefore, he involved Mangtu Ram Gorhhiya in the murder case because Mangtu had got employed Mahinder. He has further stated that after enquiries, he came to know that his brother has died due to injuries received in an accident caused by Gurdev Singh son of Tara Singh, resident of Amritsar Kalan while driving his truck No.RJ-31G/3573 and this accident was witnessed by Ram Chander alias Ram son of Sodagar Ram, resident of Panihari, now resident of Darba Kalan. The police also recorded his statement and autopsy was conducted on the dead body of his brother in the hospital.) In his cross-examination, this witness has admitted that he is not eye witness of the liquor vend and others had committed the murder of his brother Mohinder. The petitioners have also



examined Shri Ram Chander, Sub Inspector as PW4, who has deposed that on 10.6.2003, he was posted as SI/SHO at P.S.N.S.Chopta. On 10.6.2003, case FIR No.45 under sections 302/201/34 of IPC was registered at P.S.Nathusari Chopta on the statement of Dalip Singh son of Banwari, resident of Rampura Bishnoian and it was investigated by him and during investigation, it was found by him that it was not a murder, rather, it was a motor accident case and accordingly, charges under sections 279 and 304-A of IPC were found to have been committed and Gurdev Singh accused was challaned and during investigation, he prepared rough site plan of the occurrence and challaned the accused for trial. PW1 Banwari Lal in his cross-examination has also supported the case of the petitioners regarding the accident caused by respondent no.1 while driving his truck No.RJ-31G/3573. However, in his cross-examination, he has admitted that he did not witness the accident and that he has given the version in his affidavit Ex.PA on the basis of telephonic message given by someone to his son Dalip. The petitioners have also placed on record certified copy of report under section 173 of the Cr.P.C. vide which the accused (respondent no.1) was challaned to face trial under Sections 279 and 304-A of IPC. Ex. PE is the certified copy of the First Information Report registered under sections 302,201 read with section 34 of IPC against one Mangtu Gorachhiya and some unknown persons on the statement of Dalip son of Banwari Lal.

10. On the other hand, respondent no.1 Gurdev Singh while appearing as RW1 in the witness box has clearly deposed that he never caused any accident while driving his truck No.RJ-31G/3573 on 10.6.2003 in the area of village Darba Kalan. He has further stated that a false case has been registered against him by the police in order to help the family of the deceased and to cover up lapses for tracing out the real culprits.

11. I have carefully considered the evidence placed on record by the parties. In first instance, a case under sections 302,201 read



with section 34 of the Indian Penal Code was registered and the matter was investigated. However, later on, the case was converted into one under sections 279 and 304-A of the Indian Penal Code. Statement of Ram Chander was recorded on the basis of which this fact for the first time was disclosed that the deceased died in a road side accident. Ram Chander has disclosed that truck no.RJ-31G/3573 has run over the deceased. After recording the statement of Ram Chander, this new story of accident was introduced. Ram Chander has not been examined and it is stated that he has died. There is no positive, legal and reliable evidence on record to prove that the accident was caused by respondent no.1 while driving truck No.RJ-31G/3573. The report of Post Mortem Ex. PF has disclosed that the injuries may be caused in a road side accident but that is not a conclusive and primary evidence. Respondent no.1, the alleged driver of the truck in question while appearing in the witness box has denied the factum of accident by categorically stated that he never caused any accident while driving truck No. RJ-31G/3573.

12. The learned counsel for the respondents has also placed reliance upon Keshkali Vs. Uday Singh and another, 2004 (III) Accident and Compensation Cases 642 (M.P.), in which it has been observed by the Hon'ble High Court of Madhya Pradesh that the witnesses nowhere claim that they had seen accident and they have not disclosed the fact of accident to anyone for a period of seven days and there is no eye witness of accident and the claimants have not produced any evidence to show that the deceased died in a motor accident, the claims Tribunal rightly dismissed the claim petition as there was no iota of evidence to show deceased died in motor accident. This authority is fully applicable to the facts of the instant case as in the case in hand also, there is no positive and reliable evidence produced on record by the claimants to show that the deceased died in a motor vehicle accident.



13. As a result of above discussion, this court is of the opinion that the claimants have failed to produced any cogent, positive and legal evidence on record to prove that the death of Mohinder Singh had taken place in the use of Truck No.RJ-31G/3573 being driven by respondent no.1. Accordingly, this issue is decided against the petitioner and in favour of the respondents.”

10. A perusal of the impugned award reveals that the learned Tribunal has erroneously dismissed the claim petition by placing undue emphasis on the fact that the initial FIR was registered under Section 302 IPC before being altered to Sections 279/304-A IPC. The Tribunal’s approach in treating the initial FIR as conclusive, while disregarding subsequent investigative findings, is legally unsound. It is a settled principle that an FIR is merely the first step in an investigation. The mere fact that the FIR was initially registered under Section 302 IPC does not preclude the possibility of the case being one of a motor vehicle accident, especially when subsequent evidence overwhelmingly supports such a finding.

11. The testimony of PW1-Banwari Lal (father of the deceased) clearly establishes that the case pertains to an accident. His credibility remained unimpeached even during cross-examination, wherein he consistently maintained that the accident involves the truck in question. Despite the cogency of his deposition, the tribunal failed to accord due weight to his unshaken and reliable testimony.

12. Furthermore, the testimony of PW4 (SI Ram Chander), the Investigating Officer, substantiate this conclusion. He categorically deposed that upon conducting a thorough investigation, it was ascertained that the



deceased succumbed to injuries sustained in a road accident. Consequently, the charges were appropriately altered to Sections 279 and 304-A IPC.

13. Additionally, the post-mortem report provides medical corroboration, confirming that the injuries sustained by the deceased were consistent with those typically caused by a vehicular accident. The Tribunal has failed to appreciate that medical evidence carries significant evidentiary value, particularly in cases where the cause of death is disputed.

14. Moreover, PW-3 Sh. Ved Parkash (Ahlmad) in the Court of Additional Chief Judicial Magistrate, Sirsa deposed that he brought the summoned file in case State Vs. Gurdev Singh, in FIR No.45 dated 10.06.2003, under Sections 279/304-A IPC, Police Station Nathusari Chopta pending for prosecution evidence. Furthermore, the learned Tribunal has erred in overlooking the well-established legal principle that in proceedings under the Motor Vehicles Act, once a challan has been presented against the driver of the offending vehicle, it constitutes prima facie evidence of his involvement in the accident.

15. The Tribunal's reasoning, which places an undue burden on the claimant to further establish the role of the offending vehicle despite the presence of a duly presented challan, runs contrary to settled legal principles governing claims under the Motor Vehicles Act. The standard of proof in such cases is preponderance of probabilities, and not proof beyond a reasonable doubt as required in criminal trials.

16. Further, it is a settled law that the strict principle of proof in a criminal case are not attracted in motor accident claim petition. The claimants are required to establish their case on the touchstone of preponderance of



probability as held by Hon'ble the Apex Court in judgment titled as ***Parmeshwari Vs. Amir Chand and others, 2011 (11) SCC 635***. The relevant extract of the same is reproduced as under:-

"12. We are constrained to repeat our observation that the total approach of the High Court, unfortunately, was not sensitised enough to appreciate the plight of the victim. The other so-called reason in the High Court's order was that as the claim petition was filed after four months of the accident, the same is "a device to grab money from the insurance company". This finding in the absence of any material is certainly perverse. The High Court appears to be not cognizant of the principle that in a road accident claim, the strict principles of proof in a criminal case are not attracted. The following observations of this Court in Bimla Devi and others v. Himachal Road Transport Corporation and others, 2009(3) RCR (Civil) 805: 2009(4) R.A.J. 408: 2009(2) AICJ 167: (2009)13 SCC 530 are very pertinent:

"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied."

17. By disregarding the evidence on record, including the post-mortem report, the investigating officer's findings, and the challan filed against the respondent the learned Tribunal has committed a legal error in dismissing the claim petition.

18. The finding that the claimant failed to establish the involvement of the offending vehicle is manifestly perverse and contrary to settled legal



principles. In view of the overwhelming evidence on record, the award passed by the learned Tribunal is legally unsustainable and is liable to be set aside.

19. Since Section 163-A of Motor Vehicles Act, 1988 is now substituted by Section 164 of Motor Vehicles Act, 1988 (Act 32 of 2019 w.e.f 01.04.2022), compensation is liable to be enhanced as per the substituted statutory provision ie. Section 164 of the Motor Vehicles Act, 1988, therefore, the appellants/claimants herein are entitled to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in case of death in the amount of Rs.5 lakhs and in case of grievous hurt of Rs.2.5 lakhs.

20. Further, this Court in FAO No.4301 of 2006, titled as "***Akaljit Kaur and Others Vs. Parveen Kumar and Others***" held as under:-

"11. Hon'ble Supreme Court in the case of Ram Murti and others Vs. Punjab State Electricity Board [2022(4) TAC 738) held that the appellants therein to be granted the benefit of beneficial provision enacted by the Parliament under Chapter 11 of which Section 164 provides for payment of compensation in the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

12. This Court in FAO-195-2006 titled as Mamta and Others Vs. Happy and Others, decided on 29.05.2024, held that since Motor Vehicle statute is a beneficial legislation, the Judge should not go into the technicalities of the provisions, under which the application or petition is moved but should apply his judicial mind, as these are only the irregularities and not illegalities which cannot be cured. It has been observed by the Hon'ble Supreme Court that the loss caused to the claimants or the relationship or to the victim of the limb cannot be compensated. Still the Court should make every effort by exercising its discretion empathetically. Further, Justice should actually be shown to be



delivered by application of judicial mind with intelligence, prudence, care and caution and by showing empathy. The Court decision should be such that they strengthen the trust and confidence of public and litigants in judicial system and judiciary."

21. In view of the above, the present appeal is ***allowed***. Accordingly, the award dated 02.12.2005 is set aside and appellants/claimants are held entitled to compensation to the tune of Rs.5 lacs.

22. So far as the interest part is concerned, as held by Hon'ble Supreme Court in **Dara Singh @ Dhara Banjara Vs. Shyam Singh Varma** 2019 ACJ 3176 and **R.Valli and Others VS. Tamil Nadu State Transport Corporation** (2022) 5 Supreme Court Cases 107, the appellants-claimants are granted the interest @ 9% per annum on the amount of compensation from the date of filing of claim petition till the date of its realization.

23. The respondent-Insurance Company is directed to deposit the amount of compensation alongwith interest with the Tribunal within a period of two months from today. The Tribunal is further directed to disburse the amount of compensation alongwith interest equally in the accounts of the claimants/appellants. The claimants/appellants are directed to furnish their bank accounts details to the Tribunal.

24. The Insurance Company is hereby directed to disburse the current scheduled fee to Mr. Lalit Garg, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.



25. Pending applications, if any, stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

January 31, 2025
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Whether speaking/reasoned:	Speaking
Whether reportable	Yes /No