

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****235****FAO-1081-2011(O&M)****Date of decision: 26.05.2026****Rajender & Another****...Appellant(s)****Vs.****Manoj @ Leela & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Nipun Verma, Advocate
for the appellants.Mr. Parvesh Kumar Banwal, Advocate
for respondents No.1 to 3.Mr. R.C. Kapoor, Advocate
for respondent No.4.

NIDHI GUPTA, J.**CM-28704-CII-2018**

This is an application filed by respondent No.3 under Section 151 CPC for placing on record order of learned Judicial Magistrate, 1st Class, Bhiwani dated 28.09.2018 (Annexure RR-1).

After going through the contents of the application, which is supported by affidavit of applicant/respondent No.3, the same is allowed subject to all just exceptions and Annexure RR-1 is taken on record.

MAIN CASE

Present appeal has been filed by the claimants assailing Award dated 08.10.2010 passed by Motor Accident Claims Tribunal, Bhiwani (hereinafter referred to as 'the learned Tribunal') whereby Claim Petition



filed by the claimants/appellants bearing MACT Case No.20 dated 09.03.2007 under Section 166 of Motor Vehicles Act (hereinafter “the Act”), has been dismissed. The two claimants are the 22-year-old son and 56-year-old husband of deceased Chhano Devi.

2. It was the pleaded case of the appellants that deceased Chhano Devi had died due to the injuries suffered by her in a motor vehicular accident that took place on 26.06.2006 at about 5:30 pm to the rash and negligent driving of TATA Sumo bearing registration No.HR-47-T-0123 (hereinafter referred to as “the offending vehicle”) being driven by respondent No.1, owned by respondent No.2, registered owner of which is respondent No.3, and insured by respondent No.4. Pro-forma respondents No.5, 6 and 7 are the married daughters of deceased Chhano Devi.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Tribunal had concluded that *“no cogent and material evidence has been brought on record by the petitioners to prove that Chhano Devi died in the accident which occurred on 26.6.2006 thereby involving vehicle No.HR-47T/0123 allegedly driven by respondent no.1 Manoj alias Lila. Hence, issue no.1 is decided against the petitioner.”* Consequentially, the Claim Petition came to be dismissed.

4. It is inter alia submitted by learned counsel for the appellants that the learned Tribunal was in error in dismissing the Claim Petition as it erred in law while deciding issue No.1 against the claimants/appellants. It



is submitted that it has been proved on record that accident took place due to rash and negligent driving of respondent No.1 while driving vehicle bearing registration No.HR-47-T/0123. The learned Tribunal has seriously erred in law while holding that there is no cogent and material evidence on record by the appellants to prove that Chhanno Devi died in the accident which occurred on 26.06.2006 involving vehicle No.HR-47-T/0123 driven by respondent. The appellants have proved that accident took place due to rash and negligent driving by respondent.

5. It is further submitted that it has come on record that in the F.I.R., number of vehicle wrongly been mentioned as HR-55/0123 which was pointed out by the claimants/appellants by filing applications to the higher authorities that vehicle involved is HR-47-T/0123. The claimants also filed complaint when the Police Agency colluded with the owner of the vehicle who is relative to the police officer. Evidence has been led in that respect, but the learned Tribunal has failed to notice that fact in its Award. It is also submitted that various documents produced on record by the appellants and the respondents suggest that the accident was caused by the respondents which involves aforesaid vehicle, but no action was taken against the driver as the owner of the vehicle is relative of police officer. It is further submitted that the learned Tribunal has seriously erred in law while relying on the Enquiry Report on the application by the claimants which report is apparently false. The documents of the respondents (Ex.R-



1 and Ex.R-2) are false and fabricated. The documents produced by the appellants clearly prove their case and the respondents are liable for the consequences. It is accordingly prayed that the present appeal be accepted and impugned Award dated 08.10.2010 passed by the learned Tribunal be set aside and Claim Petition be allowed with costs.

6. Per contra, learned counsel for the respondents No.1 to 3 and respondent No.4 oppose the submissions advanced on behalf of the appellants and submit that the impugned Award suffers from no error; and the present appeal deserves to be dismissed.

7. 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.

8. The pleaded case of the claimants/appellants before the learned Tribunal as recorded in Para 1 of the Award is as follows: –

“Petitioners Rajender and Hawa Singh have filed the present claim petition under Section 166 of the motor Vehicles Act, 1988, on the allegations that on 26.6.2006, at about 5.30/6.00 p.m. Chhano Devi (since deceased) along with her son Rajender (petitioner no. 1) was going from her house towards her plot. Rajender was following Chhano Devi by a distance of 7-8 steps. They were going on Kacha portion of the road on their left side. In the meantime, a Tata Sumo bearing No.HR-47T/0123 came from the side of Dadri at a very high speed and driven by respondent no.1 Manoj alias Leela in a rash and negligent



manner and hit Chhano Devi by coming on Kacha portion of the road. Due to impact, Chhano Devi fell in the nearby pits. The driver of the offending vehicle came out of the vehicle after the accident and after seeing the injured then sped away with his vehicle. Chhano Devi was brought to general Hospital, Bhiwani, where she died on the same day. The post mortem on her dead body was conducted in General Hospital, Bhiwani, on 27.6.2006.

It is further alleged that regarding the accident in question FIR no.276 dated 27.6.2006, under Sections 279/304-A of the IPC was registered at police station Sadar, Bhiwani by petitioner no.1 Rajender. But due to shock on accident of death of her mother, he could not give the correct number of the offending vehicle when he lodged the complaint with the police. In the FIR the number of the offending vehicle was wrongly mentioned to be HR-55/0123. However, in fact, the accident had taken place thereby involving HR-47T/0123 and the accident was caused due to rash and negligent driving on part of respondent no.1

It is further alleged that Chhano Devi was 50 years old at the time of her death at the time of accident in question. She was a household lady and also doing agriculture work thereby earning Rs.6000/- per month. Petitioner no.1 is the son, petitioner no.2 is husband and proforma respondents no.5 to 7 are daughters of Chhano Devi (deceased) and were dependent upon her for their livelihood

It is further alleged that the accident has taken place due to rash and negligent driving of respondent no. 1 Manoj alias Leela of offending vehicle No.HR-47T/0123, which is owned by



Balwant Singh alias Balwan Singh, respondent no.3, which is insured with respondent no.4 the New India Assurance Company Ltd.

The petitioners have claimed Rs.10,00,000/- as compensation along with interest from the respondents jointly and severally."

9. Thus, in respect of the accident dated 26.06.2006, an FIR No.276 dated 27.06.2006 was registered under Sections 279 and 304-A IPC at Police Station Sadar, Bhiwani on the basis of statement made by claimant No.1 Rajender/son of the deceased. The FIR was registered against an unknown driver. Admittedly, in the said FIR, the appellant No.1 had given the number of the offending vehicle as "HR-55/0123"; and not the number of present offending vehicle which is "HR-47T/0123". The claimants have contended that number of the offending vehicle was inadvertently wrongly mentioned in the FIR by the claimant No.1 as he was under shock due to witnessing the accident and death of his mother.

10. However, subsequently, claimant No.1 had moved application dated 27.07.2006 (Ex.P5) before the Superintendent of Police, Bhiwani pointing out that number of the vehicle has been wrongly given. Accordingly, it was prayed that suitable action be taken against the guilty person. However, as no action was taken by the police authorities, Appellant had submitted another application dated 22.12.2006 (Ex.P1). Head Constable Bal Krishan had appeared before the learned Tribunal as PW1 and had deposed that the application 22.12.2006 (Ex.P1) had been received in the office of



Superintendent of Police, Bhiwani; whereupon inquiry was conducted as per the facts mentioned therein. However, upon investigation, the said application was dismissed vide report of Head Constable Ramdhari dated 23.01.2007 (Ex.R1) and report of SHO dated 24.01.2007 (Ex.R2). Consequentially, Cancellation Report came to be submitted in the matter. Notably, the appellant filed no objections to the said Cancellation Report. Instead, the appellant filed a private complaint no. 250 of 2007 before the Ilaqa Magistrate in which the accused was not even summoned. Relevant observations of the learned Tribunal in this regard are in Paras 15 to 18 of the impugned Award which read as follows:-

“15. The evidence brought on record accordingly shows that on the statement of petitioner no.1 Rajender (PW-2) FIR No.276 dated 27.6.2006 (Ex.P-8) was lodged thereby specifically alleging that the accident had taken place with vehicle No.HR-55/0123 by some unknown driver. But later on the petitioner tries to change his statement by making an application dated 27.7.2006 (Ex.P-5) and another application dated 22.1.2006 (Ex.P-1) to S.P. Bhiwani thereby alleging that the accident had actually taken placed with offending vehicle bearing No.HR-47T/0123 but in the FIR the vehicle number was wrongly given to be HR-55/0123. However, the police had conducted enquiry on the basis of the subsequent application filed by petitioner no. 1 Rajender but his version was found to be false. The report of the HC Ramdhari dated 23.1.2007 is Ex.R-1 and the report of the SHO dated 24.1.2007 is Ex.R-2.



16. It is pointed out that the petitioner has not examined HC Ramdhari as well as SHO PS Sadar, Bhiwani in order to challenge their report Ex.R-1 and Ex.R-2. It is also pointed out that in the course of arguments it is admitted that the police had accordingly submitted cancellation report in respect of FIR No.276 dated 27.6.2006 Police Station Sadar, Bhiwani (Ex.P-8).

17. No satisfactory explanation has been given by the petitioner as to how he came to know about the correct number of the offending vehicle and also the name of the driver as well as the owner of the same. No witness is examined to link their involvement. It seems that petitioner without any basis wants to involve them with the accident in question. Hence, solitary statement of PW-1 cannot be believed.

However, the petitioner no.1 Rajender, who was the maker of FIR no.276 dated 27.6.2006 (Ex.P-8) instead of filing of objection petition to the cancellation report submitted by the police, had filed a private complaint in the court of learned Ilaqa magistrate. That fact is mentioned by Rajender, when he appeared in the witness box as PW-1 thereby disclosing that he had filed a complaint bearing no.250 of 2007 titled Rajender Versus Manoj in the court of learned Ilaqa Magistrate, Bhiwani and the same is pending for 11.10.2010. But it is not out of context to point out that the fact regarding filing of criminal complaint no.250 of 2007 was not disclosed in the amended claim petition filed by the petitioners Rajender and Hawa Singh on 11.8.2008. This shows that the petitioners have tried to conceal the material facts from the Tribunal as well as the respondents.



18. The copy of the complaint filed by PW-2 Rajender bearing criminal complaint no.250 of 2007 titled Rajender Versus Manoj is Ex.P-3.

The petitioners also placed on the file the order dated 2.8.2007 passed by learned ACJM, Bhiwani, in criminal complaint no.250 of 2007 thereby calling report under Section 210 of the Cr.P.C. from SHO Police Station Sadar, Bhiwani when it was brought to the notice of the court that regarding the same incident FIR No.276 dated 27.6.2006 under sections 279 and 304-A of the IPC was lodged.”

11. Record further reveals that Illaqa Magistrate had ultimately adjourned the matter sine die. Ld. Counsel for the claimants has brought nothing to the notice of this Court that in the said criminal complaint No.250 of 2007 learned Illaqa Magistrate had passed any order summoning the accused. Therefore, the learned Tribunal had correctly concluded that *“mere pendency of the criminal complaint no.250 of 2007 is of no consequence and this is not sufficient to raise inference that accident has taken place with the offending vehicle no.HR-47T/0123.”* Accordingly, the claim petition came to be dismissed with the following observations by the learned Tribunal: -

“20. As pointed out above, there is only solitary statement of PW-2 to prove that Chhano Devi had died in the accident in question on 26.6.2006 in the accident involving vehicle No.HR-47T/0123. But as pointed out above, in the FIR Ex.P-8 lodged by PW-2 the number of the vehicle involved in the accident was given to be HR-55/0123. He had tried to change the story



thereby alleging that he had wrongly given the number of the vehicle to be HR-55/0123 instead of offending vehicle No.HR-47T/0123 because he was under mental shock on account of death of his mother. But as pointed out above, PW-2 Rajender had made application to S.P., Bhiwani. But in the enquiry his stand was not found to be correct. Moreover, the police has not found the fact mentioned in the FIR Ex.P-8 to be correct and therefore, it has submitted cancellation report. Furthermore, PW-2 has not filed the objection petition to the cancellation report submitted by the police, instead, he filed a private complaint case bearing. no.250 of 2007 on 2.8.2007. But that criminal case is still at the preliminary stage and till now even summoning orders has not been passed.

21. There is nothing to show that petitioner no.1 Rajender was under mental shock when he lodged FIR Ex.P-8. No satisfactorily explanation has been given with regard to giving a wrong number of the offending vehicle to be HR-55/0123. Moreover, in the FIR it was against unnamed driver. It is not explained as to from what source the petitioner came to know about the correct number of the offending vehicle and also the name of the driver of the offending vehicle. It seems that the petitioners now wants to change the story thereby changing the number of the offending vehicle from HR- 55/0123 to HR-47T/0123. But as pointed out above, this story was not found to be correct and true by the police when it conducted enquiry on the application/representation made by the petitioner no.1 to S.P., Bhiwani. Furthermore, the solitary statement of PW-2 also does not inspite confidence and he has failed to explain the wrong mentioning of the number of the vehicle involved in the accident



in the FIR (Ex.P-8). This accordingly shows that the offending vehicle No.HR-47T/0123 was not involved in the accident in question but the petitioners have made a futile attempt to involve the same in order to grab compensation. Hence, I have no hesitation in holding that no cogent and material evidence has been brought on record by the petitioners to prove that Chhano Devi died in the accident which occurred on 26.6.2006 thereby involving vehicle No.HR-47T/0123 allegedly driven by respondent no. 1 Manoj alias Lila. Hence, issue no. 1 is decided against the petitioner.”

12. It may be pointed out that notwithstanding the above repeated inquiries conducted by the Police authorities on the applications submitted by the appellant; and the contrary and contradictory stands taken by the appellants at different times; before this Court the appellants had argued that driver of the vehicle bearing registration No.HR-47T/0123 had deposed before the learned Tribunal that wife of the owner of the said vehicle was serving as an Inspector of Police. Accordingly, on dated 17.10.2012, predecessor Bench of this Court had passed the following order: -

“The husband and son of the deceased Chhano Devi have preferred the present appeal, challenging the dismissal of the claim petition.

In connection with the accident, which allegedly took place on 26.06.2006, the very son of the deceased had lodged the F.I.R. on 27.06.2006 giving out the registration number of the offending vehicle namely HR-55/0123. It was made clear in the F.I.R. that it was a Tata Sumo vehicle.



The son of the deceased having alleged that he was under utter shock and, therefore, he had wrongly given three digits of the offending vehicle. He submitted two applications one on 27.07.2006 (Ex.P-6) and another on 22.12.2006 (Ex.P-8) giving out the correct registration number of the vehicle bearing No.HR- 47T/0123 but unfortunately, an untraceable report was submitted by the Head Constable on 24.01.2007 stating therein that he proceeded to the village but he could not trace the vehicle and the owner of the vehicle.

The son of the deceased lodged a private complaint on 02.08.2007 but the learned Judicial Magistrate without adverting to the fact that the untraceable report was already submitted, simply adjourned sine-a-die the private complaint and stayed the private complaint.

The driver of the vehicle bearing registration No.HR- 47T/0123 was examined before the Tribunal. He has come out with a version that the wife of the owner of the vehicle is serving as an Inspector of police.

In my considered view, proper investigation was not done by the police officials in this case as expected from them for the reasons best known to them. The Judicial Magistrate had also very carelessly dealt with the private complaint made by the son of the deceased.

In view of the above, The Inspector of Police, Police Station, Sadar, Bhiwani is directed to be present in the Court on 05.11.2012 at 10:30 AM without fail along with the file relating to F.I.R. No.276 dated 27.06.2006, under Sections 279 and 304-A, IPC of Police Station Sadar, Bhiwani."



13. Vide subsequent order dated 20.03.2013, it was directed as follows:-

“..... Therefore, in the interest of justice, the S.S.P. Bhiwani is directed to seize the entire file forthwith and entrust this case to a competent DSP to reinvestigate the FIR given by Rajinder and file a report under Section 173 under the Code of Criminal Procedure. A copy of the report filed by the DSP nominated by the SSP of the district be submitted to this Court.”

14. In compliance of the above said direction of this Court, report under section 173 CRPC was duly submitted and respondent no.1 faced trial. This fact has been recorded by Predecessor Bench in order dated 17.05.2013 which reads as follows: –

Learned State counsel has placed on record the letter dated 16.5.2013 received from the Superintendent of Police, Bhiwani wherein it stands mentioned that the investigation of the case was entrusted to DSP, Headquarter, Bhiwani. During investigation, Manoj Kumar, driver of the offending vehicle was arrested. However, the owner of the offending vehicle has sold his vehicle to some other person and, therefore, he has been arrested under Section 201 IPC. The efforts for recovery of the offending vehicle are on and final report under Section 173(8) Cr.P.C. will be submitted before the concerned Ilaqa Magistrate. Adjourned to 11.9.2013 for arguments.”

15. It may be pointed out that in the FIR No.276 dated 26.06.2006, the respondent No.1 has been acquitted by the learned Judicial Magistrate,



1st Class, Bhiwani vide judgment dated 28.09.2018 (Annexure RR1). Relevant extract of which is as follows: -

“24. After hearing both the counsels for the prosecution as well as for defence, I am of the firm opinion that in the present case there are certain lapses on the part of prosecution which cannot be done away with. The prosecution has set up its case upon the complaint Ex. PW-1/A wherein the complainant has described the manner in which the alleged accident was caused by the accused by driving the offending vehicle. The complainant has also stated about the rash and negligent driving of the accused by driving the offending vehicle at high speed. However, it is worth to mention here that in complaint Ex. PW-1/A, the registration number of the offending vehicle was mentioned by the complainant as HR-55-0123. Lateron, investigating agency submitted untrace report in the matter. Subsequently, by the order of Hon'ble High Court re-investigation in the matter was conducted and the complainant had given his supplementary statement mentioning the registration number of the offending vehicle as HR-47T-0123. However, the prosecution is completely silent upon this aspect of the case as to why the complainant mentioned two different registration numbers of the offending vehicle. In such circumstances, it was incumbent upon the investigating agency to prove on record the material by which they had connected the offending vehicle bearing registration no. HR47T-0123. Mere supplementary statement of complainant that the registration number of the offending vehicle was HR-47T-0123 is not sufficient in the absence of other cogent evidence. It has also not been explained by the prosecution as to



how come the complainant came to know about the registration no. HR-47T- 0123 of the offending vehicle. Also, no record has been brought by the investigating agency qua the vehicle number HR-55-0123. It seems that in order to implicate the accused in re-investigation, supplementary challan was filed by the investigating agency mentioning the registration number of the offending vehicle as HR-47T-0123 that too without cogent evidence.

25. Apart that, the oral evidence of complainant PW-1 is imperative comment upon. PW-1 has categorically stated in his cross examination that except him and his mother, no one was present at the spot at the time of alleged accident. However, to the contrary PW-7, the alleged eye witness of the present case has stated that he witnessed the alleged accident and even he also suffered injuries in the accident. It is not understandable as to why the complainant has not deposed about the presence of PW-7 and the factum of his receiving injuries in the alleged accident in his complaint Ex. PW-1/A and oral evidence. Apparently, there is no consonance in the version of PW-1 and PW-7 qua the presence of PW-7 as well as the factum of receiving injuries by him in the alleged accident. It would also not be out of place to mention here that police did not record his statement during investigation. It has not been explained by the prosecution as to why PW-7 was not joined in investigation by the investigating agency when he himself witnessed the alleged accident. Also, the complainant in complaint Ex. PW-1/A and in his examination in chief mentioned that the offending vehicle was Tata Sumo where as the alleged eye witness PW-7 has stated in his examination in chief that it was Tata Spacio. There



is apparent difference in the description of offending vehicle in the version of PW-1 and PW-7.

26. Further, it has not been disclosed by the investigating agency as to how come the accused has been connected in the present case. It was incumbent upon the prosecution to procure sufficient evidence to prove that infact, accused Manoj was driving the offending vehicle on the day of alleged accident when the complainant himself given two registration numbers of offending vehicle. However, there is nothing on record which could suggest that accused was the driver on the offending vehicle which caused the alleged accident. The only stand of prosecution is that accused Manoj and accused Balwan suffered their respective disclosure statement Ex. PW-6/A and Ex. PW-6/B vide which they have admitted their guilt. But at the same time, the aforesaid disclosure statements cannot be read into evidence as perusal of the case file shows that the alleged disclosure/confessional statements of the accused had been recorded by the police officials during the police custody of the accused persons and that too without the presence of any independent/public witness. As such, the said disclosure/confessional statements are not admissible in evidence as per the bar of Sections 25 & 26 of the Indian Evidence Act, 1872. There is no evidence on record which could prove the charge under Section 201 of IPC against accused Balwan.

27. Further, the accused was not known to the prosecution witnesses before. In such a circumstance, the test identification parade of the accused should have been conducted. The law is explicit that in criminal cases the identity of the culprit is



*invariably the most vital factor for the success of the prosecution case. Unless he has been apprehended at the spot or was previously known to or positively identified by the eye witnesses at the place of occurrence. Hence, the omission to hold test identification parade becomes fatal for the prosecution. The same is the position in the present case. It cannot be said with certainty in the present case that accused was driving the offending vehicle at the time of the accident. In the said circumstance, the serious doubt arises regarding the identity of the accused. No identification parade was conducted by the prosecution during the course of investigation. So it cannot be held safely that accused was only driving the vehicle. In **Satpal Versus State of Haryana reported in 2000(2) RCR (Criminal) 720**, the accused was not known to eye witnesses earlier. No identification parade was held. The Hon'ble Punjab and Haryana High Court held that only identification in the court cannot be said to be established beyond doubt. Conviction was set aside.*

28. Further, there is no direct evidence on record or eye witness which could connect the accused with the alleged commission of the offence. In addition, the rash and negligent driving has not been proved to the desired extent. No evidence as to tyre skid marks has been placed on record.

29. Further, various shortcoming and inherent flaws are present the prosecution evidence like ambiguities in the site plan, no proper record with respect to the skid marks as well as the fact that it was not proved to the satisfaction of this court that the vehicle was driven in a rash and negligent manner by the driver of the offending vehicle which caused the accident.

30. Further, no independent witness was not joined by the police



to witness the factum of alleged accident and investigation proceedings. Had the police officials made any efforts to join any public witness then they should have and could have noted down the name of the persons who were asked by them to witness the alleged investigation & arrest of accused. Nothing of this sort has come in the evidence of the prosecution. It is pertinent to refer to the following case law **State of Punjab Vs. Gurmeet Singh 1991(2) Recent Criminal Report 361**. In this case, there were 20 shops nearby and Investigating Officer had ample opportunity to join independent witnesses. It was held that statement of official witnesses were not sufficient to convict the accused and the contention of the prosecution that police officials had no ill will to involve the accused was not tenable in the said case.

31. Further, this court would like to draw support from the judgment given by a Division Bench of the Hon'ble Punjab and Haryana High Court titled as **State of Haryana Vs. Shamsher Singh 2006(3) RCR (Criminal) 345**, wherein, it was held that in a criminal trial the prosecution is cast with a very serious duty to bring on record quality evidence in order to substantiate its allegation against the accused person. It cannot seek conviction of any person without bringing substantial evidence on record as it becomes extremely difficult for the Court to pronounce a person guilty in absence of fool-proof evidence nailing guilt by the accused person.

32. In view of the above, I am of the considered opinion that the prosecution has failed to prove its case against the accused beyond the shadow of reasonable doubt. Therefore, the accused is, hereby, acquitted of the charges levelled against him. His bail



bond and surety bond stand discharged. File be consigned to the record room after due compliance.”

(Emphasis added)

16. Thus, despite best efforts by the Claimants as also the Investigating Agencies to implicate respondent no.1 in one way or the other, no cogent evidence could be produced to establish his guilt. Clearly, the claimants have abjectly failed to prove their case.

17. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts and findings.

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

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

26.05.2026

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No