Before Tribhuvan Dahiya, J.

NEW INDIA ASSURANCE COMPANY LIMITED—*Petitioner*

versus

MANPREET BAGGA AND OTHERS—*Respondents*

FAO No. 3544 of 2022

September 06, 2022

Motor Vehicles Act, 1988—S.166 and 173—Death in accident—Liability of Insurance Company to pay compensation—Challenged— Accident in question took place in busy market place, near a roundabout and deceased suffered serious head injuries —In case there is some delay in lodging FIR, it cannot be fatal to claimant's case, and gets explained by preceding circumstances—Further, non-examination of deceased's father, on whose statement the FIR in question was lodged, is also inconsequential, as factum of the accident, lodging of FIR, injuries and hospitalisation of deceased duly established on record by way of statements of eye witness—Merely because eye witness not cited as witness by police, cannot dispel veracity and credibility of eye witness—Thus, finding that driver was driving offending vehicle cannot be faulted with—Hence, liability of Insurance Company to pay compensation upheld.

*Held,*that the arguments raised by learned counsel for the appellants/Insurance company have no merit. The accident in question took place on 12.11.2019 in a busy market place, near a roundabout. Deceased Rajiv Kumar suffered serious head injuries, he was taken to a hospital at Mohali and finally to the PGI, Chandigarh. He remained constantly under treatment at the PGI, as established by the testimony of CW-2 Dr. Nilanjan Majumdar, Senior Resident and succumbed to the injuries on 27.11.2019, whereupon the FIR in question was lodged. It is, therefore, apparent that the family members, who were in a state of shock, remained occupied in attending on the deceased in the hospital. This has been specifically deposed by claimant wife/ respondent No.1 also. In case there is some delay in lodging the FIR in question, it cannot be fatal to the claimants case, and gets explained by the preceding circumstances.

(Para 8)

Further held, that besides, non-examination of the deceased's father, on whose statement the FIR in question was lodged, is also

inconsequential, as factum of the accident, lodging of the FIR, injuries and hospitalisation of deceased have been duly established on record by way of statements of the eye witness,CW-4, and the doctor concerned, CW-2. It is also proved on record that challan/report under Section 173 Cr.P.C. has been filed against respondent No.3-driver, who is facing the criminal trial. The evidence led is, therefore, sufficient to establish involvement of the driver as well as the offending vehicle. The findings to that effect recorded by the Tribunal do not call for any interference.

(Para 9)

Further held, that next contention of learned counsel for the appellant that the eye witness, CW-4, is not to be relied upon or that it is a procured witness, is also liable to be rejected. It has been well established on record that the accident in question took place in busy market place around 7:00 p.m. That is a time when lot of people would be present near the place of accident in question who could easily have witnessed it. The testimony of CW-4, who has been cross examined by the appellant and others, duly established the accident as well as involvement of the offending vehicle. He has also testified, as recorded by the Tribunal, that he did not know the deceased or his family before the accident. It could also not be established on record that he was, in any manner, inimical to respondent No.3-driver. Merely because he has not been cited as a witness in the challan presented by the police, it cannot dispel the veracity and credibility of the eye witness. It being a busy market place, there can be many eye witnesses to the accident in question. In case one has come to testify before the Tribunal, and the other has given statement to the police, it will not, in any manner, indicate any false involvement of the offending vehicle. Besides, neither the driver-respondent No.3 nor the owner-respondent No.4 came to the witness box to rebut the claimant's case. Therefore, the finding recorded by the Tribunal on Issue No.1 holding respondent No.3 to be rash and negligent, cannot be found fault with.

(Para 11)

Ashwani Talwar, Advocate, *for the appellant.*

Rudra Sharma, Advocate, for respondents No. 1 and 2/ caveators.

Naresh Kaushik, Advocate, for respondent No. 5/caveator.

TRIBHUVAN DAHIYA, J. (ORAL)

(1) This appeal has been filed by the appellant/Insurance

Company disputing its liability to satisfy the award passed by the Motor Accidents Claims Tribunal, SAS Nagar (Mohali) (in short 'the Tribunal') dated 5.4.2022, on the ground that the offending vehicle/car in question has been implanted in the case, which essentially is a hit and run case.

(2) The instant claim petition was filed by the wife and minor son of the deceased. As per facts of the case, as recorded in the award passed by the Tribunal, Tej Singh Sidhu (father of the deceased) recorded his statement with the police that he received telephonic message from the police to the effect that on 12.11.2019 at about 7:00 p.m. his son Rajiv Kumar (deceased) was going on his Activa scooter bearing registration No. CH04-J-6196 to join evening duty in PGIMER, Chandigarh, where he was working as Nursing Officer. He met with an accident when he reached near main market, Sunny Enclave, near Nijjar Chowk, Kharar, with a car bearing registration No. PB65- AV-7878. As a result, Rajiv Kumar suffered head injuries and was admitted to Civil Hospital, Phase VI, Mohali, for treatment. He along with his neighbors reached Civil Hospital, from where he came to know that his son Rajiv Kumar had been referred to PGI, Chandigarh, being in critical condition. He thereafter, reached the Trauma ward in PGI, Chandigarh, and found that his son had suffered head injuries. A young man Amandeep Singh/respondent No.3/ driver of the offending vehicle, met him there and disclosed that about 7.10 p.m., he had stopped his car near Nijjar Chowk and without noticing anything opened the window of driver side of the car. As a result Rajiv Kumar, riding on an Activa scooter, struck against the opened window and fell down on the road. He took Rajiv Kumar in his car to Chopra Hospital, Sunny Enclave, from where, he was referred to Civil Hospital, Phase VI, Mohali, and then to PGI, Chandigarh. During treatment at the PGI, Rajiv Kumar succumbed to the injuries on 27.11.2019. He was 44 years of age at the time of death. On the basis of statement of the complainant Tej Singh Sidhu, an FIR No. 273 dated 27.11.2019 was registered against the respondent No.3-driver and respondent No.4-owner of the car.

(3) Upon notice, respondents No.3-driver and respondent No.4–owner of the offending vehicle, appeared and filed their written statements denying the factum of accident, and also involvement of the vehicle in it. It was also averred that a false FIR has been registered against respondent No.3-driver. The Insurance company also filed a separate written statement denying the factum of

accident with the offending vehicle, as alleged.

(4) The Tribunal has awarded compensation of Rs.1,31,84,784/- along with interest @ 7.5% per annum to the claimants. The liability was fastened on the driver, owner and Insurance company jointly and severally.

(5) While deciding Issue No.1 "whether Rajiv Kumar son of Tej Singh Sidhu died in a motor accident, which took place on 12.11.2019, caused by respondent No.3 while driving offending car bearing registration No. PB 65- AV-7878, in a rash and negligent manner? OPP", the Tribunal has held that the factum of accident was proved by Gurinder Singh–eye witness of the occurrence as CW-4. He deposed that on 12.11.2019, he was present in the main market, Old Sunny Enclave, near Nijjar Chowk, Kharar, for purchasing some domestic articles when he saw that respondent No.3 –Amandeep Singh @ Mandeep Singh suddenly applied brakes and opened the driver side window in the middle on the main road, due to which Activa scooter of deceased Rajiv Kumar struck into the car. He fell down from the scooter and became unconscious as he received several injuries. The driver came out of the car and after seeing condition of the injured, took him to some hospital for treatment. He further deposed that he can identify the driver of the offending car. Within minutes PCR vehicle came on the spot and police made inquiries about the accident. The police obtained mobile number of this witness but nobody called him thereafter. He further deposed that claimant No. 1–wife of the deceased contacted him, and he narrated about the whole incident to her. In cross examination he stated that he has come to depose at the instance of the claimant-wife, who took his mobile number a year ago. He also specifically deposed that the FIR in question was got registered by the deceased's father. He denied that he was not present at the spot or was not witness to the accident. He did not know the deceased or his family prior to the accident in question.

(6) While recording findings on Issue No. 1, the Tribunal apart from the statement of the eye witness, CW-4, has also recorded that after filing the written statement denying the factum of accident, neither the driver-respondent No.3 nor the owner-respondent No.4 stepped into the witness box to rebut the claimants' case. No application was submitted by them to the authorities regarding false implication of respondent No.3 or his car. Respondent No.3 was arrested in this case and was facing trial in the Court at Kharar. Besides, CW-2 Dr. Nilanjan Majumdar, Senior Resident from PGI, Chandigarh has also

deposed about the admission of Rajiv Kumar deceased in PGI from 12.11.2019 to 26.11.2019, due to road accident. He further deposed that Rajiv Kumar suffered head injuries in the accident and proved the admission and discharge summary as Ex.PW2/1. Further, the copies of FIR and challan against the driver-respondent No.3 have also been proved on record. On this basis, the Tribunal concluded that the accident took place due to rash and negligent driving of car by respondent No.3 and decided the issue in favour of theclaimants.

(7) Learned counsel for the Insurance company has argued that it is a case of false involvement of the offending vehicle in the accident which gets established; firstly, on account of delay in lodging the FIR; secondly, non- examination of the complainant, who is father of the deceased on whose statement FIR in question was lodged; thirdly, eye-witness CW-4 cannot be relied upon since he has been statedly contacted one year after the accident, andthe police have not cited him as an eye witness in the challan filed in the criminal trial.

(8) The arguments raised by learned counsel for the appellants/Insurance company have no merit. The accident in question took place on 12.11.2019 in a busy market place, near a roundabout. Deceased Rajiv Kumar suffered serious head injuries, he was taken to a hospital at Mohali and finally to the PGI, Chandigarh. He remained constantly under treatment at the PGI, as established by the testimony of CW-2 Dr. Nilanjan Majumdar, Senior Resident and succumbed to the injuries on 27.11.2019, whereupon the FIR in question was lodged. It is, therefore, apparent that the family members, who were in a state of shock, remained occupied in attending on the deceased in the hospital. This has been specifically deposed by claimant wife/respondent No.1 also. In case there is some delay in lodging the FIR in question, it cannot be fatal to the claimants' case, and gets explained by the preceding circumstances.

(9) Besides, non-examination of the deceased's father, on whose statement the FIR in question was lodged, is also inconsequential, as factum of the accident, lodging of the FIR, injuries and hospitalisation of deceased have been duly established on record by way of statements of the eye witness, CW-4,and the doctor concerned, CW-2. It is also proved on record that challan/report under Section 173 Cr.P.C. has been filed against respondent No.3-driver, who isfacing the criminal trial. The evidence led is, therefore, sufficient to establish involvement of the driver as well as the offending vehicle. The findings to that effect recorded by the Tribunal do not call for any interference.

(10) It has been held by the Supreme Court in ***Sunita and others*** *versus* ***Rajasthan State Road Transport Corporation and another***[1] that the approach in examining the evidence of accident in claim cases is not to find fault with non-examination of some best eye witness, but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probabilities. Para 31 of the judgment reads as under :

> 31. Similarly, the issue of non examination of the pillion rider, Rajulal Khateek, would not be fatal to the case of the appellants. The approach in examining the evidence in accident claim cases is not to be find fault with non-examination of some "best" eye witness in the case but to analyse the evidence already on record to ascertain whether that is sufficient to answer the matters in issue on the touchstone of preponderance of probability. This Court in Dulcina Fernandes (supra), faced a similar situation where the evidence of claimant's eye witness was discarded by the Tribunal and the respondent was acquitted in the criminal case concerning the accident. This Court, however, took the view that the material on record was prima facie sufficient to establish that the respondent was negligent. In the present case, therefore, the Tribunal was right in accepted the claim of the appellants even without the deposition of the pillion rider, Rajulal Khateek, since the other evidence on record was good enough to prima facie establish the manner in which the accident had occurred and the identity of the parties involved in the accident."

(11) Next contention of learned counsel for the appellant that the eye witness, CW-4, is not to be relied upon or that it is a procured witness, is also liable to be rejected. It has been well established on record that the accident in question took place in busy market place around 7:00 p.m. That is a time when lot of people would be present near the place of accident in question who could easily have witnessed it. The testimony of CW-4, who has been cross examined by the appellant and others, duly established the accident as well as involvement of the offending vehicle. He has also testified, as recorded by the Tribunal, that he did not know the deceased or his family before the accident. It could also not be established on record that he

[1] 2019 (2) RCR (Civil) 209

was, in any manner, inimical to respondent No.3-driver. Merely because he has not been cited as a witnessin the challan presented by the police, it cannot dispel the veracity and credibility of the eye witness. It being a busy market place, there can be many eye witnesses to the accident in question. In case one has come to testify before the Tribunal, and the other has given statement to the police, it will not, in any manner, indicate any false involvement of the offending vehicle. Besides, neither the driver-respondent No.3 nor the owner-respondent No.4 came to the witness box to rebut the claimants' case. Therefore, the finding recorded by the Tribunal on Issue No.1 holding respondent No.3 to be rash and negligent, cannot be found fault with.

(12) Learned counsel for the appellant's reliance upon the judgments of this Court in ***Reliance General Insurance Company Limited*** *versus* ***Munshi Singh and others***[2] and ***Ram Parkash*** *versus* ***Bagga Singh and others***[3]**,** is misplaced, as the judgments have no application to the facts and circumstances of the present case. The judgment in the case of ***Reliance General Insurance Co.*** *case* (*supra*) relates to a matter in which FIR was lodged against an unknown vehicle and unknown driver. The complainant in his statement had himself stated that the details of the vehicle had been provided to him by two other persons, who were not shown to have made any such statement to the police. The accident in question had taken place when it was pitch dark. In those circumstances, it was held that the involvement of the offending vehicle in the accident could not be established. The facts of the instant case are entirely different, as referred to above. The second judgment cited in ***Ram Parkash*** *case* (*supra*) has also no application to the facts of this case. As therein, the driver already stood acquitted in criminal proceedings initiated against him because witness has made contradictory statements, and no other reliable evidence was brought on record to prove the factum of accident.

(13) On the above analysis of facts established on record as well as law on the point, it is held that the respondents/claimants duly established the facts relating to the accident, involvement of respondent No.3 and the offending vehicle in it.

(14) There is no merit in the present appeal.

(15) Dismissed.

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[2] 2015 (9) RCR (Civil) 190

[3] 2014 (3) RCR (Civil) 65

(16) All the pending miscellaneous applications, if any, stand disposed of as having been rendered infructuous.

Ritambhra Rishi