

(2025) 06 SHI CK 0709
In the High Court Of Himachal Pradesh
Case No : FAO (MVA) No.195 Of 2013

Ram Kali & Others

APPELLANT

Vs

M/s Kangra Ex Servicemen TPT & Others

RESPONDENT

Date of Decision : 20-06-2025

Acts Referred:

Bhartiya Nagarik Suraksha, 2023 — Section 481
Code of Criminal Procedure, 1973 — Section 313, 374(2)
Indian Penal Code, 1860 — Section 366, 376

Citation : (2025) 06 SHI CK 0709

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Ashwani K. Sharma, Nisha Nalot, I.N.Mehta, Pawan Kumar Nadda, Ankush Thakur

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J.

1. Present appeal has been preferred by the claimants-appellants under Section 173 of the Motor Vehicle Act, 1988 (hereinafter referred to as 'M.V. Act') for rejection of their Claim Petition No.45 of 2011, titled as Ram kali & others vs. M/s Kangra Ex-Servicemen TPT & others, by Motor Accident Claims Tribunal, Kullu (MACT), vide Award dated 19.11.2012.

2. According to claimants-appellants, on 14.09.2011 Raj Kumar (deceased) was travelling in a Van No.HP-34A-0759 alongwith other persons and on the way driver of the Van parked the vehicle on the side of the road to purchase some articles. In the meantime, respondent No.2-Pradeep Chand came from opposite side driving Bus No.HP-40B-9937, owned by respondent No.1-M/s Kangra Ex-Servicemen Transport Co., in a rash and negligent manner and dashed the bus against the Van causing injuries to occupants of the Van, including Raj Kumar. Injured were removed to Regional Hospital Kullu. On 15.09.2011, Raj Kumar succumbed to his injuries and his dead body was subjected to postmortem.

3. It is case of the claimants-appellants that deceased Raj Kumar died on account of rash and negligent driving of respondent No.2-Bus driver, but driver and conductor of the bus, in connivance with police succeeded to register FIR No.203 of 2011 dated 14.09.2011 in Police Station Bhunter under Sections 279, 337, 338 and 304 of the Indian Penal Code (IPC) against Van driver.

4. With aforesaid claim, Claim Petition was preferred before Motor Accident Claims Tribunal (MACT) for awarding compensation of `20,00,000/- from the respondents by pleading that deceased was a Home Guard Jawan getting salary of `14014/- and contributing to the income of the family by doing agricultural work and, as such, he was earning `16,000/- per month and was spending entire amount on the claimants.

5. Respondents had contested the claim of the appellants by filing reply and leading evidence. Stand of the respondents was that accident took place on account of rash and negligent driving of Van driver, but not for any act on the part of the bus driver, with further objection that driver, owner of the Van and Insurance Company which had insured the Van were also necessary parties to adjudicate claim for the rash and negligent driving on the part of the Van driver and liability of owner, driver and insurer of Van.

6. In rejoinder, claimants-appellants had reiterated their stand with submission that there was no rash and negligent driving of the Van driver and, therefore, objection with respect to necessary parties was not sustainable and owner, driver and insurer of the Van were not necessary parties.

7. After completion of pleadings, MACT had framed following issues:-

"1. Whether late Sh.Raj Kumar had died in an accident on account of rash and negligent driving of respondent No.2? OPP

2. If issue No.1 is proved in affirmative, to what amount of compensation the petitioners are entitled and from whom? OPP

3. Whether respondent No.3 being indemnifier is liable to pay the compensation? OPR 1 and 2

4. Whether the petition is bad for non joinder of necessary parties? OPR 1 and 2

5. Whether the vehicle was being plied in breach of terms and conditions of the insurance policy? OPR-3

6. Whether respondent No.2 was not having valid and effective driving licence? OPR-3

7. Relief.

8. To substantiate the claim, claimants-appellants examined four witnesses and had also produced copy of legal Heir Certificate Ex.PA; Postmortem report Ex.PW.1/A; and salary certificate of deceased Ex.PW.2/A.

9. Respondents, owner and driver examined four witnesses and had placed on record Insurance Policy Ex.RW.2/B; copy of Registration Certificate Ex.RW.2/C; copy of driving licence Ex.RW.1/B; Fitness Certificate Ex.RW.2/D; copies of Route Permit and Time Table Ex.RW.2/E and Ex.RW.2/F.

10. After Taking into consideration pleadings and evidence on record, MACT held that petition was bad for non joinder of necessary parties. Other issues No.1 to 3 were also decided against the claimants. Whereas, issue Nos.5 and 6 were decided against the Insurance Company, but in favour of respondents No.1 and 2 i.e. owner and driver of the bus.

11. Therefore, it was held by the MACT that Raj Kumar did not die in the accident caused by the rash and negligent driving of respondent No.2 and, thus, the claimants were not entitled for compensation from the respondents, including respondent No.3. Further that petition was bad for non joinder of necessary parties.

12. It was also held by the MACT that bus was being driven by the driver for valid and effective driving licence to drive the same and it was not being plied in breach of terms and conditions of the Insurance Policy.

13. During pendency of this appeal, an application was filed by the claimants to implead driver and owner of the Van as necessary parties. The said application was contested by respondents. Respondent No.3-Insurance Company had also filed reply to oppose the same. After taking into consideration material on record and considering the pleadings of the claim petition as well as application filed for impleading driver and owner of the Van, it was found that though it was categorical stand of the claimants that proposed respondents were not necessary parties and that of the respondents that they were necessary parties, however, in appeal, both sides had shifted respective stands as claimants were pleading that proposed respondents were to be added as necessary parties and respondents were claiming that proposed respondents were not necessary parties.

14. By considering entire material, the application for impleading driver and owner of the Van was dismissed by this Court with observation that for changed stance, respondents shall not be entitled to contest the appeal on the issue of non joinder of necessary parties and appeal shall be considered on its own merit excluding the issue of non joinder of necessary parties.

15. Ignoring the issue of non joinder of necessary parties, claim of the claimants has to be adjudicated on the basis of other material placed on record to prove their claim and also rash and negligent driving on the part of respondent No.2.

16. For awarding claim to the claimants that in petition under Section 166 of M.V. Act it is sine qua non that claimants have to prove rash and negligent driving of the driver and/or of owner of the vehicle involved in the accident. In case rash and negligent driving on their part is not proved, other evidence with respect to income, dependency and amount of compensation shall be of no use and need

not to be considered. Therefore, for adjudging the merit of the claim of the appellants, firstly material on record with respect to rash and negligent act on the part of owner and driver of the bus is required to be assessed.

17. Out of four witnesses, examined by the claimants, PW.1 is Dr.Ashok Rana, has proved postmortem of the deceased; PW.2-Prateek Sharma, Senior Assistant serving in the office of Commandant, Home Guard, has proved salary certificate of deceased Raj Kumar; and PW.3 claimant Ram Kali, wife of deceased, has deposed to justify the claim in consonance with claim petition. However, admittedly PW.3 Ram Kali was not present on the spot.

18. Only alleged eye witness to the accident is PW.4 Hira Lal, who claims that on that day, he was coming from Bhunter to Bajaura on his Scooter and he noticed that a bus being driven in rash and negligent manner by respondent No.2, dashed against the Van. According to him, three persons had received injuries, including one lady sitting on the rear seat and deceased Raj Kumar sitting on the front seat. According to his examination-in-chief, placed on record as Ex.PW.4/A, driver of Van was also sitting on the driving seat at that time.

19. Respondents, owner and driver of the vehicle, have examined four witnesses. Out of them, RW.1 Pradeep Chand driver and RW.4 Som Nath are spot witnesses. RW.1 Pradeep Chand has alleged that accident took place on account of rash and negligent driving of Van driver. RW.4 Som Nath is a passenger who was travelling in the bus on relevant day and on the basis of whose statement, recorded under Section 154 Cr.P.C., FIR was registered against Van driver.

20. RW.1 Pradeep Chand and RW.2 Arun Pathaina-owner of bus No.HP-40B-9937 are residents of District Kangra, whereas, RW.4 is resident of District Hamirpur and working as Accountant at Kullu. RW.3-LHC Jinesh Kumar is a police official, who had proved on record copy of FIR Ex.RW.3/A and has deposed that a criminal case was initiated against Van driver Raju under Sections 279, 337, 338 and 304 IPC by presenting challan in the Court of Chief Judicial Magistrate, Kullu on 17.12.2011.

21. Facts of FIR, except allegation of rash and negligent driving of the Van driver, have not been disputed. In the statement of PW.4 Hira Lal, it has come that there were three injured persons in the Van. In FIR also it has been recorded that three persons sitting in the Van had suffered injuries. Two of them were male and one was female. Therefore, these facts are corroborated in the evidence of appellants as well as respondents. However, claim of the claimants that driver had parked the vehicle on the side of the road to purchase some articles, has not been proved on record by leading cogent and reliable evidence. No doubt, in claim petition or in other civil proceedings a party has to prove case by leading evidence to satisfy principle of preponderance of probability only, but in present case, claimants-appellants have failed to discharge such onus.

22. It is case of the claimants, as also recorded in FIR, that there were three persons sitting in the Van and one of them was deceased Raj Kumar. There is

nothing on record about fate of other two injured. From the record, at least, it is apparent that driver of Van Raju was alive and was facing criminal trial for rash and negligent driving in present incident. Third occupant was a lady, but none of them has been examined as a witness to controvert the plea recorded in the FIR at the instance of RW.4 Som Nath, regarding rash and negligent driving on the part of driver of the Van.

23. PW.4-Hira Lal has been examined as a spot witness, but he is not a person, who informed the police, took the injured to the Hospital or remained associated in the investigation by the police. Though it is not necessary that everyone on the spot would like or has to be associated by the police in investigation, however, presence of this witness is doubtful for the reason that though he has claimed that lateron he informed about rash and negligent driving of the bus driver to the claimants, but it is a fact that he did not stop on the spot and not bothered to inform the police or to take injured to the Hospital. A person showing sympathy with the claimants by informing about rash and negligent driving of the bus driver, if he was present on the spot, definitely, would have either informed the police or at least would have managed to take injured to the Hospital or would have informed the families of the victims immediately. Had he been completely stranger, then there would have been no question for expecting all this. But, as claimed by him, he is the person who informed claimants about rash and negligent driving of bus driver.

24. Probability of truthfulness of the story of the claimants is also diminished by the claimants themselves by not examining those two persons, including Van driver, who, undisputedly were present on the spot at the time of accident and had received injuries. No other person, including PW.4, would have been a better person to depose about cause and manner of the accident. For withholding such an important witness, adverse inference deserves to be drawn against the claimants.

25. On the contrary, respondents have examined RW.4 Som Nath, who is not related to the respondents except that he was travelling in the bus on the day of incident. There is nothing on record to reflect any personal or other interest of RW.4 to depose in favour of the respondents and against the claimants. As a matter of fact, he had made statement under Section 154 Cr.P.C., on the spot to the police on the day of incident immediately after the accident.

26. It is a settled law that FIR or contents contained therein may not be substantial proof of incident or to prove rash and negligent act on the part of Van driver. However, FIR and contents recorded therein can be used to corroborate other material evidence on record. The contents of FIR may also be rebutted by the party disputing the same by leading cogent and reliable evidence. In present case, stand of respondents is duly corroborated by independent witness RW.4 and contents of FIR as well as subsequent events occurred thereafter including presentation of challan against Van driver. Whereas, claimants have avoided to produce material witnesses, who were present on the spot and even to examine

driver of the Van to rebut contents of FIR and deposition of RW.4 Som Nath.

27. In the aforesaid material, placed on record by claimants and the respondents, it is apparent that principle of preponderance of probability is in favour of evidence led by the respondents.

28. True it is that normal ordinary person despite being present on the spot, including the shop keepers or residents of the area, may not like to participate in the investigation or depose in the Court. However, persons sitting in the Van, who had received injuries on account of alleged rash and negligent driving of bus driver, would have been the best persons as well as willing persons to join investigation and/or to depose in the Court to substantiate claim of the claimants-appellants.

29. In view of above discussion, even if objection of the respondents with respect to non joinder of necessary parties is rejected or ignored, there is no sufficient evidence to establish claim of the appellants-claimants regarding rash and negligent driving on the part of the bus driver entitling them to have compensation under Section 166 of the M.V. Act from respondents.

30. Therefore, I do not find any merit in the appeal and the same is dismissed accordingly, so also pending application(s), if any.