

2025:PHHC:113714



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

FAO-1958-2010 (O&M)

Date of Decision: August 26, 2025

Devinder Singh

...Appellant

VERSUS

Shiv Parshad and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Vishal Gupta, Advocates
for the appellant.

Mr.Ravinder Malik (Ravi), Advocate
for respondent No.1.

Respondent No.2 proceeded against ex-parte.

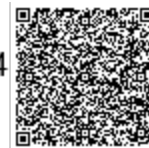
Mr.D.P.Gupta, Advocate
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, assailing the judgment of dismissal of the claim petition filed by the appellant-claimant for seeking compensation, on account of the injuries sustained by him, in a motor vehicular accident, which took place on 26.03.2005.

The material facts, as pleaded in the claim petition, are as follows:-

That, on 26.03.2005, the appellant-claimant along with Vicky, Munish

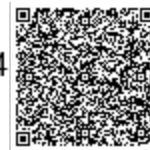


and other friends, had gone to Gurudwara Ponta Sahib. He was coming back, while pillion on motorcycle bearing registration No.HR-02M-3649, being driven by Vicky. At about 5.00 p.m., when they reached near Anaj Mandi, Chhachhrauli, respondent No.1-Shiv Parshad, while driving his motorcycle bearing registration No.HR-02L-6304, came from behind and struck the motorcycle driven by Vicky, as a result whereof, both Vicky and claimant fell down. The appellant-claimant sustained multiple injuries. He was brought to his house by Vicky and from there, his father took him to Goel Hospital, Jagadhri, where he was operated for fracture, in the left leg. FIR No.58 under Section 279 and 338 IPC was registered at Police Station Chhachhrauli on 05.04.2005.

Upon notice, respondents made appearance. Respondent No.1-Shiv Parshad had asserted that he was driving the motorcycle in a proper manner and on correct side of the road. However, the claimant, while overtaking the motorcycle, struck against it, as a result whereof, both of them fell down and sustained multiple and grievous injuries. Consequently, it was pleaded that the claimant himself being a tort-feaser, is not entitled to compensation.

Respondent No.2, in the reply, had denied about the accident to have ever taken place with the offending vehicle. However, at the time of arguments, respondent No.2 was proceeded against ex-parte.

Respondent No.3-insurance company, in the reply, asserted about the claim petition to have been filed in collusion with respondents No.1 and 2, with the purpose to extract money from the insurance company. Besides the same, also it was asserted that driver of the offending vehicle was not



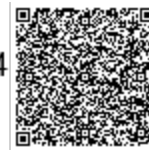
holding valid driving licence, fitness certificate and registration certificate. Defence available under Sections 147, 149 and 170 of the Act, were also taken.

From the pleadings of the parties, following issues were framed:-

- “1. Whether the accident resulting in injuries to Devinder Singh was the result of rash and negligent driving of vehicle no.HR-02-L-6304 by respondent no.1?OPP.*
- 2. If issue no.1 is proved, then to what amount of compensation the petitioner is entitled to and from whom?OPP.*
- 3. Whether the driver of the offending vehicle was not possessing a valid and legal driving licence at the material time, if so, to what effect?OPR.*
- 4. Relief.”*

To substantiate his claim, the claimant himself stepped into witness box as PW-6 and further also examined various other witnesses. However, certain documents were tendered into evidence by the respondents and the evidence was closed.

On appraisal of the evidence, brought on record, learned Tribunal considered Satya Narain, who was firstly nominated as driver of the offending motorcycle bearing registration No.HR-02L-6304, having been substituted with his brother Shiv Parshad, who allegedly drove the offending motorcycle, at the relevant time of accident. On this account,



learned Tribunal reached the conclusion that the claimant has miserably failed to prove that in fact, respondent No.1-Shiv Parshad was driving the offending motorcycle, at the relevant time and therefore, the question of rashness and negligence does not arise. Resultantly, issue No.1 relating to the role assigned to Shiv Parshad as well as blameworthiness was decided against the claimant. Though, findings on other issues, as such, were recorded and assessment of compensation was also made, but however, in view of issue No.1, having decided against the claimant, the claim petition was dismissed.

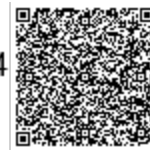
Being aggrieved, the appellant-claimant has filed the present appeal.

Upon notice, contesting respondents made appearance through counsel.

I have heard learned counsel for the parties and with their able assistance, have gone through the evidence, brought on record.

At the very outset, learned counsel for the appellant submits that learned Tribunal had not appraised the evidence, adduced on record, in correct perspective. In fact, learned Tribunal had solely relied upon the contents of the FIR Ex.P1, oblivious of the evidence, brought on record, more particularly, the testimony of claimant, who stepped into witness box as PW-6 as well as PW-5 Vicky, who was driving the ill-fated motorcycle, at the relevant time and also failed to take into consideration the fact of respondent No.1 having not stepped into the witness box.

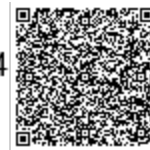
Even, the medical evidence, brought on record, leaves no room for doubt, about the claimant having sustained injuries in the accident in



question and his being hospitalized and having undergone surgery. In fact, learned counsel for the appellant has placed reliance upon decisions rendered by the Hon'ble Supreme Court in ***Anita Sharma and others vs. The New India Assurance Co. Ltd. and another, 2021 (1) RCR (Civil) 200***, and ***Sajeena Ikhbal & Ors. vs. Mini Babu George & Ors., 2024(4) RCR (Civil) 605***, to emphasize that the evidence, in a motor vehicular accident case, ought to be appraised, on the basis of preponderance of probabilities, rather than, beyond reasonable doubt.

Per contra, learned counsel representing the contesting respondents vehemently contend that the appellant-claimant, neither proved the fact of accident and involvement of the motorcycle bearing registration No.HR-02L-6304, nor proved about the respondent No.1-Shiv Parshad to be driving the offending motorcycle, at the relevant time. In fact, it is submitted that as per contents of the FIR and contents of the report under Section 173 Cr.P.C. as well as taking into consideration the testimony of the claimant himself, it is evident that there is substitution of the driver of the offending vehicle, in an exaggerated manner, to seek compensation from the insurance company. It is further submitted that learned Tribunal has very meticulously appraised the role assigned to Satya Narain, at first instance and thereafter, his name being substituted by the name of Shiv Parshad. Even, learned Tribunal has appraised about the existence of malafide intention, on the part of the appellant-claimant, which led to swapping of the driver of the offending vehicle.

In view of the same, it is submitted that evidence has been appraised in the correct perspective and the Tribunal has reached the right decision of

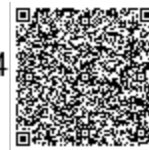


the dismissal of the claim petition and said conclusion, calls for no further interference and as such, appeal sans merit.

It goes without saying, as held by the Hon'ble Supreme Court in the case law cited by learned counsel for the appellant, about the standard of proof, in a motor vehicular accident case, to be based on preponderance of probabilities and not beyond the shadow of reasonable doubt. This Court does not dispute about this manner of appraisal of the evidence, required to be appraised by the Motor Accident Claims Tribunal. However, very true, as observed by learned Tribunal about the manner, in which the FIR is lodged in haste and sometimes, it may not be giving any exhaustive version of the accident. Also, it has been correctly held by learned Tribunal that in pursuance of the investigation done by the police, it may be concluded, on the basis of the investigation of a particular person, who was named in the FIR, to be not the real culprit and if the other person is found to be guilty, during the course of investigation, he can be proceeded against, while the person, who has been nominated in the FIR, may not be compulsorily prosecuted.

However, at the same time, it ought to be noticed that foundational facts, ought to be established, at first instance, on the basis of the evidence, which convince the Court to believe the manner of taking place of the accident and the vehicle involved and also about the pleaded involvement to be true.

Beneficial reference ought to be made to Section 3 of the Indian Evidence Act, 1872, which defines the expressions, '**proved**', '**disproved**' and '**not proved**', as herein given:-



“Proved”. — A fact is said to be proved when, after considering the matters before it, the Court; either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

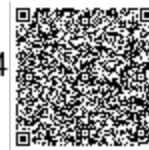
“Disproved”. — A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its nonexistence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

“Not proved”. — A fact is said not to be proved when it is neither proved nor disproved.”

A careful reading of the aforesaid three clauses indicate the degree of certainty, which is required to treat a fact as **proved**. Basically, the test is whether a prudent man, under the peculiar circumstances of the case, assume the existence of a certain fact, as true or disbelieve it. The proof of effect of the evidence adduced, depends not upon the accuracy of the statements, but upon the probability of their existence. As per the Indian Evidence Act, 1872, the anvil of testing **“proved”** **“disproved”** and **“not proved”** is the same in both civil and criminal cases, which is that of a prudent man. The Presiding Officer is required to test every evidence in this light before relying upon it, in both civil and criminal proceedings.

Considering the civil and criminal cases, the difference lies only in the standard of proof, which is higher in criminal cases i.e., the facts must be proved beyond all reasonable doubts, but in civil cases, the party only has to convince the Court by preponderance of probabilities in his favour.

Further, Section 101 of the Indian Evidence Act, 1872, deals with the burden of proof, which provides that ‘whosoever desires any Court



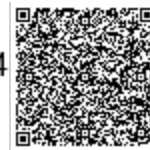
to give judgment in his favour, on the basis of certain facts, must establish the existence of those facts. Even, Section 103 of the aforesaid Act, provides that burden of proof of particular fact, lies on the person, who wishes the Court to believe in it.

All the aforesaid provisions, form a part of one binding thread, which calls upon the claimant, an undisputed burden to believe the foundational facts of the case and bring evidence for all the facts, which he relies upon to convince the Court, that in the mind of a reasonable man, such facts should be believed to be true. It is only, thereupon, the doctrine of preponderance of probabilities will come into picture and the Court, after being reasonably satisfied, will not demand strict proof of evidence or any further evidence, to prove the same fact, in case of civil proceedings. However, so far as, criminal cases are concerned, such facts may be required to be proved/endorsed, by way of additional evidence or corroboration. In the light of the same, the difference, therefore, lies in the probative force, attached to the evidence and not in the test of its proof (degree of proof).

The Court in a civil trial, applies a standard of proof, governed by a preponderance of probabilities. This standard is also described sometimes, as a balance of probability or the preponderance of the evidence. Proof of a fact, depends upon the probability of its existence. The findings of the court must be based on:

- 1. The test of a prudent person, who acts under the supposition that a fact exists and;*
- 2. In the context and circumstances of a particular case.*

Thus, it is evident that the doctrine of preponderance of

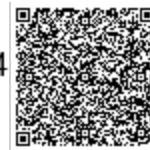


probabilities of evidence, does not mean that the Civil Court/Tribunal is not required to apply basic test, that whether a particular fact is proved or not. Even, if the standard of proof in civil cases is lower, such requirement is not dispensed with.

In this backdrop, now advertng to the case in hand. As already observed above, the accident had taken place on 26.03.2005. The FIR Ex.P1 was got registered by the claimant on 05.04.2005. Therein, the version put forth is that claimant had gone to Ponta Sahib with his friends, Satya Narain, Munish and Vicky. That he was pillion rider of the motorcycle being driven by Vicky and that Satya Narain, while driving the motorcycle, in a rash and negligent manner, struck the motorcycle being driven by Vicky from behind.

However, in the claim petition, the case set up is that Shiv Parshad was driving the offending motorcycle, at the relevant time of the accident. It is further pertinent to mention that said Shiv Parshad, in the reply, had impliedly admitted about taking place of the accident, though, he asserts that he was driving the motorcycle in simple manner and at a slow speed, on his correct side and that in fact, it was the claimant, while overtaking the motorcycle of the answering respondent, had struck against the motorcycle of the answering respondent, wherein, the answering respondent had also sustained grievous injuries.

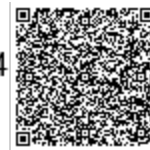
In the context of the reply so filed, it is now essential to make mention to the report under Section 173 Cr.P.C., which has been proved as Ex.P32. Therein, it is specifically mentioned that in pursuance of the supplementary statement made by the complainant Devinder Singh, Shiv Parshad was arrested as accused. There is no mention made as to when this



supplementary statement was made and in what manner further investigation was conducted by the Investigating Officer. Things would have been straightened to a great extent, had the Investigating Officer being examined, but however, he was never examined. Not only this, further it is pertinent to mention that in the claim petition, there is no mention about the manner of recording of the FIR and further about the manner of nominating Shiv Parshad as accused, in a criminal case. Also, the appellant-claimant himself stepped into witness box as PW-6. Therein also, he had remained totally silent, with regard to the blameworthiness, firstly asserted, on the part of Satya Narain and thereafter, his name having been substituted with that of Shiv Parshad. He is also totally silent about the manner of recording of the FIR and thereafter, recording of his supplementary statement. Even, the supplementary statement has not come on record.

Still, the role assigned to Shiv Parshad could have been appraised, had the appellant-claimant pleaded in his claim petition and also deposed about the same, while in the witness box and proved the supplementary statement. Furthermore, it is also required to be noticed that it is only while facing cross-examination that the appellant-claimant admitted that Shiv Parshad lives near his house and he also stated that Satya Narain is brother of Shiv Parshad. Furthermore, he had admitted that he was in senses after the accident. Vicky, Shiv Parshad and Satya Narain, took him to his house and his father got admitted him in the hospital. He also admitted that at first instance, he nominated Satya Narain in his statement to the police and thereafter, he changed the name as Shiv Parshad.

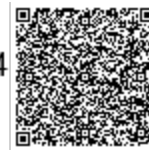
Now, it is submitted by learned counsel for the appellant-

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claimant that it was on account of sedation of the medicines that the appellant had stated the name of Satya Narain, instead of Shiv Parshad-respondent No.1. However, this seemingly is undercover raised during the course of arguments, only to escape from the manner of recording of the FIR and the manner, in which, the name of the driver has been swapped, at a later stage. Close perusal of the FIR Ex.P1 reveals that the appellant-claimant, while recording the FIR, had categorically stated that on 26.03.2005, at about 10.00 a.m., he along with his friends Satya Narain s/o Raj Kumar, Munish s/o Harish Chander and Vicky, had gone to Ponta Sahib Gurudwara. Subsequently, in his statement, he had also named Satya Narain, at several places and has also categorically stated about the manner of taking place of the accident and the manner of injuries sustained by him.

The version, coming in the FIR is the most natural version and it is not at a singular place, where the name of Satya Narain has been mentioned, which could give an impression about the same to have been wrongly mentioned. Mentioning name of Satya Narain for multiple times, in the statement of the claimant, on the basis whereof, FIR was registered, itself speaks about the malafide intention, which led to the swapping of the name of Satya Narain with Shiv Parshad, at a later stage.

Also, further it is pertinent to mention that at the time of recording of the statement, there is note given by the police, about the manner of having reached Goel Hospital, Jagadhri and after obtaining the opinion of the concerned doctor, about the fitness of the injured, that the statement was recorded. This recital in the FIR also corroborates the statement having been recorded, when claimant was fit for the same.



Moreover, it is significant to mention that the accident had taken place on 26.03.2005, whereas, the FIR was got registered on 05.04.2005. Keeping in view the number of intervening days, it is difficult to believe the version, as now put forth, more particularly, when the appellant-claimant, while facing cross-examination has himself stated that he was in senses after the accident and further, he had stated that he was taken to his home by Satya Narain, Vicky and Shiv Parshad and later on, his father had got him admitted in Goel Hospital.

It has been correctly so observed by learned Tribunal that kind of injuries sustained, also do not establish about the appellant-claimant to be not in his senses or that he was under mental shock. The appellant-claimant had not sustained head injury. It was only the injuries sustained by him on lower portion of the body, in the form of fractures.

Such being the factual position, with regard to the interchange of name of the driver of the offending motorcycle, learned Tribunal had very meticulously observed about the reason behind the swapping of the name of Shiv Parshad, instead of Satya Narain. What is the reason, though may not have come on record, but however, it gives an inkling to the Court about Satya Narain to be not having a driving licence and on this account, the blameworthiness was swapped on his brother Shiv Parshad, at a later stage.

Considering all the aforesaid circumstances, spelt out from the evidence, brought on record, definitely, the version put forth by the appellant-claimant does not inspire confidence and the same has been very correctly discarded by learned Tribunal and therefore, the appellant-claimant has failed to prove about respondent No.1-Shiv Parshad to be driving the



offending motorcycle, at the relevant time and therefore, the question of rashness and negligence, does not arise. Thus, the findings on issue No.1 recorded by learned Tribunal are hereby affirmed.

In the light of the such findings, the claim petition has been correctly dismissed by learned Tribunal. Hence, the appeal sans merit and the same is hereby dismissed.

August 26, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No