

2025:PHHC:030196



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

**FAO-4586-2008 (O&M)  
Date of Decision: March 04, 2025**

Smt.Parkasho alias Parkash-wati and others

...Appellants

VERSUS

Ashok Kumar and others

...Respondents

**CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Ms.Sukhpreet Kaur, Advocates  
for the appellants.

Respondents No.1 and 2 proceeded against ex-parte.

Mr.S.S.Sidhu, Advocate  
for respondent No.3-insurance company.

\*\*\*\*

**ARCHANA PURI, J.**

The present appeal has been filed by the appellants-claimants, thereby, assailing the judgment dated 08.05.2008 passed by learned Motor Accident Claims Tribunal, whereby, the claim petition filed by the claimants was dismissed.

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

That, on 18.11.2005, at about 7.15 p.m., Bharat Singh was going on his cycle and when he reached near Ganesh Rice Mills, on Hassanpur Bhiduki road, the offending vehicle, which was driven by respondent No.1-Ashok Kumar, at a very high speed, in a rash and negligent manner, struck the cycle of Bharat Singh, as a result whereof, he fell on the road and



**FAO-4586-2008**

received serious and grievous injuries, including head injury and enroute to PHC Hassanpur, Bharat Singh died.

While asserting the accident to have taken place, due to rash and negligent driving of the offending vehicle by respondent No.1-Ashok Kumar, which led to death of Bharat Singh, the claimants filed the claim petition, thereby, seeking compensation to the extent of Rs.20,00,000/-.

Upon notice, respondents had made appearance. Respondents No.1 and 2, in their separate reply, had raised various preliminary objections, thereby, disputing the maintainability of the claim petition and also about the claimants to be not entitled to claim any compensation. On merits, the accident, as such, was denied. The remaining averments, with regard to the age, occupation and income of the deceased were also denied.

Respondent No.3-insurance company, in its reply, besides taking preliminary objections, also denied about the factum and manner of taking place of the accident and various assertions, with regard to age, occupation etc. of the deceased. In fact, it was asserted that FIR was got lodged in collusion with the local police. At first instance, the FIR was against unknown vehicle and later on, as an afterthought, the insured vehicle was being planted to get the compensation.

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

- 1) Whether the accident in question was caused due to rash and negligent driving of gypsy No.26G 0189 by Ashok Kumar respondent No.1? OPP*
- 2) Whether the petitioners are entitled to compensation? If so how much and from whom?OPP*
- 3) Whether the petition is not maintainable in the present form?*



*OPR*

*4) Whether the petition is bad for mis-joinder of parties? OPR*

*5) Whether the petition has been filed in collusion with respondents No.1 and 2? If so, to what effect. OPR3*

*6) Whether the Gypsy driver was not holding valid driving licence? If so, to what effect? OPR3*

*7) Relief.*

To so substantiate their claim, claimant Jagdish Chand, himself stepped into witness box as PW-2 and also examined PW-1 Balwan Singh, PW-3 Shib Sahay Malik, Head Clerk, Operation Division, DHBVNL, Palwal, PW-4 Head Constable Sita Ram and PW-5 Nand Kishore.

To rebut the claim of the claimants, respondent-insurance company tendered into evidence, the copy of the insurance policy Ex.R1.

On appraisal of the evidence, brought on record, learned Tribunal had concluded about statement of alleged eye witness Jagdish Chand to be not inspiring confidence and thereupon, had decided the material issues against the claimants and thus, consequently, dismissed the claim petition vide impugned judgment.

Feeling aggrieved by the aforesaid dismissal of the claim petition, the appellants-claimants have filed the present appeal.

In pursuance to the notice issued, respondent-insurance company made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, learned counsel representing the appellant-claimant has submitted that before learned Tribunal, the appellant-claimant were required to prove their case by preponderance of probabilities and to



substantiate the fact of accident and manner of taking place of the same, which resulted into death of Bharat Singh. Appellant-claimant No.2-Jagdish Chand, who is son of the deceased had stepped into witness box as PW-2 and he categorically deposed about having witnessed the accident and also deposed about vehicle involved in the accident and also deposed about rashness and negligence, on the part of Ashok Kumar, driver of the offending vehicle.

Furthermore, it has been submitted that the FIR was got registered at the instance of Jagdish Chand and challan was presented against Ashok Kumar. In the given circumstances, it is submitted that learned Tribunal had erroneously reached the conclusion about fact of accident and involvement of the Maruti Gypsy bearing registration No.HR-26G-0189, to be not established.

Per contra, learned counsel representing the respondent-insurance company vehemently contends that the appellants-claimants neither proved the fact of accident and involvement of the offending vehicle, nor proved that respondent No.1-Ashok Kumar, was rash and negligent in driving the vehicle in question. In fact, while making critical reference to the testimony of PW-2 Jagdish Chand, alleged eye witness to the accident and also while making reference to the various documents, coming forth, learned counsel for the insurance company submitted that FIR Ex.P1, was got registered thereby, mentioning the offending vehicle to be a Bolero of silver colour and the number was not mentioned. Even, the name of the driver, as such, was not mentioned.

In fact, while filing the claim petition, the claimants have substituted



the vehicle as Maruti Gypsy bearing registration No.HR-26G-0189. In view of the substitution of this vehicle, it was required on the part of the appellants-claimants to establish about the linkage of this vehicle with the accident in question and the role assigned to Ashok Kumar. However, while making reference further to the testimony of PW-2 Jagdish Chand, it is submitted that the same does not inspire confidence. Taking into consideration his cross-examination, serious doubt is raised to the version put forth by the claimants.

In fact, vague assertion has been taken about Ashok Kumar and Subhash i.e. driver and owner of the offending vehicle, to have come to the house of Jagdish Chand and having admitted about the accident to have caused with their vehicle by Ashok Kumar.

Furthermore, it is submitted that even if, it is presumed that it was in this manner, Ashok Kumar was linked to the accident in question, but however, it was called upon the claimants to so establish, but it has not been so established. In the minimum, the investigating officer, ought to have been examined but no such steps have been taken. Further, it is submitted that the collusion is writ large, on the part of the claimants and respondents No.1 and 2, as in the criminal case also, appellant-claimant No.2 has not supported the prosecution version and was declared hostile and ultimately, Ashok Kumar was acquitted.

In the light of the aforesaid, it is submitted that when the evidence, as a whole is read, it stands amply established that the accident has been wrongly projected to have been caused by Maruti Gypsy bearing registration No.HR-26G-0189, driven by respondent No.1-Ashok Kumar, in



a rash and negligent manner and the same resulted into death of Bharat Singh. 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.

In view of the rival submissions made aforesaid, 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 basis of the evidence produced before it and not to rely solely, on account of material put forth, on the basis whereof, judgment of acquittal is passed. It is indeed trite to state that while finding of a civil Court, is binding on the criminal Court, the finding of criminal court, could not and should not influence the decision of the Tribunal. The Tribunal is to adjudge the case, on the basis of the evidence produced before it and not on the basis of the findings, solely recorded by the criminal court, though the same may put Tribunal, on some caution for scrutiny purposes.

Thus, there is requirement of independent appraisal of the evidence, coming forth, before the Tribunal.

In this backdrop, advertng to the case in hand, it must be noticed that FIR Ex.P1 was got registered at the behest of Jagdish Chand, son of the deceased, who had stepped into witness box as PW-2. This witness, in his examination-in-chief, at one stage, had stated about the accident to have taken place with a car like Bolero, coming from the opposite side, driven by its driver and further, he stated that he noted down the registration number of the vehicle, which was HR-26G-0189. Further, he



**FAO-4586-2008**

deposed about death of his father and in the later portion of examination-in-chief, he had stated that he had not noted down the registration number of the offending vehicle, at the time of accident. On 24.11.2005, Ashok Kumar met him and directed him the registration number of his vehicle and make being Maruti Gypsy. Ashok Kumar told him that he caused the accident in which his father had died.

Thus, it is evident that it is on the basis of the disclosure made, at the behest of Ashok Kumar that he deposed about the vehicle involved in the accident and the role assigned to Ashok Kumar. This is a vague assertion so made, which does not stand established. In the FIR, the offending vehicle is mentioned to be Bolero of silver colour. No doubt, the number of the vehicle, as such, has not been given in the FIR Ex.P1, but may it be so. It should be noted that by the very nature of things, an FIR is only aimed at intimating of the occurrence to the police. It cannot and does not purport to be a complete encyclopedia of all the attending circumstances. One should not overlook the fact that on account of accident, author of the FIR, is also expected to be in a traumatic state of mind, soon thereafter, more particularly, when he or she is related to person, who had sustained injuries in the accident, which proved fatal.

However, at the same time, it is necessary for the claimants to prove in what manner, the make of the vehicle, later on came to the knowledge of the claimants and also about the role assigned to the person, who drove the said vehicle. Relating to the same, now coming to the cross-examination of Jagdish Chand, it is pertinent to mention that it not at all inspires confidence. In the opening line of cross-examination, he had stated



**FAO-4586-2008**

that he had seen the offending vehicle, after the accident had occurred and further also, admitted to be correct that when he reached the spot, the vehicle had already fled away. Though, voluntarily he stated that the vehicle had passed from his side, but, it is seemingly an afterthought. Furthermore, he also stated that he did not note down the registration number of the vehicle, at the spot nor anyone else, noted the same. He also admitted to be correct that he did not tell the registration or name of its driver to the police. He further admitted to be correct that he told the police that the offending vehicle was of silver colour Baleno.

Considering this cross-examination, it is evident that the claimant-Jagdish Chand, at any stage, had not come to know about the particulars of the vehicle involved in the accident and the role assigned to Ashok Kumar. Even if it be so, the things would have been straightened, had the claimants made an attempt to examine the investigating officer, who would have clarified about the manner of nominating Ashok Kumar as accused, in the criminal case, but however, no such steps have been taken.

PW-5 Nand Kishore had been examined and in his affidavit Ex.PW5/A, had stated that he was present in the house of Jagdish Chand, on 24.11.2005 and there, Ashok Kumar and Subhash had come and admitted that accident had taken place and they had come to compromise the matter and furthermore, he deposed about the police, in his presence, on 15.12.2005, having recovered offending Gypsy bearing registration No.HR-26G-0189. Also, he stated that the compromise was not effected. Even if, his testimony is considered as it is, then also, it does not inspire confidence. Non-linkage impact is definitely there.



Things, as observed aforesaid, would have worked, had the investigating officer come and proved the recovery memo, which also could be explained only by the investigating officer. But however, no such steps have been taken.

Very true, as pointed out by learned counsel for the appellants-claimants that in the accident claims, the case is to be established by preponderance of probabilities, but however, to begin with, the foundational facts of the case, ought to be brought on record by the claimants and such evidence, ought to be brought, thereby clarifying the facts relating to the taking place of the accident and the manner of the same. It has to convince the Court that in the mind of 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.

The Court in a civil trial, applies a standard of proof, governed by preponderance of probabilities. This standard is also described sometimes, as a balance of probability or 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 though, the standard of proof in civil cases is lower, then also, such requirement is not dispensed with.

In this backdrop, as already discussed threadbare, the testimony of PW-2 Jagdish Chand, son of the deceased, who allegedly had witnessed the accident and upon whose statement, FIR was got registered, as such, does not inspire confidence. The fact of Ashok Kumar and Subhash, driver and owner of the offending vehicle, having come to the house of Jagdish Chand and the consequential, nomination of vehicle as well as the role assigned to Ashok Kumar, do not stand established. This could only be established by the investigating officer, but however, no such steps have been taken to examine him or in the minimum, by producing the copy of report under Section 173 Cr.P.C. or the statement of Jagdish Chand, got recorded, at first instance and subsequent statement. Furthermore, no evidence, with regard to the recovery of offending vehicle and from whom, it was so made, has been proved.

In the given circumstances, learned Tribunal had appraised the evidence in correct perspective and has rightly concluded about the testimony of PW-2 Jagdish Chand, to be not inspiring confidence and consequently, had dismissed the claim petition.

As such, the appeal sans merit and the same is hereby dismissed.

**March 04, 2025**  
Vgulati

**(ARCHANA PURI)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

**Yes**  
**Yes/No**