



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

**XOBJR-39-CII-2000 in
FAO-1265-1998
Date of Decision: July 07, 2025**

Smt.Baldev Kaur and others

...Appellants

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.C.L.Verma, Advocate
for the cross-objector.

Ms.Jagriti Kalia, AAG, Punjab

ARCHANA PURI, J.

These are cross-objections filed at the instance of Piara Singh in FAO-1265-1998.

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

That, on 02.10.1994, Jaswinder Singh was posted as Constable at Police Station Mankheri. On that day, Jaswinder Singh was standing on the katcha portion of the road near Police Station Mankheri, which is situated near Mankheri-Kharar road. At about 8.30 p.m., a bus bearing registration No.PB-12A-9948, came from the side of Morinda and was proceeding towards Kharar. The bus was driven by respondent No.3-Mangal Singh, in a rash and negligent manner. The bus struck Jaswinder Singh, as a result

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whereof, he received multiple injuries. The driver of the bus fled away along with the bus. The accident had taken place, on account of rash and negligent driving of bus in question by respondent No.3 and the same resulted into injuries on the person of Jaswinder Singh, which proved fatal. FIR was lodged. The claimants, who are widow and minor children of deceased were dependents upon deceased Jaswinder Singh and had filed claim petition for seeking compensation.

Notice was issued to the respondents. Respondents No.1 and 2, in their separate reply, denied about the taking place of the accident and also denied about the rashness and negligence, as imputed by the claimants. Even, respondent No.3-driver of the offending bus, raised various objections, vis-a-vis, the maintainability of the claim petition and also about the claimants to be not legal heirs of deceased. However, on merits, the factum of accident was denied and it was alleged that the false case has been registered against him. Respondent No.3 was arrested, after considerable delay and the offending bus was taken into possession by the police on 13.10.1994, whereas, the bus was plying on the route of the accident everyday, thereafter.

However, it is pertinent to mention that during the pendency of the claim petition, Piara Singh, father of deceased Jaswinder Singh had filed an application for being impleaded as a party. The said application was dismissed on 09.11.1995. Thereupon, Civil Revision was filed before this Court and the matter was referred to Hon'ble Full Bench. In pursuance of the judgment dated 27.05.1997 passed by the Full Bench, Piara Singh was



impleaded as respondent No.5, in the claim petition.

Respondent No.5-Piara Singh, in his written statement, had averred that all the expenses were borne by him on the transportation of dead body, funeral and last ceremony of deceased. He being old person, was fully dependent upon his son Jaswinder Singh. His wife had already expired in the year 1992.

In the replication, the claimants denied the averments made in the reply, filed at the instance of Piara Singh and denied about him to be dependent upon the deceased. In fact, it was submitted that he was residing with his other two sons and was also owner of the land. His other two brothers, who were unmarried, were also living with him and he was cultivating the land of his brothers and thus, he is not entitled to any compensation.

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

1. *Whether Mangal Singh respondent while driving bus No.PB12A-9948 rashly and negligently on 2-10-94 caused the death of Jaswinder Singh?OPP*
2. *Whether the claimants are legal representatives and legal heirs of deceased Jaswinder Singh?OPP*
3. *Whether the claimants are entitled to receive compensation. If so to what extent and from which of the respondent?OPP*
4. *Whether the claim petition is not maintainable?OPR*
- 4-A *Whether respondent No.5 is also entitled to compensation alongwith the claimants?OPR5*
5. *Relief.*



To substantiate their claim, claimant Baldev Kaur, widow of deceased, stepped into witness box as PW-2 and further also examined Sanjeev Kumar as PW-1 as well as Mehar Singh as PW3, besides tendering into evidence, copy of post-mortem report Ex.A-1, copy of FIR Ex.A2 and copy of statement of Mehar Singh Ex.A3.

On the other hand, respondent No.3-Mangal Singh stepped into witness box as RW-2 and further also examined RW-1 Suba Singh and RW-3 Ramesh Kumar and Piara Singh stepped into witness box as RW-5/A.

The sole alleged eye witness examined by the claimants is PW-3 Mehar Singh. Learned Tribunal, on appraisal of the testimony of said witness and the testimonies of other witnesses, concluded about the doubt to be raised qua the presence of the said witness, at the spot, at the time of accident and his having witnessed the accident and thus, consequently, while taking into consideration the version given by the said witness, while deposing before the Court and also about his statement under Section 161 Cr.P.C., copy whereof is Annexure A-3, had concluded that the testimony of said witness does not inspire confidence and his presence at the spot was doubtful. Precisely, on this account, it was held that the accident had not taken place, due to rash and negligent driving of the offending bus by respondent No.3 and consequently, issue No.1 was decided against the claimants, as a result whereof, the claim petition was also dismissed vide impugned judgment.

Being aggrieved, the appellants-claimants had filed FAO-1265-



1998. In the said appeal, even the cross-objections were filed by Piara Singh, who is father of deceased Jaswinder Singh and who was impleaded as respondent No.5 before learned Tribunal.

At this juncture, it is pertinent to mention that during the pendency of aforesaid appeal, on 23.03.2023, this Court had dismissed the appeal for want of prosecution. Till date, none had appeared on behalf of the appellants-claimants, to seek revival of the appeal, so dismissed. Nevertheless, the cross-objections would be heard and determined, in view of Sub-rule 4 of Rule 22 Order 41 CPC.

I have heard learned counsel for the cross-objector as well as respondent-State and with their able assistance, perused the record of the Tribunal.

At the very outset, learned counsel representing the cross-objector has submitted that the appellants-claimants were required to prove the case by preponderance of probabilities and to so substantiate the fact of accident and manner of taking place of the same, which resulted into death of Jaswinder Singh, the claimants have examined eye witness PW-3 Mehar Singh, who has given vivid description of having witnessed the accident, as he was travelling on scooter, at the relevant time of the accident and he had witnessed the same and noted the number of the offending bus. Rather, he had also seen the driver of the bus. In fact, learned counsel for the cross-objector also pin-pointed that widow of the deceased has also deposed about the death of Jaswinder Singh, in a motor vehicular accident and furthermore, his post-mortem report has also been proved. It is further pointed out that



the criminal case was also registered against respondent No.3, which fact also ought to have been taken into consideration. It is also pointed out that learned Tribunal is required to examine the case, on the preponderance of probabilities and should not insist on proving the case on strict standard of proof i.e. beyond all reasonable doubt.

On the other hand, learned counsel for the respondent-State, has made critical reference to testimony of PW-3 and has categorically submitted that learned Tribunal had appropriately appraised the testimony of PW-3 Mehar Singh, the alleged sole eye witness to the accident in question and had correctly reached the conclusion about the involvement of bus as well as rashness and negligence, on the part of respondent No.3, having not been established and thus, made prayer for the dismissal of the appeal.

In the light of the aforesaid, this Court also does not dispute about the manner of appraisal of the evidence, in the motor accident claims under the Motor Vehicle Act, which is a beneficial piece of legislation. However, for the same, some satisfactory evidence, which inspires confidence, ought to be produced to prove their case, by preponderance of probabilities.

In this regard, 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, 1872, the anvil of testing **“proved”** **“disproved”** and **“not proved”** is the 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 case of criminal cases i.e., the facts must be proved beyond all reasonable doubt, but in civil cases, the party only has to convince the Court of preponderance of probabilities in his favour.

Furthermore, 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 a part of one binding thread, which calls upon the plaintiff/claimant, an undisputed burden to establish 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, the doctrine of preponderance of probability 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 findings of the Court, in a civil case, must be based on the test of a prudent person, who acts under the supposition that a fact exists and also in the context and circumstances of a particular case.

Thus, it is evident that the doctrine of preponderance of probability 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. The



alleged sole eye witness examined by the appellants-claimants is PW-3 Mehar Singh. However, learned Tribunal had made critical analysis of the said witness, who had deposed about his going on scooter on 02.10.1994 and that the bus was going towards Chandigarh and struck against some police officials, who were standing on road. He brought his scooter on one side and noted down the number of the bus. He also stated he had seen the driver of the bus. He also further deposed that thereafter, he had gone to meet mistri and then on 4th, he had gone to the school. He also deposed that he had come to know about the person, who met with an accident, was Constable Jaswinder Singh, who was posted in Mankheri and was resident of Kharar. Furthermore, he has also tendered into evidence his statement under Section 161 Cr.P.C., which is Ex.A3.

No doubt, the statement under Section 161 Cr.P.C. can be used for the purpose of confrontation as well as corroboration. However, considering the testimony of the said witness, it has been appropriately observed by learned Tribunal that the version coming forth in Ex.AW3 is quite different, wherein, the said witness had stated about his having proceeded towards Kharar side on 02.10.1994, on his scooter and when he reached near Mankheri Police Post at about 8.30 p.m., a bus was going at a very fast speed towards Chandigarh. The said bus struck against some police officials, who were standing there, on the left portion (katcha portion of the road, in front of police post). He further, in this statement, stated about the driver of bus having not stopped the bus and that he had followed the bus, on his scooter and noted down the number, by flashing dipper. Thereafter, he



went to his village and on the next date, he attended the school and went to village Dhire Majra. On 4th October, he came to know that Jaswinder Singh Constable had died in the accident and he came forward to lodge the report.

The version of the manner of his stopping at the spot of accident and noting down the number of the bus and having seen the driver of the bus, as deposed in the Court, is at variance with his statement under Section 161 Cr.P.C. Not only this, if he had noted down the number of the offending bus, definitely, the normal human behaviour calls that he is to report to the police, but no reason, as such, has come forward as to why the report was not made on the same day, more particularly, when the accident had allegedly taken place outside the police post Mankheri and there were other police officials standing by the side of the deceased, at the relevant time.

Considering the same, at least in the minimum, the claimants would have examined any other police official, posted at police post Mankheri, at the relevant time, who had allegedly witnessed the accident, but however, no such steps have been taken. Furthermore, the Investigating Officer has not been examined, who would have stated about the manner of recording of the statement of PW-3, the alleged eye witness and furthermore, also about the manner of nomination of respondent No.3 as accused in the case, but however, no such steps have been taken. Even, the cross-objector, as such, has solely himself stepped into witness box as RW-5/A, but he did not lead any evidence, vis-a-vis, taking place of the accident.

Considering this manner of 'let go' attitude of the claimants, definitely, the testimony of PW-3 Mehar Singh does not inspire confidence

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and doubt is raised about his being created witness, only to seek compensation. Considering the same, as such, there was no convincing evidence coming forth, to establish the taking place of the accident and involvement of the offending bus as well as rashness and negligence, on the part of respondent No.3.

In the light of the same, the findings recorded by learned Tribunal on issue No.1, do not warrant any interference. In view of the aforesaid conclusion, learned Tribunal had correctly dismissed the claim petition. Hence, the cross-objections sans merit and the same are hereby dismissed.

July 07, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No