

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****269****FAO-4660-2018 (O&M)****Date of Decision : 06.03.2025**

Mahavir Singh

....Appellant

VERSUS

Parveen Kumar and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dheeraj Narula, Advocate for the appellant.

Mr. Nigam K. Bhardwaj, Advocate for respondent No.3.

ALKA SARIN, J. (Oral)

1. Present appeal has been preferred by the claimant-appellant challenging the award dated 07.12.2017 whereby claim petition filed by him has been dismissed by the Motor Accident Claims Tribunal, Sirsa on the ground of delay in lodging the FIR as well as due to contradictions in the statements of the witnesses.

2. Learned counsel for the claimant-appellant would contend that the delay in lodging the FIR was occasioned due to the fact that the parties were trying to compromise the matter. It is further the contention that the claimant-appellant remained admitted in the hospital from 27.06.2015 to 07.07.2015 and the relevant documents pertaining to hospitalization were also produced. Learned counsel for the claimant-appellant would further contend that minor contradictions in the statements of the witnesses in claim cases are bound to occur and has relied upon a judgment of the Hon'ble

Supreme Court in case of **Ravi vs. Badrinarayan & Ors. [2011(2) RCR (Civil) 190]** to contend that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases.

3. None has put in appearance on behalf of respondent Nos.1 and 2, despite service.

4. *Per contra* learned counsel for respondent No.3 would contend that the claim petition has rightly been dismissed inasmuch as there were lot of discrepancies in the statements of the witnesses as well as there was a delay in lodging the FIR.

5. Heard.

6. In the present case, the claim petition was dismissed on the ground of delay in lodging the FIR as well as there were certain discrepancies in the statements of the witnesses. Firstly, coming to the point of delay in lodging the FIR. The accident in the present case had taken place on 27.06.2015 and the FIR was lodged on 07.07.2015 i.e. after about 11 days. The claimant-appellant stepped into the witness-box as PW-1 and testified that he was got admitted in hospital on 27.06.2015 and from the same day onwards negotiations for compromise between the parties started. The respondents did not even put any suggestion to this witness that no talks of compromise were there between the parties. In motor accident cases delay in lodging the FIR would not be fatal to the claim. Hon'ble Supreme Court in case of **Ravi (supra)**, wherein there was a delay of 03 months in lodging the FIR, held as under :

“ 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.”

7. In the present case, there is only a delay of about 11 days in lodging the FIR, which has satisfactorily been explained by the claimant-appellant while being stepped into the witness-box as PW-1 and hence, the finding of the Tribunal in that regard is erroneous.

8. Coming to the second point as regards discrepancies in the statements of the witnesses. It is well settled that in motor accident claim cases once the foundational fact, namely, the actual occurrence of the accident has been established, then the Tribunal's role would be to calculate the quantum of just compensation if the accident had taken place by reason of negligence of the driver. The standard of proof to be borne in mind must be preponderance of probabilities and not the strict standard of proof beyond all reasonable doubt which is followed in criminal case. Reference in this regard can be made to a judgment of the Hon'ble Supreme Court in the case of **Sunita & Ors. vs. Rajasthan State Road Transport Corporation & Anr. [2020 (13) SCC 486]**.

9. Further, Hon'ble Supreme Court in the case of **Anita Sharma & Ors. vs. The New India Assurance Co. Ltd. & Anr. [2021 (1) RCR (Civil) 200]** has held 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 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)

23. *The observation of the High Court that the author of the FIR (as per its judgment, the owner-cum-driver) had not been examined as a witness, and hence adverse inference ought to be drawn against the appellant-claimants, is wholly misconceived and misdirected. Not only is the owner-cum-driver not the author of the FIR, but instead he is one of the contesting respondents in the*

Claim Petition who, along with insurance company, is an interested party with a pecuniary stake in the result of the case. If the owner-cum-driver of the car were setting up a defence plea that the accident was a result of not his but the truck driver's carelessness or rashness, then the onus was on him to step into the witness box and explain as to how the accident had taken place. The fact that Sanjeev Kapoor chose not to depose in support of what he has pleaded in his written statement, further suggests that he was himself at fault. The High Court, therefore, ought not to have shifted the burden of proof."

10. Still further, a perusal of documents i.e. copy of challan report (Ex.PA) and copy of FIR (Ex.PB) reveals that the accident in question had taken place and respondent No.1 i.e. driver of the vehicle has been facing trial therefor before the Illaqa Magistrate concerned. Hence, the finding of the Tribunal as regards discrepancies in the statements of the witnesses is also erroneous and is not sustainable in the eye of law.

11. In view of the above, the impugned award passed by the Tribunal dismissing the claim petition of the claimant-appellant cannot be sustained and the same is accordingly set aside. The matter is remanded to the successor Presiding Officer of the Tribunal concerned for decision of the claim petition afresh, on merits, in accordance with the law. Parties shall appear before the Tribunal concerned on **24.03.2025 at 10.00 am.**

12. Present appeal stands disposed off in the above terms. Pending applications, if any, also stand disposed off.

06.03.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO