



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

(i) FAO-1787-2011 (O&M)

Vikram @ Billu

...Appellant

VERSUS

Om Parkash and another

...Respondents

(ii) FAO-7053-2011 (O&M)

Sushma Devi and others

...Appellants

VERSUS

Om Parkash and another

...Respondents

Date of Decision: May 26, 2025

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Jyotsna Saini, Advocate for
 Mr.Ashish Gupta, Advocate
 for the appellants.

 Ms.Maanvi Verma, Advocate for
 Mr.Rajneesh Malhotra, Advocate
 for respondent No.2.

ARCHANA PURI, J.

These are two appeals filed by the appellants-claimants, thereby, questioning the dismissal of the claim petitions vide judgment dated 27.09.2010 passed by learned Motor Accident Claims Tribunal.

The material facts, to be noticed, are as follows:-

That, on 04.06.2009, at about 11.30 p.m., claimant Vikram @ Billu together with Shashi Parkash (since deceased) was going to Jamalpur from



Pachgaon on a motorcycle, which was driven by Vikram and Shashi Parkash was the pillion rider. While they were talking to Rakesh s/o Dev Pal, after stopping motorcycle near DSC Company, meanwhile, Tata Indica car bearing registration No.HR-26AC-6298, driven by respondent No.1-Om Parkash, in a rash and negligent manner and at a high speed, came from the side of Pachgaon and struck against the motorcycle from behind. After the accident, respondent No.1 fled away along with his vehicle towards Jamalpur chowk. As a result of this accident, Vikram and Shashi Parkash had fallen on the ground. They were taken to General Hospital, Gurgaon. Shashi Parkash was taken to Kalyani Hospital, Gurgaon, where he succumbed to his injuries. Vikram was taken to a private hospital in Rewari.

Also, it is the pleaded case that Vikram was 24 years old and he was shopkeeper and indulged in sale of milk and was earning Rs.5000/- per month, at the time of accident. He had become disabled, on account of injuries sustained in the accident in question.

Shashi Parkash was asserted to be 35 years old and running a barber shop and earning Rs.6,000/- per month. The claim petition was filed by wife, three minor daughters and aged parents of deceased Shashi Parkash.

In reply, respondent No.1-Om Parkash (driver-cum-owner) had denied the accident in toto. All other averments, with regard to the age and the vocation followed by the injured as well as the deceased were denied.

On the similar lines, even separate reply was filed at the instance of the insurance company.

After framing of the issues, the evidence was adduced by both the sides. On appraisal of the evidence, brought on record, learned Tribunal



had disbelieved the version of manner of taking place of the accident and accordingly, dismissed both the claim petitions.

Being aggrieved, the appellants/claimants have filed the present appeals.

At the very outset, learned counsel for the appellants-claimants has submitted that learned Tribunal had not appraised the eye witness account, in proper perspective. In fact, it is submitted that PW-5 Ravi Kant is the complainant, at whose instance, the criminal proceedings were initiated by way of registration of the FIR. This witness, in his affidavit PW-5/A, had given minute details of manner of taking place of the accident, which was witnessed by him. He has deposed in most natural manner, but however, his testimony has been erroneously discarded. Likewise, it is submitted that the testimony of injured Vikram, when he stepped into witness box as PW-4, has also not been appraised in proper manner. Considering the same, learned counsel for the appellants-claimants has again made reference to the testimonies of both the aforesaid witnesses and more particularly, laid emphasis upon the report under Section 173 Cr.P.C, proved as Ex.P3, on the basis whereof, trial is being faced by respondent No.1, in a criminal case, qua the accident in question.

However, to counter the claim of the appellants-claimants, learned counsel for the respondent-insurance company has assiduously submitted that in fact, false version was set up by the claimants. Ravi Kant has been introduced as witness, only to make out the case for entitlement for compensation. In fact, it is submitted that the vehicle in question was never involved in the accident in question and no incriminating material is there,



vis-a-vis, role of Om Parkash. In fact, learned counsel for the respondent has assiduously made reference to the testimonies of the eye witness and injured, examined in the present case. In the light of the same, it is submitted that wrongful role was assigned to Om Parkash, driver of the car bearing registration No.HR-26AC-6298, which has been correctly appraised by learned Tribunal.

In view of the rival submissions made by learned counsel for the parties, at the very outset, it is pertinent to mention that it has been consistently held by the Courts that the Tribunal is to adjudge the case, only on the strength of evidence, produced before it and not to rely, solely on the material, put forth, before the criminal Court, on the basis of registration of the FIR and presentation of challan against the driver. Of course, fundamental facts, ought to be established. Basically, the test is whether a prudent man, under the peculiar circumstances of the case, assume the existence of certain facts, as true or disbelieve it.

Beneficial reference is made to *Bimla Devi and others v. Himachal Road Transport Corporation and others, (2009) 13 SCC 530* wherein, it was observed that it is well settled preposition of law that requirement of proof in a MACT case, is not so stringent, as in criminal case. In a case relating to motor accident claims, the claimants are not required to prove the case, as is required to be proved in criminal trial. Said distinction must be kept in mind. The claimants are merely to establish their case, on the touchstone of 'preponderance of probability' and the standard of proof 'beyond reasonable doubt' cannot be applied.

Likewise, in *Chameli Devi Vs. Mukesh 2016 ACJ 27*, it has



been held that the fact of driver, facing trial in a criminal case in relation to the accident and the finding arrived therein, would not *ipso facto* establish any negligence on the part of driver.

In ***Mukesh Devi Vs. Sandeep 2018 (2) RCR (Civil) 629***, it was held that initial onus is always upon the claimants to prove the negligence of the offending vehicle. Mere filing of the challan against respondent No.1, facing of the trial by him or even the conviction recorded in criminal proceedings, cannot be sufficient to hold him responsible for causing the accident, in the absence of any evidence produced in the petition. Even the result of criminal proceedings should not affect claim proceedings, under the Motor Vehicles Act and rather, it is to be established on the evidence produced.

In ***Anguri Devi v. Lakhvinder Singh, 2017(3) PLR 86***, it was observed that it is settled principle of law that mere registration of the FIR and filing of the challan by the police, in the criminal case, does not establish the negligence of the driver, as the Tribunal is required to act upon the evidence adduced before it.

Thus, it is evident that in the claim petition under Section 166 of the Motor Vehicles Act, standard of proof is not like criminal case i.e. beyond reasonable doubt, but still the claimants are duty bound to produce such evidence, which would show, on the basis of preponderance of probability that the accident was caused due to rash and negligent driving of the offending vehicle, as pleaded by them in the claim petition.

In this backdrop, advertent to the case in hand, it is required to be seen, as to whether, the claimants were able to prove the negligence of the offending vehicle, in the accident or not.



The testimony of PW-5 Ravi Kant, at whose instance, the criminal proceedings were initiated, is of utmost importance. The said witness, in his affidavit Ex.PW5/A has stated about the manner of taking place of the accident, as per pleaded case and about the same having witnessed by him. His testimony has been dealt in detail by learned Tribunal. Firstly, the version put forth in the FIR was appraised by the Tribunal, wherein, he had stated about having witnessed the accident and about having informed the brothers of Shashi Parkash, regarding the accident, who had reached there immediately and took injured Shashi Parkash, Rakesh and Vikram to General Hospital, Gurgaon and further deposed about the manner of they being shifted to other hospitals. He also stated therein that Shashi Parkash succumbed to the injuries in Kalyani Hospital and thereafter, he had been himself trying to locate the vehicle, which caused the accident and he came to know that vehicle No.HR-26AC-6298 had caused the accident. This fact, he had told to the police.

Ravi Kant had got registered the FIR against the unknown driver and unknown vehicle. Not even the make of the vehicle, as such, was stated. Very true, the FIR is only meant for initiation of criminal proceedings and it is not necessary that minute detail of the manner of accident, ought to come on record. Though, FIR has been got registered with promptitude, in the case in hand, but however, no name of the driver, no make of the vehicle as well as number of vehicle, as such, has come on record. Even then, subsequently, if the particulars came to the notice of the author of the FIR or to the Investigating Officer, the said evidence, as such, can be collected and *ipso facto*, the particulars not coming in FIR, shall not prove fatal. However, it is



required to be brought on record. It is not so in the case in hand.

PW-5 Ravi Kant, in the cross-examination had stated that he met Vikram on 07.06.2009. He admitted that he had got mentioned in the FIR, regarding the alleged accident being caused by Indica car. He had not stated to the police regarding driver and registration number of the car as HR-26AC-6298, while lodging the FIR. He also stated that at the time of lodging of the FIR, he was not aware regarding the driver as well as the registration number of the said car vehicle. He further specifically stated that he does not know till today (i.e. till the date of his appearing as witness) the name, parentage and address of driver of the offending vehicle. He also stated that he was told about the registration number of the car as HR-26AC-6298 by the employees of DSC company. He does not know the name, parentage and address of any those persons, who told him. He further deposed that the same was told to him on 06.06.2009. He had informed the police regarding the particulars of the person, who had told him the registration number of the said vehicle. He do not know whether the statements of those persons were recorded by the police or not. More particularly, further he stated that the police had approached him regarding registration number of the said car after 2½ months and then he had made statement, in this respect, regarding the registration number. He also stated that he was not aware when the Indica car was taken into custody by the police. He had not seen the driver, as well as the Indica car.

However, statement of PW-5 Ravi Kant, is at variance with the statement made by him in the criminal case, which has also been appraised by learned Tribunal. The facts, as put forth in the cross-examination, itself



raised a doubt about the manner of this witness having witnessed the accident and about the involvement of the vehicle, as such. Things would have been different, had the Investigating Officer been examined, who would have straightened the facts. This witness, though had stated about subsequently having disclosed about the particulars of the offending vehicle to the police, but however, he had not so stated in his affidavit, nor his supplementary statement, if any, has come forth. Though, learned Tribunal has made reference to the supplementary statement got recorded by this witness, after a period of 2½ months and also about the manner of enquiry conducted, but there is no document of the manner of conducting of the investigation, coming on record.

The report under Section 173 Cr.P.C. has been proved on record. Though, in the report under Section 173 Cr.P.C. there is mention made about ASI Shri Krishan to have recorded the statements of Vikram and Rakesh, but these statements, as such, have also not come on record. This report under Section 173 Cr.P.C. also does not disclose about the manner of implication of Indica car bearing registration No.HR-26AC-6298 as well as the role assigned to Om Parkash.

In the light of the aforesaid, also it is necessary to consider the testimony of Vikram, who got injured in the accident in question. He stepped into witness box as PW-4 and in his affidavit Ex.PW4/A, he had simply stated in general about the accident to have taken place, on account of rash and negligent driving of the Indica car by its driver. However, while facing cross-examination, in the opening line, he had stated that he was told about the identity of the offending vehicle as Indica car by Ravi Kant, who



lodged the FIR. In further cross-examination, he had stated that Ravi Kant had met him on 07.06.2009, when he regained consciousness and the police had told him the identity of the vehicle as Indica car bearing registration No.HR-26AC-6298. On 04.06.2009, he was not aware. He further stated he does not know till date, the offending vehicle and its registration number and also does not know till date, the name, parentage and address of driver of the offending vehicle. It was evident that it was Ravi Kant, who had disclosed about the involvement of Indica car. Thus, his testimony also, with regard to the involvement of the vehicle and role assigned to Om Parkash, is based upon the testimony of PW-5 Ravi Kant, which does not inspire confidence.

Thus, the statements of material witnesses i.e. PW-5 Ravi Kant-eye witness and PW-4 Vikram-injured, have been correctly appraised by Tribunal and it has been correctly held by learned Tribunal that the claimants have failed to prove the rashness and negligence of respondent No.1-Om Parkash, while driving the Indica car bearing registration No.HR-26AC-6298, which resulted into injuries on the person of Vikram and death of Shashi Parkash.

Accordingly, the findings on issue No.1 are hereby affirmed. Considering the same, both the appeals sans merit and the same are hereby dismissed.

May 26, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No