

2025:PHHC:010500



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

FAO-1080-2013 (O&M)
Date of Decision: January 23, 2025

Ram Singh

...Appellant

VERSUS

Subhash and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Satish Kumar, Advocate for
Mr.Vikram Singh, Advocate
for the appellant.

None for respondent No.1.

None for respondent No.2.

Mr.R.K.Bashamboo and Mr.Shubham Gupta, Advocates
for respondent No.3.

ARCHANA PURI, J.

The present appeal has been filed by the appellant-claimant, thereby, assailing the judgment dated 17.01.2013 passed by learned Motor Accident Claims Tribunal, whereby, the claim petition filed by the claimant was dismissed.

The essential facts, to be noticed, are as herein given:-

That, on 20.08.2010, at about 4.30 p.m., the appellant-claimant along with his co-villagers Ishwar s/o Bhartu Ram and Jagminder s/o Ganga Ram, had started from bus-stand Samalkha, on a three-wheeler bearing registration

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No.HR-67-1794. When they reached about 1½ kms. ahead of village Garhi Tyagian, then, from the opposite side, respondent No.1-Subhash, who is resident of village of the claimant, came while driving the truck bearing registration No.HR-69A-1128, in rash and negligent manner and struck into the three-wheeler. As a result of this accident, the claimant and other occupants had suffered multiple grievous and serious injuries.

It is the version of the claimant that respondent No.1-Subhash (driver) had fled away after causing the accident along with the truck in question. The said truck was owned by respondent No.2-Jagdish Dahiya and the insurer of the truck was Reliance General Insurance Company Ltd.

Relating to the accident in question FIR No.353 was got lodged on 22.08.2010. The appellant-claimant is stated to be 54 years old and was also working as security guard with Siddharath International School, Samalkha on monthly income of Rs.4200/-. Besides the same, it was also averred that on account of the injuries, the claimant had suffered permanent disability. Hence, the claim petition.

In reply, the respondents had denied the accident. In fact, respondent No.1-Subhash had taken the categorical plea about no accident to have taken place on 20.08.2010, while vehicle bearing registration No.HR-69A-1128, was being driven by him. He also asserted about a false case to have been registered against him.

Respondent No.2, though, admitted about himself to be the owner of the truck in question, but also, categorically took the plea that it was not involved in any accident and was wrongly impounded by the police.

Respondent No.3-insurance company has also taken the plea



about the offending truck to have been falsely implicated in the criminal case. In fact, it took the plea that the claim petition does not disclose any cause of action and there is violation of terms and conditions of the insurance policy. The plea of 'hit and run' was also taken. Ram Singh had falsely named Subhash, as driver of the vehicle bearing registration No.HR-69A-1128, at later stage.

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

- “1. Whether injuries to Ram Singh son of Puran Singh has resulted in the accident, which allegedly took place on 20.8.2010 at 4.30 P.M. in the area of village Garhi Tyagian, P.S. Samalkha, District Panipat, on account of rash and negligent driving by respondent no.1-Subhash son of Daya Chand, while driving truck bearing Regd. No.HR-69A/1128?OPP*
- 2. If issue No.1 is proved, then what amount of compensation does the claimant is held entitled to claim, and from whom?OPP*
- 3. Whether the claim petition is not maintainable in the present form and whether respondent No.1-Subhash was not holding a valid, effective driving license at the material time of accident, if so, then to what effect, and whether there has been any breach of insurance policy conditions/provisions of the Motor Vehicle Act on the part of insured?OPR-3*
- 4. Relief.”*

To substantiate his claim, Ram Singh himself stepped into witness box as PW-1 and also examined Dr.Rakesh Jindal and the treatment record Ex.P1 to P4 was also proved. Learned counsel for the claimant, thereafter, tendered into evidence, copy of the FIR Ex.P5, medical bills



Ex.P6, receipt Ex.P7 and report under Section 173 Cr.P.C. Ex.P8 and closed the evidence.

However, in rebuttal, respondents tendered into evidence, copy of driving licence, NOC as well as the copy of the insurance policy and thereafter, closed the evidence.

On appraisal of the evidence, brought on record, learned Tribunal concluded about the statement of claimant Ram Singh, to be not inspiring confidence and thereupon, decoded issue No.1, relating to the factum and manner of taking place of the accident, against the claimant and consequently, the claim petition was dismissed.

Feeling aggrieved by the aforesaid dismissal of the claim petition, the appellant-claimant has filed the present appeal.

Learned counsel for the parties heard.

At the very outset, learned counsel for the appellant has submitted that before learned Tribunal, the appellant-claimant was required to prove the case by preponderance of probabilities and to so substantiate the factum of accident and manner of taking place of the same, which resulted into injuries on his person, the claimant himself stepped into witness box. Besides the same, even the doctor has also been examined and various documentary evidence, relating to the treatment of the claimant, has also been proved. Rather, it is submitted that the FIR was also got registered, copy whereof is Ex.P5. Even, challan under Section 173 Cr.P.C. was presented against respondent No.1-Subhash.

In fact, it is submitted that the evidence has not been appraised in the correct perspective. While making reference to the contents of the

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FIR, it is submitted that though the accident had taken place on 20.08.2010, but however, the FIR was got registered by the claimant on 22.08.2010 and the name of the driver of the offending vehicle has been categorically mentioned in the same, which fact has been over-looked by the Tribunal and it had erroneously reached the conclusion about the involvement of the offending truck, to be not established.

Per contra, learned counsel representing respondent No.3 vehemently contends that the appellant-claimant has not satisfactorily proved the involvement of the truck bearing registration No.HR-69A-1128, in the accident in question, nor proved the involvement of respondent No.1-Subhash, in the capacity of being driver. Learned counsel has critically referred to the testimony of PW-1 Ram Singh and made reference to the various documents, coming forth, to establish the hollowness of the claim of the claimant. While, stretching further, learned counsel has submitted that even though, the challan was presented against respondent No.1-Subhash, but however, in what manner, he was connected with the alleged accident, does not stand established from the copy of the challan. Furthermore, no steps have been taken by the appellant-claimant to examine other two occupants of the three-wheeler, who were accompanying him, at the relevant time. Even, driver of the three-wheeler has not been examined. Further, even the Investigating Officer, who could have amply established about the manner, in which, Subhash stood connected to the accident in question, has not been examined.

In fact, it is submitted that when the evidence, as a whole, is taken into consideration, it stands amply established that accident has been



wrongly projected to have been caused by truck bearing registration No.HR-69A-1128, driven by respondent No.1-Subhash, in a rash and negligent manner and the same resulted into injuries on the person of the claimant. In fact, it is submitted that learned Tribunal had appraised the evidence in correct perspective and reached the right decision of dismissal of the claim petition and the said conclusion, calls for no interference and as such, appeal sans merit.

It has been consistently held by the Courts, that the Tribunal is to adjudge the case, only on the basis of evidence, produced before it and not to rely, solely on account of material, put forth, before the criminal Case. In motor accident claims cases, the Tribunal is required to examine the case on the preponderance of probabilities and should not insist upon, proving the case on strict standard of proof i.e. beyond all reasonable doubt. However, at the same time, it ought to be taken into consideration that the fundamental facts, ought to be established. Basically, the test is whether a prudent man, under the peculiar circumstances of a case, assume the existence of certain facts, as true or disbelieve it.

FIR Ex.P5, qua the accident, is coming forth and it is stated that the same had been got lodged by one Rai Singh, but however, from the contents of the FIR, it is evident that it was got registered by Ram Singh i.e. claimant only. However, it matters not much, as the lodging of the FIR, singularly, is not to be taken into consideration. In fact, it only pinpoints about the factum of accident having taken place and nothing beyond that.

The Tribunal is to adjudge the case, on the basis of the evidence produced before it and not on the basis of the contents of the FIR, though,



the same may be taken into consideration by learned Tribunal for scrutiny purposes, to connect with the evidence, independently brought on record. There is requirement of independent appraisal of the evidence, coming forth, before the Tribunal.

However, 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,

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1872, the anvil of testing “**proved**” “**disproved**” and “**not proved**” is 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 part of one binding thread, which calls upon the plaintiff/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, that 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 adverting to the case in hand. At the very outset, it is pertinent to mention that as per version put forth by the appellant-claimant, the accident had taken place on 20.08.2010. The FIR, in question, Ex.P5 was got registered on 22.08.2010. Close perusal of its contents reveals that the appellant-claimant had stated therein about himself to be accompanied with other two occupants in the three-wheeler, namely, Ishwar s/o Bhartu Ram and Jagminder s/o Ganga Ram. Also therein, it is stated about Subhash s/o Daya Chand r/o Mahawati, to be driving the offending truck, in rash and negligent manner. However, he categorically stated therein that driver had fled away and they did not notice the number of the truck.



Considering such recitals, it is important to make reference to the testimony of Ram Singh, got recorded before learned Tribunal. PW-1 Ram Singh, in the opening line of cross-examination had stated that police had never met him in his accident case. Further, he had also stated in the cross-examination that he had got recorded the registration number of the truck, in his statement. However, further he had also stated that he had gone through the FIR Ex.P5, in which registration number of the truck is not written. Also, he further stated that the person, who caused the accident, ran away along with his vehicle. He also stated that Subhash is his brother, in near relation.

Said Subhash, who is resident of the same village of the claimant, therefore, was also related to the claimant. But however, even then, two days after the taking place of the accident also, the claimant was not aware of the number of the truck, driven by Subhash, even though, he had opportune time, to verify about the same. Not only this, it is pertinent to make reference to the report under Section 173 Cr.P.C., which has been proved on record by the claimant himself. Though, reliance is placed upon the same, to assert that the challan has been presented against respondent No.1-Subhash, only because he was driving the truck in question, but however, solely on account of presentation of challan, this conclusion, as such, cannot be drawn. It was required on the part of the claimant, to independently establish about the same.

Otherwise also, even if the report under Section 173 Cr.P.C. is taken into consideration, it should be noted that it was only after 45 days of taking place the accident, that Subhash was arrested on 04.10.2010. However, the



manner of arrest of Subhash, as such, has not been mentioned in the challan. This position would have been clarified by way of examination of the Investigating Officer. However, no steps have been taken qua the examination of Investigating Officer, who could have straightened the things, with regard to involvement of Subhash, in the accident in question.

Even though, learned Tribunal had made reference to the statement under Section 161 Cr.P.C. of owner Jagdish Dahiya and stated about Jagdish Dahiya, to have produced Subhash, but however, his statement, though forms part of the record, but as such, it could not be taken into consideration.

Be that as it may, suffice to consider the contents of the report under Section 173 Cr.P.C. and testimony of Ram Singh, more particularly, while taking into consideration, total denial of the accident by respondents No.1 and 2, who are the driver and owner of the offending truck, as the reply was filed, much after the arrest having effected of Subhash, in a criminal case, as reflected in the report under Section 173 Cr.P.C. Also, it should be noted that the alleged driver as well as the owner of the offending truck, have not themselves stepped into witness box.

Considering in entirety, the evidence, as such, brought on record, it does not stand established that truck bearing registration No.HR-69A-1128, was involved in the accident. Such being the fact situation, there are definitely important omissions in the chain of evidence as produced by the claimant to establish about the involvement of the truck bearing registration No.HR-69A-1128, driven by respondent No.1-Subhash, at the relevant time.



In these circumstances, learned Tribunal has rightly discarded the testimony of the appellant-claimant, with regard to the version, so put forth. Consequently, learned Tribunal had correctly dismissed the claim petition.

Hence, the present appeal sans merit and the same is hereby dismissed.

January 23, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No