



FAO-804-2006 (O&M)

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

FAO-804-2006(O&M)

Date of Decision: February 14, 2025

Harbans Kaur and ors.

.....Appellants

Versus

Naveen Parashar & ors.

.....Respondent(s)

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vijay Kumar Goyal, Advocate
for appellant Nos 2 to 5.

Mr. Sahej Mahajan, Advocate
for the respondent-Insurance company

SUDEEPTI SHARMA J.

1. The present appeal has been preferred against the award dated 08.10.2005 passed in the claim petition filed under Section 163-A of the Motor Vehicles Act, 1988 whereby the claim petition filed by the claimants/appellants before the learned Motor Accident Claims Tribunal, Kaithal (for short, 'the Tribunal') was dismissed.

FACTS NOT IN DISPUTE

2. The brief facts of the case are that on 16.02.2004, Hukam Singh (since deceased) along with Gurtej Singh and Darshan Singh was going on scooter bearing registration No. PB-31-A-1312 to Jhunir, in the meantime, a santro car bearing registration No. HP-14-A-0474 came from opposite direction, which was being driven by respondent No. 1 in a rash and negligent manner and hit against the scooter of Hukam Singh (since deceased). As a result of this accident, Hukam Singh (since deceased) and other persons sustained multiple injuries on the various parts of their bodies. Respondent No. 1 fled away from the spot alongwith his car.

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Hukam Singh was referred to Rajindra Hospital, Patiala, where he succumbed to his injuries on 20.02.2004.

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 death of Hukam Singh took place in a motor vehicle accident which allegedly took place on 16.02.2004 with vehicle No. HP-14-A-0474 alleged to be driven by Naveen Parashar? OPA
2. Whether the driver of the vehicle was not holding valid driving licence and if so, to what effect? OPR
3. Whether respondent N. 2 was not holding a valid registration certificate and if so, to what effect? OPR
4. Whether the claim petition has been filed by the claimants in connivance with respondent Nos. 1 and 2, if so what effect? OPR
5. Whether the claim petition is bad for non-joinder of necessary parties? OPR
6. Whether the claimants are estopped by their own act and conduct from filing the present claim petition? OPR
7. Whether the claimants have received compensation from the owner through compromise dated 20.02.2004, if so what effect? OPR
8. Whether claim petition is not maintainable in the present form? OPR
9. To how much amount the claimants are entitled and from whom? OPA
10. Relief.”

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



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SUBMISSIONS OF THE COUNSEL FOR THE PARTIES

6. The learned counsel for the appellants-claimants contends that the claim petition was dismissed only on the ground that no accident took place with Santro Car. He further submitted 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 granted as per the substituted statutory provision i.e. Section 164 of the Act.

He further submitted 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.

7. Per contra, learned counsel for the respondent-Insurance Company, however, vehemently argues that the claim petition has rightly been dismissed. He, therefore, prays for dismissal of the appeal.

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

9. Before proceeding further, it is relevant to reproduce the relevant portion of the impugned award, which reads as under:-

“Issues No. 1, 4, 6 & 9

8. All these issues are inter-connected so taken together for discussion

To prove these issues, claimant herself stepped into the witness box as



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AW-1. Besides claimant Harbans Kaur no other witness is examined on behalf of claimants regarding involvement of the Car in question in this accident. However, AW-1 was not present on the spot and that is why she do not know as to how, the accident in question took place. Thus claimant has not examined even a single witness to prove involvement of the car in question in this accident.

9. Counsel for claimants vehemently contends that respondent no 1 and 2 as well as respondent no.3, in their written statement specifically claims as if compensation paid by respondent.no. 1 & 2 to claimants and as such, it is contended that this admission enough to establish about involvement of the car in question, However, contents of written statement of respondents no.1 and 2 are to the effect that as respondent no.2 is outsider and as such due to threat of involvement of his car in accident he paid Rs. 1,85,000/-. So it is not case of respondents no.1 and 2 that payment, if any, was made voluntarily. Rather the payment as per claim put forth by respondents no. 1 and 2 was made under coercion or threat of implication in false case of accident. If that be the position, then mere payment of any amount by respondent no.1 and 2 will not show involvement of that car in question. It is for claimants to prove their case, but they failed to prove the same as discussed above.

10. RW-1 just brought record of summoned file Ex. R-1, containing 18 leaves. After going through this file Ex.R-1, it becomes obvious that inquest report dated 20-2-2004 prepared in this case of accident wherein it is mentioned in column no.20 as if certain cattle heads come in front of scooter, due to which scooter slipped and death of Hukam Singh took place. Even statements of Jarnail Singh, Tirlochan Singh and Dalip Singh and terms of compromise deed dated 18-2-2004 as well as statements of Gurtej Singh son of Niranjana Singh and Hukam Singh son of Sunder Singh (deceased himself), and of report of S.H.O. dated 20-2-2004, establishes that certain cattle heads came in front of the scooter due to which scooter slipped and fell in ditches, resulting in injuries to Hukam Singh and subsequently his death. When deceased himself as well as Gurtej Singh (one of the cited witness), themselves claimed before police about taking place of accident due to coming of cattle heads in front of scooter, resulting in slipping there of then the

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only inference that can be drawn is that in fact car in question was not involved in the accident.

11. Even statement of RW-4 Ramesh Kumar, who claims to be present in the car claims that certain cattle heads on the road come in front of scooter on which three persons were riding, as a result of which scooter went un-balanced and struck in ditches due to which occupants of the scooter after fall sustained injuries. This RW-4 claims that thereafter said scooter struck with the car and as such it is vehemently contended by counsel for claimants that in-fact statement of RW-4 also establishes as if the car was involved in the accident. That submission of counsel for claimants has no force because statement of RW-4 read as a whole goes to establish that scooter got un-balanced due to abrupt coming of the cattle heads in front of it. So statement of RW-4 only establishes as if touching of the scooter took place with car after scooter became un-balanced. RW-4 specifically claims that the car or its driver has no role in the accident. RW-4 admits in cross examination that none of the occupants of the scooter struck with the car, but scooter fell in ditches. So testimony of RW-4 read as a whole goes to establish as if car was not involved in the accident.

12. RW-2 Sanjiv Goyal, S.H.O. claims that on day of accident he was posted as S.H.O. of Police Station, Jhunir and he prepared inquest report and recorded statements of Jarnail Singh, Tirlochan Singh, Didar Singh and Dalip Singh. All those statements shows (as referred above) as if the accident occurred due to coming of cattle heads in front of the scooter RW-2 was not present at the time of accident, but he claims as if the accident occurred between car and scooter in question. No identification of the persons got conducted and persons whose statements recorded by RW-2 were not known to him earlier. As RW-2 was not present at the spot of accident and as such his testimony do not establish about involvement of the car in question. Hear say evidence is not admissible in evidence. So statement of RW-2 in no way establishes as if the accident in question occurred with the car in question. Even RW-3 did not witness the accident and as such virtually there is no direct evidence available on record to show involvement of the car in question in the accident.

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13. RW-2, the I.O. of the case claims that compromise on 20-2-2004 was arrived at, as per which compensation of Rs. 1,25,000/- was received from owner of the car. On this compromise of 20-2-2004 signatures or thumb impressions of Harbans Kaur and Hardeep Singh claimants are not there in a fact admitted by RW-2. When these signatures of Harbans Kaur and Hardeep Singh, not there on this compromise deed, then it is contended that sham document of compromise dated 20-2-2004, has been prepared. If this contention of counsel for claimants accepted about preparation of this sham document, then this means that as per case of claimants themselves such compromise was not arrived at. If such compromise not arrived at then question of payment of Rs. 1,25,000/- does not arise.

14. Counsel for respondent no.3 contends that this compromise deed has been prepared by claimants in collusion with respondents no.1 and 2 and as such respondent no.3 is not liable to pay the compensation amount at all. Though RW-3 claims to have made payment of Rs. 1,25,000/- on behalf of Lachhman Dass, the owner of the car, but in which capacity this RW-3 made payment of Rs. 1,25,000/- on behalf of Lachhman Dass qua that statement of RW-3 absolutely silent. RW-3 do not claim to be an employee of Lachhman Dass and nor he is shown to be having any connection with Lachhman Dass and as such if any payment made by RW-3 of Rs.1,25,000/-, then the same payment cannot be said to be made for and on behalf of Lachhman Dass. However, payment under coercion admitted by respondent no. 1 and 2 in their written statement and as such now respondent no.1 and 2 cannot be permitted to claim that this payment of Rs. 1,25,000/- was not made if that be the position, then only inference that can drawn is that this payment of Rs. 1,25,000/- if any may have been made by respondent no.1 and 2, then same is due collusion with claimants and that is why signature of all the claimants that is Harbans Kaur and Hardeep Singh were not obtained on the compromise deed. Even as per admission of RW-2. It is due to this fact that respondents no.1 & 2 specifically pleaded in written statement that they are entitled to get paid amount of compensation reimbursed from respondent no.3. So admission of RW-3

quá taking place of accident between scooter and Santro Car enough to

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establish as if this witness introduced by respondent no 1 and 2 just for strengthening claim of claimants RW-3 admits in cross examination as if no receipt regarding payment of Rs. 1,25,000/-obtained from the person to whom payment made. It is also admitted by RW-3 that signatures of the persons, who received compensation as per compromise, were not obtained on 20-2-2004 because they resiled later on broom terms of oral compromise as per which Rs.60,000/- was to be paid at the time of bhog of the deceased. These admissions of RW-3 establishes as if actually payment of compensation not made and that is why signatures of 14 persons receiving payment not obtained and nor any receipt regarding payment of Rs.1,25,000/- obtained from the persons receiving compensation amount. It is expected from a man of ordinary prudence to obtain receipt of payment of big amount of Rs. 1,25,000/- as and when such payment made for self or on behalf of other, but no such receipt obtained and as such this circumstances enough to suggest as if false plea regarding payment of Rs. 1,25,000/- put forth by respondent no. 1 and 2 just for strengthen any case of claimants. So submission of Shri Sunder Gupta, Advocate has force that in fact there is collusion between claimants and respondents no.1 and 2. Collusion can be proved by circumstantial evidence and not by direct evidence at all. The above pointed circumstances leans in favour of holding as if there is collusion between claimants and respondents no 1 and 2 and that is why they made payment in hope of reimbursement of this paid amount from respondents no.3.

15. Another compromise deed dated 18-2-2004 purported to be thumb marked by Harbans Kaur, but signed by Andeep Singh heirs of Hukam Singh and also signed by Jarnail Singh, a brother of deceased as well as by Darshan Singh and others, there on the record to show as if accident occurred due to slipping of scooter on coming of cattle heads in front of it. This panchayatnama dated 18-2-2004, also signed by Gurtej Singh and Darshan Singh eye witnesses as well as Hukam Singh (deceased) himself. When such compromise on 18-2-2004 in panchayat was arrived at and even statements given by eye witnesses and deceased and others during investigation also shows as if car in question was not involved in the accident, then taking of plea regarding payment of Rs. 1,25,000/-



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subsequently reflects as if this plea concocted. So inference of collusion with persons, who themselves expects reimbursement of the paid amount from the insurance company is draw able. It is due to this that claimants remained content by not examining any other witnesses except Harbans Kaur regarding role of the car in question. If respondent no 1 and 2 has not stepped into witness box, then adverse inference against them can be drawn for recording findings as if they paid compensation amount due to admission suffered by them in written statement. This legal position also exploited by claimants in their favour by getting examined certain other witnesses from respondents no. 1 & 2 to show payment of Rs. 1,25,000/-. Mad really respondents no. 1 and 2 were to contest the claim petition regarding non-involvement of the car in question in accident, then either of them would have stepped into witness box to dis-prove case of claimants. As proof adduced regarding payment of Rs.1,25,000/- as compensation just for establishing involvement of the car in question and as such it is obvious that infact respondents no.1 and 2 took all steps as may have helped claimants in getting compensation from respondents no.3, despite the fact that original case of claimants themselves before police on 18-2-2004 was that accident occurred due to coming of cattle heads in front of scooter in question. All these circumstances establishes as if theory of payment of compensation concocted by the claimants in connivance with respondents no. 1 and 2 for enabling the claimants to get compensation amount from respondents no.3. It is due to this, that neither eye witnesses of accident as quoted, in the claim petition examined and nor respondent no 1 and 2 stepped into witness box deliberately, so that truth may not come out.

16. Benefit from ratio of case National Insurance Co. Ltd, and others Vs Kastoori Devi and others, 1988, A.C.J. 8, cannot be gained by counsel for claimants, because even if admission in claim petition may be establishing that there were three persons riding on the scooter, despite that it is not established that car came in contact with said scooter at time of accident or before that and as such it is not essential to determine the contributory negligence

17. As per case Gulab Chand Dhot Vs. P. N. Aggarwal 1994, ACJ, 887, if the number of the vehicle involved in the accident given in FIR is

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different, then that of the number of the vehicle given in claim petition and particulars of driver not given and eye witnesses who reported case to police not examined, but different witnesses examined and even the vehicle was not seized by the police immediately after accident, then possibility of witness mis-stating facts cannot be ruled out. Same is the position in the case before me because here involvement of the car in question not alleged by deceased or other witnesses when their statements were recorded on 18-2-2004, but different case put forth in the claim petition by not examining the eye witnesses or any of the persons, present on the spot and as such claimants failed to establish about involvement of the car in question. Burden of proof of establishing identity of the vehicle involved in the accident is always on the claimants. When positive evidence not led to discharge that burden, then case of claimants cannot be held to be proved. Same is the position in the case before me because here claimants not examined any eye witness and circumstances shows collusion between claimants and respondents no 1 and 2 as discussed above. If car driver fled away from spot, then how claimants came to know about number of car or name of driver qua that no. explanation offered. When accident takes place due to negligents on part of scooterist himself, then compensation under section 163-A of Motor Vehicle Act, cannot be claimed by any of the occupants of such scooter because parliament never intended to provide compensation to the person responsible for accident on structured formula basis is ratio of case Appaji (since deceased) and another Vs. M. Krishna and another, 2004, ACJ, 1289. Ratio of this case fully applicable to the facts of the present case because here accident in question not proved to be caused due to involvement of the car in question. In view of all this, I hold that as claimants failed to establish involvement of the Car in question, but collusion between claimants and respondents no 1 and 2 establishes and as such claimants by their act and conduct debarred from filing the present claim petition due to which, they are not entitled to get any compensation amount. So all issues no.1, 4, 6 & 9 adjudged accordingly against claimants.”

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10. A perusal of the impugned award reveals that the learned Tribunal has erroneously dismissed the claim petition on the ground that the appellants failed to establish the involvement of the offending car in the accident. However, the Tribunal's approach in assessing the evidence is legally flawed and contrary to the settled principles of law governing motor accident claims.

11. The Tribunal has failed to properly appreciate the testimony of RW2, the Station House Officer (SHO), who explicitly stated in his deposition that the accident was caused by the car in question. Even during cross-examination, no material contradictions were elicited to discredit his testimony. The SHO, being the Investigating Officer, is a competent witness whose deposition carries significant evidentiary value. His statement, corroborated by the investigation records, establishes the role of the car in the accident.

12. Moreover, the Tribunal overlooked the crucial testimony of RW4, Ramesh Kumar, who was an occupant of the car at the time of the accident. RW4's statement unequivocally affirms the factum of the accident involving the said car. His testimony is direct, credible, and corroborates the sequence of events leading to the accident. The Tribunal's failure to accord due weight to this evidence amounts to a serious misappreciation of material facts.

13. Further, the Tribunal has erroneously diverted its focus from the primary issue—whether the accident occurred due to the use of the vehicle to an irrelevant inquiry regarding the alleged compromise between the parties. The existence or validity of a compromise is extraneous to a claim under Section 163-A of the Act, 1988, where the sole question to be determined is whether the accident arose out of the use of a motor vehicle. By allowing considerations of compromise to influence its findings, the Tribunal has misdirected itself and rendered a legally unsustainable decision.

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14. A bare perusal of the entire evidence on record leaves no room for doubt that the accident in question was caused by the involvement of the offending car bearing registration No. HP-14-A-0474. The testimonies of RW2 and RW4, coupled with the circumstances of the case, clearly demonstrate that the accident arose out of the use of the vehicle, thereby satisfying the statutory requirement under Section 163-A. Accordingly, the impugned award suffers from serious legal infirmities and is liable to be ***set aside***.

15. A perusal of the award indicates that in the present case the claimants filed the claim petition seeking compensation on account of the death of Hakam Singh (husband of appellant No. 1 and father of appellant Nos. 2 to 5). 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) and compensation should be enhanced as per the substituted statutory provision i.e. Section 164 of the Act, therefore, the appellant herein is 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 the case of death in the amount of Rs.5 lakhs and in the case grievous hurt of Rs.2.5 lakhs.

16. 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.


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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."

17. In view of the above referred to judgments, the present appeal is allowed. The award dated 08.10.2005 is set-aside and the claimants/appellants are held entitled to compensation to the tune of Rs. 5 lakhs.

18. So far as issue Nos. 2 and 3 are concerned i.e

"2. Whether the driver of the vehicle was not holding valid driving licence and if so, to what effect? OPR

3. Whether respondent No. 2 was not holding a valid registration certificate and if so, to what effect? OPR

The learned Tribunal has rightly decided the above issues in favour of the claimants and against respondent No. 3-Insurance company.

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



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and **R.Valli and Others VS. Tamil Nandu State Transport Corporation** (2022) 5

Supreme Court Cases 107, the appellant Nos 2 to 5-claimants are granted the interest @9% per annum on the awarded amount from the date of filing of claim petition till the date of its realization, as appellant No.1 is stated to have expired during the pendency of the appeal and appellant Nos. 2 to 5 are the only legal heirs.

20. The Insurance Company is directed to deposit the awarded amount alongwith interest with the Tribunal within a period of two months from the date of receipt of certified copy of this order. The appellant Nos 2 to 5-claimants are directed to furnish their bank account details to the Insurance Company/Tribunal. The Tribunal is further directed to disburse the amount of compensation along with interest in the bank accounts of the appellant/claimant Nos 2 to 5 in equal share.

21. Further Insurance Company is directed to disburse the current schedule fee to Mr. Sahej Mahajan, Advocate, pursuant to order dated 18.07.2024 passed in FAO No.1682 of 2007, within a period of twenty days from the date of receipt of certified copy of this judgment.

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

(SUDEEPTI SHARMA)
JUDGE

February 14, 2025

Gaurav Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes