IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-466-2006 (O&M)
Date of Decision: 24.01.2025

Smt. Luxmi Devi alias Luxmi Gupta .....Appellant

Vs.

Surender Singh and others .....Respondents

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Arvind Bansal, Advocate,
for the appellant.

Mr. Paul S. Saini, Advocate,
for respondent No.3-Insurance Company.

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SUDEEPTI SHARMA J.

1. The present appeal has been preferred for setting aside the award dated 10.09.2005 passed in the claim petition filed under Sections 166/163-A of the Motor Vehicles Act, 1988 (for short, 'MV Act') by the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal'), whereby claim petition filed by the appellant/claimant, was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 09.03.2003 at about 10:30 P.M., appellant/claimant along with her husband and child was going in a rickshaw from Rohini to Sultanpuri. When the rickshaw reached near Raj Kamal Hotel, a tempo bearing registration No.UP-14-S-2553 being driven by respondent No.1 in a rash and negligent manner, came from the back side without blowing any horn and struck against the rickshaw. As a result thereof, the appellant/claimant sustained injuries on her right arm, left ankle,

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left foot and other parts of the body. Thereafter, she was taken to Jaipur Golden Hospital, Delhi, where she was medico-legally examined and treated. In this regard, FIR No.134 dated 16.03.2003 under Sections 279 and 337 of the Indian Penal Code, 1860, was registered at Police Station Mangolpuri.

3. Upon notice of the claim petition, the respondents appeared and filed their separate replies denying the factum of accident/compensation.

4. Appellant/claimant did not file rejoinder to the written reply.

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

> *"1) Whether the accident resulting into injuries to Luxmi Devi took place due to rash and negligent driving of vehicle No.UP-14-S-2553 on the part of its driver Anil Kumar, respondent No.2 as alleged? OPP*
> *2) If issue No.1 is proved then what amount of compensation is the claimant entitled to? OPP*
> *3) Whether the driver of the offending vehicle did not possess a valid and effective driving licence at the time of alleged accident? OPR-3.*
> *4) Relief."*

6. After taking into consideration the pleadings and the evidence on record, the learned Tribunal has dismissed the claim petition. Hence, the present appeal.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

7. Learned counsel for the appellant/claimant contends that the learned Tribunal has dismissed the claim petition on the ground that there was a delay of 07 days in lodging the FIR.

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8. *Per contra*, learned counsel for respondent No.3-Insurance Company, however, vehemently argues on the lines of the award dated 10.09.2005 and submits that the award has rightly been dismissed by the learned Tribunal. Therefore, he prays for dismissal of the present appeal.

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

10. The relevant portion of the award reads as under:-

> *"8. In order to prove this issue petitioner Luxmi Devi has appeared in the witness box as PW.1 and deposed that on 9.3.2003, she was going from Rohini Delhi to Sultanpuri Delhi in a rickshaw with her husband and children. At about 10.30 P.M. when they reached in front of Raj Kamal Hotel in the area of Mangolpuri a tempo tanker No. HP-14S-2553 came from behind. It was being driven rashly and negligently and it struck against the rickshaw, as a result of which the petitioner had fallen down on the road and sustained injuries on her hand and leg.*
>
> *Besides the above oral statement the petitioner has placed on the file copy of FIR mark P.66. She has also produced the treatment record. The accident in question has taken place on 9.3.2003 at 10.30 P.M.. The FIR was registered on 16.3.2003. Copy of the F.I.R. has been produced as mark P.66. It gives the number of the offending tempo trailer but does not give the name of the driver. There is no explanation for the delay of 7 days in the lodging of the F.I.R. As per the endorsement of the Police officials in the FIR, he had reached Jaipur Golden Hospital, Delhi on 10:3.2003 and learnt that the petitioner had been discharged. So, he went to the house of the petitioner and recorded her statement. The concerned police officials has not been examined to show as to why it took him six days for locating the house of the petitioner and recording her statement. It is nowhere the case of the petitioner that she was not in a condition to make a statement before the Police. Rather she has been discharged from the hospital on 10.3.2003 itself. It has even come in the cross-examination of witness Luxmi Devi that her first statement was recorded by the Police in Jaipur Golden Hospital, Delhi and thereafter, her statement was recorded at her house on 12 or 13 March.*

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> *It has been argued from the side of the respondents that it was a case of hit and run and the petitioner was not aware of the particulars of the offending vehicle and so she waited for 7 days and ultimately, vehicle of some acquaintance was shown as the offending vehicle. The counsel asserted that the present claim petition has been filed in collusion with respondents no.l and 2 and i.e. why respondents no.1 and 2 are not contesting these proceedings. The petitioner has not offered any explanation as to how she learnt the name of the driver of the offending vehicle. It is also not known as to whether any person has been challaned by the police for this accident. The petitioner has simply tendered a copy of F.I.R. She has not produced the copy of report under section 173 Cr.P.C. and she has not examined any of the concerned Police Officials, to prove the out come of the Investigation of the concerned case.*
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> *For all the aforesaid reason the solitary statement of Luxmi Devi cannot be considered as sufficient for concluding that the accident took place with vehicle No. UP-14S-2553 and for concluding that this vehicle was being driven by respondent No.1. So, issue no.1 is answered accordingly."*

11. Upon a thorough examination of the award, it is evident that the learned Tribunal committed a legal error in dismissing the claim petition on the basis of a seven-day delay in lodging the First Information Report (FIR). This Court in **FAO-1364-2007** titled as **"Satbir Vs. Subhash and others**" decided on 10.01.2025 has already held that while the prompt lodging of an FIR is significant in motor accident claim cases, a delay should not be deemed fatal if the claimant provides satisfactory and cogent reasons for it. The Court recognized that various genuine factors might contribute to such delays, and unless the delay is inordinate and unexplained, it should not prejudice the claimant's case. The relevant extract of the same is reproduced as under:-

> *"14. Hon'ble the Supreme Court in the case of* ***Ravi Vs. Badrinarayan and others, 2011(4) SCC 693,*** *has conclusively*

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held that a delay in lodging the FIR cannot be deemed fatal to motor claim proceedings, provided the claimant satisfactorily explain the delay with cogent and reasonable grounds. The relevant extracts of the same is reproduced as under:-

> *"20. It is well-settled that delay in lodging FIR cannot be a ground to doubt the claimant's case. Knowing the Indian conditions as they are, we cannot expect a common man to first rush to the Police Station immediately after an accident. Human nature and family responsibilities occupy the mind of kith and kin to such an extent that they give more importance to get the victim treated rather than to rush to the Police Station. Under such circumstances, they are not expected to act mechanically with promptitude in lodging the FIR with the Police. Delay in lodging the FIR thus, cannot be the ground to deny justice to the victim. In cases of delay, the courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the FIR should also be scrutinised more carefully. If court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the FIR, the claim case cannot be dismissed merely on that ground.*
>
> *21. The purpose of lodging the FIR in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of FIR certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of FIR is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of FIR. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the FIR assumes much more significance than delay in lodging thereof supported by cogent reasons."*

Therefore, the dismissal of the claim petition on this ground is unsustainable and liable to be set aside."

12. In the present case, the claimant sustained injuries necessitating medical attention, which plausibly accounts for the delay in filing the FIR.

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The Tribunal's failure to consider this explanation contravenes the principles laid down by the Supreme Court, thereby rendering its reliance on the FIR's timing as the basis for dismissal erroneous.

13. Furthermore, in Motor Accident Claims Tribunal (MACT) proceedings, the lodging of an FIR and the subsequent challaning of the driver of the offending vehicle serve as *prima facie* evidence of negligence. In the instant case, the challan against respondent No. 1 is part of the record, corroborating the assertion that the accident resulted from the respondent's negligent driving. This evidence establishes the negligence on the part of respondent No.1, which the respondent has failed to rebut.

14. Additionally, the claimant's testimony remains unchallenged and is supported by the disability certificate (Exhibit P1), which confirms a 12% disability resulting from the accident. The Tribunal's decision to dismiss the claim, despite this uncontroverted evidence, reflects misapplication of the evidentiary standards governing Motor Vehicle Claims Tribunal's proceedings.

15. Hon'ble the Supreme Court in **Anita Sharma v. New India Assurance Co. Ltd., 2021(1) SCC(Cri) 475** has held that standard of proof in motor accident matters is one of preponderance of probabilities rather than beyond reasonable doubt and strict principles of evidence and standards of proof like in criminal trial are inapplicable in the MACT claim cases. The relevant extract of the said judgment is reproduced 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*

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> *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)"*

16. In light of the aforementioned legal principles and the uncontroverted evidence presented, the learned Tribunal's decision to dismiss the claim petition is legally untenable and warrants reversal. Accordingly, the impugned award is set aside.

17. With respect to determination of compensation, the record contains evidence of hospital admission, the claimant's earning and expenses incurred for medical treatment and hospitalization. After perusing the whole record with regard to the injuries suffered by the appellant/claimant and the expenses incurred on his treatment, this Court deems it appropriate to grant a sum of Rs.1,00,000/- to the appellant/claimant on account of injuries sustained by her in the motor vehicular accident.

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18. In view of the above, the present appeal is allowed. The award dated 10.09.2005 is hereby set aside. The appellant/claimant is entitled to compensation to the tune of Rs.1,00,000/-.

19. 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 Nandu State Transport Corporation*** **(2022) 5 Supreme Court Cases 107,** the appellant-claimant is granted the interest @ 9% per annum on the enhanced amount from the date of filing of claim petition till the date of its realization.

20. The Insurance Company-respondent No.3 is directed to deposit the amount of compensation along with interest with the Tribunal within a period of two months from the date of receipt of copy of this judgment. The Tribunal is further directed to disburse the amount of compensation along with interest in the account of the appellant/claimant. The appellant/claimant is directed to furnish her bank account details to the Tribunal.

21. Respondent No.3-Insurance Company is hereby directed to disburse the current scheduled fees to Mr. Paul S. Saini, Advocate, within a period of 20 days from the date of receipt of the copy of this judgment.

22. Disposed of accordingly.

23. Pending applications, if any, also stand disposed of.

(SUDEEPTI SHARMA)
JUDGE

24.01.2025
Virrendra

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

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