

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****214****FAO-1522-2009(O&M)****Date of decision: 26.02.2026****Phoolpat Kumari @ Pushpa & Others****...Appellant(s)****Vs.****Subhash & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Anil Ghanghas, Advocate
for the appellants.

Dr. Anjali Bansal, Advocate
Mr. D.R. Bansal, Advocate
for the respondent No.3.

*********NIDHI GUPTA, J.**

Present appeal has been filed by the claimants seeking enhancement of compensation of Rs.6,06,936/- awarded by the Motor Accident Claims Tribunal, Bhiwani (hereinafter 'the learned Tribunal') vide Award dated 13.05.2008 passed in Claim Petition No.114 dated 11.09.2004 filed under Section 166 of the Motor Vehicles Act (hereinafter "the Act"). The 4 claimants are the 40-year-old widow, 15-year-old daughter, 9-year-old son, and 8-year-old son of deceased Hari Pal, who was 49 years old at the time of accident.

2. Brief facts of the case are that the Id. Tribunal on the basis of pleadings and oral & documentary evidence adduced by the parties,



concluded that deceased Hari Pal had died due to the injuries suffered by him in a motor vehicular accident that took place on the intervening night of 26/27.04.2004 due to the rash and negligent driving of Ford Ikon bearing registration No.HR-16E-0018 (hereinafter “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. The said compensation has been awarded along with interest @ 7% per annum. Respondent No.2/owner of the offending vehicle was held liable for payment of compensation. Learned Tribunal had further held that *“the accident in question took place due to contributory negligence on the part of the car driver, it is held that the claimants would be entitled to fifty percent of the recoverable amount.”*

3. Brief facts of the case as pleaded by the appellants and as mentioned in Para 1 of the impugned Award are as under: -

“By way of the petition in hand instituted under section 166 of the Motor Vehicle Act on 11.9.04 the petitioners claim compensation to the tune of Rs.50 lakhs with the averments that on the night intervening 26/27.4.04 Hari Pal, since deceased, aged 49 years old, was travelling along with his nephew Pawan Kumar in a Ford Ikon car bearing registration No. HR-16-E-0018 driven by the respondent no.1 in a rash and negligent manner on account whereof it struck against a 'peter rehra' in the area of Gobindpura resulting in injuries to the above named Haripal and Pawan out of whom Haripal succumbed to injuries thus received. An FIR No.326 under section 279,337 and 304-A IPC statedly stands registered at PS Sadar Bhiwani on 20.8.04 qua



the said accident dated 26/27.4.04. It is claimed that the deceased was employed as an Assistant Manager in the Haryana State Coop. Apex Bank Limited, Chandigarh from which avocation he used to draw Rs. 18534/- as salary, besides earning approximately Rs. 150000/- per year from agricultural activities.”

4. It is inter alia submitted by learned counsel for the appellants that the learned Tribunal was in patent error in holding the claimants liable to contributory negligence of 50% as it failed to appreciate that the appellants had clearly pleaded and proved that at the time of accident, the offending car was being driven by Subhash, and not by Pawan. It is submitted that Pawan had duly appeared before the Tribunal as PW2 and proved the case of the appellants. However, the Id. Tribunal erred in discarding the statement of PW2, who was the sole eyewitness to the occurrence and duly proved the negligence of respondent no.1. PW2 was also having the driving license at the time of accident and had the accident been caused due to his negligent driving, they need not to implead the respondent no.1. The Ld. Tribunal has erred in misreading of pleading and erred in misinterpretation of the evidence which do not exist in the facts and circumstances of the case.

5. It is submitted that the conclusion of the learned Tribunal that respondent No.1 was not driving the offending car at the time of accident is based on conjectures and surmises with baseless presumptions. It is submitted that the respondent No.1 had duly placed on record his Driving



Licence which is a very material aspect of the case. Moreover, respondent No.1 has admitted in his written statement also that he was driving the offending vehicle at the time of accident. It was therefore, clearly established on record that the offending vehicle was being driven by respondent No.1 at the time of accident.

6. It is further submitted that the Ld. Tribunal has erred in deciding the issue no.vii in favor of the respondent no.3/Insurance Company holding the collusion between the appellant and respondents no.1 and 2. The Ld. Tribunal has erred in not appreciating the fact that the alleged DDR was a result of collusion of the police and the respondent no.3 when they saw the serious condition of the deceased. The evidence of the PW2 in regard to the lodging of the FIR on his statement cannot be discarded on the point that in the FIR the name of the complainant was written as of claimant no.1 and, therefore, it does not prove the falsity of the statement of PW2 that he has not given application to the police to register the case.

7. Ld. Counsel argues that the Ld. Tribunal has erred in holding the contributory negligence of the 'peter rehra/Toka' which was standing on its extreme left side and only due to the negligent driving of the respondent no.1 the accident in question occurred. When there was no fault of the said Toka, no question of impleading the driver and owner of the Toka as party arises, the learned Tribunal wrongly decided the issue no.vi against the claimants. The Ld. Tribunal has illegally held the case of contributory negligence and



wrongly held that the respondent no. 1 was not driving the car without any evidence on file. The respondent insurance company has not produced any evidence to prove the contributory negligence. There is nothing to prove that the respondent no.1 was not driving the car at the time of accident. The whole liability should have been fastened on the respondents no.1, 2 and 3 jointly and severally being driver, owner and insurer of the offending vehicle. The respondent no. 1 was having the valid driving license. Photocopy of the same is already on record and insurance company has failed to discharge its onus on this issue no. iii and the Ld. Tribunal illegally decided the same in favour of respondent no.3.

8. It is accordingly prayed that the present appeal be allowed; the findings of the learned Tribunal on all the issues No.1, 2, 3, 4, 6, 7 be set aside/modified/reversed; and Award be modified/reversed in favour of the appellants/and amount of compensation under issue No.2 be enhanced to Rs.50 lakh by placing the whole liability to pay the compensation to the appellants upon respondents No.1 to 3 jointly and severally.

9. Per contra, learned counsel for the respondent No.3 opposes the submissions advanced on behalf of the appellants and submits that the date of accident is 26-27.04.2004, whereas FIR has been lodged four months thereafter on 20.08.2004. It is submitted that there is no explanation for the inordinate delay in registration of FIR. It is further submitted that the claim petition is a result of collusion between the claimant and the respondents



nos.1 and 2. Therefore, the appellants were not entitled to any compensation. Accordingly, the present appeal deserves to be dismissed.

10. No other argument is made on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of the appellants.

11. It is firstly to be noted that the date of accident is intervening night of 26/27.04.2004. However, FIR No.326 dated 20.08.2004 (Mark C) has been registered on the statement made by claimant/appellant no.1/widow of the deceased after unexplained delay of 4 months. Learned counsel for the appellants is unable to explain the delay in registration of the FIR. It is very odd that the eyewitnesses namely Pawan and Subhash did not lodge any report of the accident with the Police at all.

12. Further, PW1/claimant No.1 registered the FIR stating that offending car was being driven by Subhash. However, the said version of events as given by claimant No.1 cannot be relied upon as while appearing as PW1, she has admitted in her cross-examination that she had not witnessed the accident. Moreover, as per DDR dated 19.05.2004 (Ex.RA), at the time of accident, the car was being driven by PW2 Pawan. It is to be noted that although in the FIR 'Mark C', complainant/claimant no.1 has mentioned that at the time of accident, offending vehicle was being driven by Subhash. However, there is evidence to the contrary; to the effect that at the time of accident, the offending vehicle was being driven by Pawan/PW2. Admittedly,



Pawan did not possess valid driving license to drive the offending car. As such, with a view to get the compensation, the claimants had changed their original version as given in the DDR and had now stated that offending Car was being driven by Subhash. Thus, there are material discrepancies in the case set up by the claimants.

13. The collusive nature of the claim is also evident from the fact that upon notice, Subhash had appeared and filed written statement where he had admitted that he was driving the offending vehicle at the time of accident. However, he had subsequently failed to step into the witness box.

14. Furthermore, eyewitness PW2 Pawan Kumar, who was also in the offending car at the time of accident has also deposed that offending car was being driven by Subhash. However, there is cogent evidence to the contrary. A perusal of the DDR No.28 dated 19.05.2004 (Ex.RA) shows that on the date of accident, after receiving Ruqa from the hospital, the Police had gone to record statement of Hari Pal; whereupon they were informed that Hari Pal was not in a condition to get his statement recorded. Thereafter, Police had gone again to the Hospital on 28.04.2004, 15.05.2004, 17.05.2004 on each of which dates they were informed that Hari Pal was not in a position to make statement. A perusal of the DDR No.28 dated 19.05.2004 (Ex.RA) further shows that ultimately on 19.05.2004, statement of Subhash/respondent No.1/alleged Driver of the offending vehicle, was recorded who has categorically stated that at the time of accident, the



offending car was being driven by Pawan and it was Pawan who had hit into the stationary Toka (Rehra) filled with tomatoes. It is also admitted fact on record that Pawan PW2 was not authorised to drive a motor vehicle car as he possessed the Driving Licence only for scooter/two-wheeler.

15. Another very material and inexplicable discrepancy in the case set up by the claimants is that no FIR was registered by the eyewitnesses Subhash and Pawan. In fact, Pawan has made the statement that he had registered an FIR. However, no details thereof are forthcoming.

16. The relevant findings returned by learned Tribunal are as under:-

“7. The learned counsel for the respondent Insurance Company while referring to the copy Ex.RA of DDR No. 28 dated 19.5.04 has argued that as per recital therein, the respondent Subhash son of Sant Lal had disclosed before SI Phool Kumar on the said date viz. 19.5.04 that he is employed as a driver in the Halvasia Vidya Vihar, Bhiwani, and that on 24.4.04 he alongwith Hari Pal, since deceased, were returning from Dadri to Bhiwani in an Ikon car bearing registration No. HR-16-E-0018 being driven by Pawan Kumar whereas Hari Pal was lying on the rear seat when the said vehicle struck against a stationary Toka (peter rehra) filled with tomatoes in the area of village Gobindpura. On the strength of the said DDR, it is thus argued that the recital in the FIR 'Mark C' lodged belatedly qua the accident in question dated 26/27.4.04, on 20.8.04, by the claimant widow Phoolpat Kumari regarding the accident in question having been caused due to rash and negligent driving of the above described vehicle by the respondent no.1 Subhash is false and therefore the claimants



cannot be permitted to derive any benefit from the arrest memo Ex.PA dated 3.9.04 regarding arrest of respondent Subhash in the above described FIR recorded belatedly qua the accident on 20.4.04 on 20.8.04, more so when no explanation what so ever is forthcoming as to why Pawan Kumar PW2 who had not received any serious injury in the accident in question made no attempt whatsoever to lodge the FIR soon after the accident and in fact has stated during cross examination while appearing as PW2 on 2.4.07 that he had in fact lodged the FIR qua the accident in question after about two months of the alleged occurrence taking place although the Photostat copy of FIR. mark 'C' shows it to have been lodged by claimant Phoolpat Kumari and not by Pawan Kumari and that to after about four months of the accident in question. It may be noticed here that as per the affidavit Ex.PW2/A of the claimant Phoolpat Kumari, tendered as such by way of examination-in-chief, it was he who had lodged the FIR after about 1 ½ month of the accident in question taking place. She has however admitted during her cross examination that she does not know as to on account of whose fault the accident in question had taken place as she had not witnessed the accident. Reverting to the testimony of the Pawan Kumar above named, it may be noticed that at one stage of his cross examination he has stated that he has he had not made any statement before the police regarding the accident in question but in the later part of his cross examination he had claimed that he has lodged the FIR qua the accident in question after about two months of the occurrence thereof. Obviously both these contradictory version cannot be correct more so when his testimony regarding his having lodged the FIR qua the



*accident in question stands falsified from the testimony of PW1 Phulpati read with recital in the Photostat copy Mark C of the FIR. which reveals that it was lodged by her on 20.8.04 regarding the accident in question which statedly took place on the night intervening 26/27.4.04. It may be recalled that the said Phoolpat Kumari has admitted during her cross examination that she had not witnessed the accident in question and thus no authenticity can be attached to the version put forth in the FIR mark C lodged by her regarding the accident in question having taken place on account of rash and negligent driving of car bearing registration No. HR-16-E-0018 by the respondent no.1 Subhash more so when it is borne in mind that PW 2 Pawan Kumar who claims to have been travelling with Hari Pal, since deceased, in the above described car on the date and time in question did not lodge any report qua the accident in question with the police. Rather as per statement recorded by SI Phool Kumar which has been incorporated in the copy Ex.RA of DDR dated 19.5.04, the said car was being driven by Pawan Kumar where as he now claims that the car was being driven by himself. In the face of his non appearance in the witness box, the contradictory stand taken by this witness before the police and before this tribunal goes unresolved. The version put forth by him before the police as incorporated in DDR Ex.PA therefore cannot be ignored. The observations of own Hon'ble High Court in the case titled as *Surenderjit Singh Vs. Kuldip Rai Thapar and others* reported in 1983 ACJ 365 may be read to advantage in this context. In this view of the matter, the admission by the respondent no.1 Subhash in the written statement filed by him regarding his having been the driver of the above said car on the date and time*



in question cannot be acted upon to be true, more so when the said respondent Subhash has not appeared in the witness box to state this fact on oath and test the stand of cross-examination on this aspect. Had he appeared in the witness box, it could have been ascertained as to under what circumstances he came to be driving the above described car owned by respondent no.2, who is resident of Panchkula, whereas respondent Subhash is resident of Bhiwani which fact assumes significance because he has not referred in the written statement filed by him jointly with respondent no.2 as to under what circumstances he came be driving the above described car on the date and time in question. Even the respondent owner Babu Lal Verma has not appeared in the witness-box to testify regarding this crucial aspect as to whether his above described vehicle was being plied as a taxi whereon the respondent no.1 Subhash may have been employed by him as a driver, or as to under what other circumstances the said Subhash statedly came to be driving his above described vehicle on the night intervening 26/27.4.04 which lapse has been viewed in the light of the fact that no injury what-so-ever is claimed by the said respondent Subhash in the written statement filed by him to have been suffered by him and nor was any injury, suffered by PW2 Pawan who claims to have been travelling with Hari Pal, since deceased and yet none of them reported this accident to the police. In this view of the matter the observations in the case titled as Girdhari Lal Vs. Radhey Sham and others reported in 1993(2) PLR 109 cited on behalf of the claimants are of no help to them because in the said case, no such situation like the one in hand existed therein. FIR was not lodged till after about four months of the accident in question



taking place on the night intervening 26/27.4.04 and even after such belated delay, it was lodged by the wife of the deceased although she was not witness to the accident whereas the witnesses of the accused namely Pawan and Subhash did not lodge any report of the said accident with the police at all.

7. The upshot of the above discussion is that the above described car does not stand proved to have been driven by the respondent no.1 Subhash on the date and time in question though so claimed by him and consequently the respondent insurance company cannot be saddled with any liability for payment of any compensation arising out of the accident in question despite the said vehicle being admittedly insured with it vide insurance policy Ex.RB which was valid on the date of the accident in question. Nonetheless the fact cannot be lost sight of that as per the testimony of PW2 Pawan Kumar above named, the death of Hari Pal had occurred on account of injuries suffered by him while travelling in the above said car on the date and time in question which part of his testimony qua the death of Hari Pal stands corroborated from the copy EX. PN of PMR which reveals that the death of Hari Pal had occurred on account of injuries to his spinal cord and resultantly complications which were sufficient to cause death in ordinary course of injury and which injury was ante mortem in nature. Accordingly, the respondent owner is held liable for payment of compensation qua the death of Hari Pal though the Insurance Company cannot be saddled with any liability. It may be highlighted here that the driver/owner of the stationary 'peter rehra'/'Toka' against which the car in question had dashed have not been impleaded as parties to this petition and therefore while holding that the



accident in question took place due to contributory negligence on the part of the car driver, it is held that the claimants would be entitled to fifty percent of the recoverable amount."

17. Thus, it is my view that learned Tribunal has correctly held the appellants liable for contributory negligence to the extent of 50%.

18. Claim Petition was rightly held to be bad for non-joinder of necessary party as driver/owner of the stationary Rehra/Toka against which the offending car had rammed, had not been impleaded.

19. Although a prayer has been made in the Grounds of Appeal regarding enhancement of quantum of compensation, however, no argument to this effect has been raised by learned counsel for the appellants before this Court. In any event, in view of the facts and findings as recorded above, it is my clear view that appellants are not entitled for enhancement of compensation.

20. In view of the above, present appeal stands **dismissed**.

21. Pending application(s) if any also stand(s) disposed of.

26.02.2026

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No