

(2006) 09 P&H CK 0080
In the Punjab And Haryana At Chandigarh

Sukhdev Singh and Another

APPELLANT

Vs

Baldev Kaur and Another

RESPONDENT

Date of Decision : 25-09-2006

Acts Referred:

Citation : (2006) 4 ACC 533

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Judgement

Vinod K. Sharma, J.—By way of present appeal the challenge is to the award dated 1.3.2004 passed by the Motor Accident Claims Tribunal, Barnala (for short the Tribunal") granting compensation to the tune of Rs. 7,51,635 to be paid in equal shares to the claimants. The Tribunal further granted costs and interest @ 9% per annum from the date of claim petition till realisation.

2. The claim petition was filed by the claimant-respondents against Sukhdev Singh and Avtar Singh, the appellants herein, on account of death of Sukhpal Singh in a road accident on 25.5.2000.

3. It was alleged in the claim petition that on 25th of May, 2000 in the evening Sukhpal Singh along with Sadhu Singh were going on a scooter from Sekha towards Pharwahi and when they were near Pharwahi, they sighted Sukhdev Singh while coming on a tractor HMT 5911 bearing registration No. PB-16/1231 along with plough. When the tractor took a turn on reaching the road, then plough swung towards the deceased and sharp edge of the plough hit the deceased on his neck and other parts of the body. As a result thereof, Sukhpal Singh and Sadhu Singh fell down from the scooter which was also badly damaged. The accident was witnessed by Bogar Singh, Darshan Singh and Kuldeep Singh.

4. It was claimed by the claimant-respondents herein that Sukhdev Singh alias Gorla succeeded in running away from the spot with the tractor towards village Pharwahi. The eye witnesses Bogar Singh and others requested Sukhdev Singh

to take injured to the hospital, he stated that firstly Sarpanch Mohinder Singh was to be informed. After some time Shri Sukhdev Singh alleged to have come back and told that Mohinder Singh Sarpanch has been informed and he would be coming shortly and thereafter the injured would be shifted to the hospital.

5. It was the further case of the claimant-respondents that by that time Sadhu Singh had left the place of occurrence as Sukhdev Singh assured the witnesses to look after the injured and on his advice Bogar Singh and others left the place of occurrence. Shri Sukhpal Singh later on succumbed to his injuries. It was also the case of the respondents that Sukhdev Singh in connivance with the Sarpanch tried to hush up the matter, because the eye witnesses were outsiders and their addresses were not known.

6. The further case of the claimant-respondents was that Balwant Singh Sarpanch of Village Jhalur came to the spot and on seeing the dead body lying on the spot, he gave information to the police on 3rd of March, 2001. However, he could not disclose the name of driver and registration number of the tractor as Sukhdev Singh had already left the spot. The case of the respondents was that when Bogar Singh again visited the village Pharwahi and discussed about the occurrence with other witnesses, his statement was recorded by the police. It was also the case of the claimant-respondents that when the police were making efforts to arrest Sukhdev Singh, then he made extra-judicial confession before Didar Singh, who produced him before the Police. The challan was presented against Sukhdev Singh wherein it was alleged that accident had occurred due to rash and negligent driving of tractor by Sukhdev Singh.

7. The claim of the claimants was that Sukhpal Singh deceased was serving as a Kanungo in the Revenue Department and was getting Rs. 6,757 per month and the claimant-respondents were his legal heirs and were dependent on the deceased.

8. On notice respondent Nos. 1 and 2 appeared and filed a joint written statement contesting the claim petition inter alia on the ground that claim petition was liable to be dismissed being grossly and contemptuously delayed. It was submitted that as per petition the accident had taken place on 25.5.2000 whereas the claim petition was filed on 15.6.2001. It was claimed that Darbara Singh Guru, IAS, formerly the Deputy Commissioner and presently Secretary in Punjab Government is the cousin brother of the deceased and due to his powerful influence the false challan was presented to grab money under the Motor Vehicles Act. It was alleged that the appellants were not named in the FIR. It was claimed by the appellants that in fact no accident ever took place with any vehicle of the appellants and they had been made scape-goats to please Shri Darbara Singh Guru.

9. On merits, the respondent-appellants denied all the allegations of the claimants except admitting the fact that the tractor in question was owned by Shri Avtar Singh and respondent No. 1 was not the driver. It was claimed that

the tractor was not involved in the accident at all. The entire story was alleged to have been concocted at the instance of Shri Darbara Singh Guru, Senior IAS Officer of Punjab. It was also claimed that the tractor was never driven by respondent No. 1 Sukhdev Singh nor Sukhpal Singh Guru had died due to any accident with the alleged tractor.

10. It was also pleaded that Sadhu Singh had never disclosed any description of the person responsible for the accident. It was also claimed that the statements of Bogar Singh, Darshan Singh and Kuldeep Singh, eye witnesses, were pressed into service at the instance of Shri Darbara Singh, IAS. It was also the case of the appellants that Sadhu Singh never mentioned Bogar Singh, Darshan Singh and Kuldeep Singh as eye witnesses. The making of extra judicial confession was also denied. It was also alleged that criminal case was registered on totally false and frivolous facts. All other allegations were also denied.

11. It was also asserted that tractor No. PB-16/1231 was not insured. Therefore, no Insurance Company was impleaded as a party.

12. On the pleadings of the parties, the following issues were framed:

(i) Whether on 25.5.2k, in the area of village Pharwahi, on Sekha Pharwahi Road, Sukhpal Singh died in a motor vehicle accident, on account of rash or negligent driving of tractor HMT 5911 bearing registration No. PB-16/1231, by respondent No. 1. OPA

(ii) Whether the petitioners are the legal representatives of the deceased? OPA

(iii) Whether the petitioners are entitled to compensation if so to what extent and from which of the respondents? OPA

(iv) Whether the petition is grossly belated, if so its effect? OPR 1 and 2

(v) Relief

13. Issue No. 1 was decided by the learned Tribunal in favour of the claimant-respondents herein by giving detailed reasons which read as under:

10. Case of the petitioners is that on 25.2.2000, Sukhpal Singh deceased along with Sadhu, on scooter, was coming from Sekha side. They were near village Pharwahi, when tractor No. PB-16/1231 along with plough driven by Sukhdev Singh came. While taking turn, plough of the tractor swung towards the deceased. Sharp edge of the plough had hit the deceased on neck and other parts. Occurrence was witnessed by Bogar Singh, Darshan Singh and Kuldeep Singh. Sukhdev Singh was to shift the injured to hospital on tractor, but he replied that firstly intimation was to be given to Sarpanch Mohinder Singh, r/o Pharwahi. After some time, Sukhdev Singh came to the spot. In the meantime, Sadhu Singh had left the place of occurrence. Eye witnesses were requested to leave the place of occurrence, by Sukhdev Singh, by saying that Mohinder Singh is coming. After some time Balwant Singh Sarpanch of village Pharwahi came. Intimation was given to the police. Accident was due to rash and negligent

driving of the tractor, by Sukhdev Singh. In that accident, Sukhpal Singh deceased had died. Allegation of the respondents is that there was no accident, with the tractor in question of Avtar Singh, driven by Sukhdev Singh. In fact, false case was registered against respondents, at the instance of Darbara Singh Guru, IAS, presently serving as Secretary to Punjab Government, simply to grab money under the Motor Vehicles Act. Now question is whether accident was due to rash or negligent driving of tractor by Sukhdev Singh @ Gorla?

11. Kuldeep Singh appeared as PW 2 and on oath stated that he along with Darshan Singh was going towards Pharwahi from Sekha, when they sighted two persons going ahead of their scooter. They were at some distance from Pharwahi. A tractor with cultivators being driven rashly and negligently by Sukhdev Singh came and took a turn towards Sekha. While turning, cultivators had hit the deceased. Both scooterists fell on the spot and received injuries. Cultivators had hit the neck of Sukhpal Singh. Bogar Singh was also present on the spot. Tractor driver was requested to shift the injured to hospital, but he replied that firstly intimation is to be given to the Sarpanch. Sukhdev Singh present in the Court was driving the tractor. Sadhu Singh was on the pillion of the scooter. Accident was due to rash and negligent driving of the tractor by Sukhdev Singh.

12. Bogar Singh second eye witness appeared as PW-3 and has also supported the version of the petitioners by saying that accident was due to rash and negligent driving of the tractor by Sukhdev Singh. He can identify the driver of the tractor.

13. Besides oral evidence, the petitioners have also produced a copy of FIR Ex. P-1, copy of post-mortem report Ex. P-2, Ex. P-1 was recorded at the instance of Balwant Singh. According to the FIR, occurrence had taken place at about 9.00 p.m. on 25.5.2000. FIR was recorded at 10.30 p.m. Post-mortem examination was conducted on 26.5.2000.

14. The counsel for the petitioners argued that deceased was resident of Khuddi, whereas the respondents are residents of Pharwahi. Before occurrence, the petitioners had no enmity with the respondents. Without enmity, there was no idea to name the respondents while leaving the real culprits. Immediately, after the occurrence, matter was brought to the notice of the police. As per post-mortem report, injuries on the person of the deceased were ante mortem in nature. Kuldeep Singh and Bogar Singh are not related to the petitioners. They are not inimical towards the respondents. Without enmity, with the respondents eye witnesses cannot be expected to connive with the petitioners simply to get compensation, under the Motor Vehicles Act. No doubt, Shri Darbara Singh Guru is related to the petitioners, but if close relative of the IAS, IPS officer or any politician is murdered or dies in a roadside accident, then it does not mean that dependents of the deceased are not to get compensation, simply on the ground that deceased was related to senior officer. If respondents were to be implicated falsely, at the instance of Darbara Singh Guru, IAS, Secretary to Punjab Government, then on the same day, State case could easily be got registered. If

during night time, there is an accident, and no eye witness, even then on circumstantial evidence, accused can be convicted and sentenced. If intention of the petitioners was to get compensation, then petitioners could easily implicate their relative or friend. In the State case accused could easily be got acquitted by appearing in the Court and not supporting the prosecution story. Same eye witnesses while appearing before Claims Tribunal, can state on oath that accident was due to rash and negligent driving of the accused/respondent, who was driving the offending vehicle, at the relevant time. In the present case, Mr. Guru was not inimical towards the respondents. There was no idea to choose the respondents, who are residents of Pharwahi. Common experience shows that there are number of tractors, cars, scooters in every village. If idea was to get compensation, then any vehicle insured could easily be implicated particularly, when driver of the vehicle is having a valid licence. Delay is no ground to reject the claim petition. If there are number of eye witnesses, then all are not required to be examined. As per story, Sadhu Singh was on the scooter of the deceased, but he was not examined. If story is not genuine, then Sadhu Singh could easily be produced by the respondents. Sadhu Singh is not related to the deceased. Balwant Singh Sarpanch of village Jhalur had informed the police. Death is unnatural, due to the injuries, which were ante mortem in nature. No doctor was examined by the respondents to opine that injuries as per postmortem report, were not possible in a road side accident. So, registration of criminal case, in view of the statements of eye witnesses, clearly shows that accident was due to rash and negligent driving of the tractor by Sukhdev Singh. The Counsel for the petitioners cited Gouripala Manemma Vs. APSRTC, .

15. The Counsel for the respondents argued that Sukhdev was driver, whereas, tractor, in question, was owned by Avtar Singh, but with the tractor of Avtar Singh, there was no accident. According to the petitioners, accident had taken place on 25.5.2000, whereas, claim petition was filed on 15.6.2001. Sadhu Singh was on the scooter, driven by the deceased. Sadhu Singh was the best witness to appear in the Court to state on oath that accident was due to rash and negligent driving of the scooter by Sukhdev Singh. Non-appearance of Sadhu Singh is fatal. When best evidence is not produced, then adverse inference is to be drawn against the petitioners. Bogar Singh, Darshan Singh and Kuldeep Singh are not from the area of Barnala. Presence of alleged eyewitnesses, at the time of accident is doubtful. If Bogar Singh, Darshan Singh and Kuldeep Singh had witnessed the occurrence, then they should have informed the police. Immediately intimation was not given to the police. Revisit of Bogar Singh on 3.3.2001, in the area of Khuddi, is doubtful, because he had no relation in the area of Khuddi and Pharwahi. Question is why Bogar Singh revisited the place of accident on 3.3.2001. According to the petitioners, Sukhdev Singh made extra-judicial confession before Didar Singh, but Didar Singh was not produced. Recovery memo, order of Sapurdari and copy of charge-sheet were also produced by the petitioners, but these documents cannot be read into evidence, because evidence was of affirmative in nature. While leading evidence in

affirmative, documents should have been produced. Clear-cut order of the Tribunal that documents i. e. Ex. A3 to Ex. A are to be read in rebuttal only. Firstly, driver of the offending vehicle was not named in the FIR. Number of the vehicle was also not mentioned. After about eight months, story was concocted simply to claim compensation. The respondents were challaned at the instance of Sardar Darbara Singh Guru, IAS, Secretary to Punjab Government, who is related to the deceased. Requested to dismiss the claim petition. The Counsel for the respondents cited Kanan and Others Vs. State of Kerala, .

16. Ex. P-1 is copy of FIR, which was recorded at the instance of Balwant Singh, Sarpanch resident of village Jhalur. As per FIR, occurrence had taken place at about 9.00 p.m. FIR was recorded at 10.30 p.m., Ex. P-2 is post-mortem report. On 26.5.2002, post-mortem examination was conducted. According to the post-mortem report, seven injuries were noticed, on the person of Sukhpal Singh. Injury No. 1 is on the neck. Death was due to haemorrhagic shock, as a result of injury No. 1, which is sufficient to cause death, in the ordinary course of nature. All the injuries were ante mortem in nature. That means, death was at about 9.00 p.m. on 25.5.2000.

17. Next question is whether the accident was due to rash and negligent driving of the tractor by Sukhdev Singh. According to the petitioners, occurrence was witnessed by Bogar Singh, Darshan Singh and Kuldeep Singh. Sadhu Singh was on the scooter of Sukhpal Singh deceased. Claim petition was filed on 15.6.2001. There is delay in filing the claim petition, but under the Motor Vehicles Act, there is no limitation to file claim petition. Delay is one of the suspicious circumstance to opine as to whether accident was due to rash and negligent driving of the offending vehicle by the driver, impleaded as one of the respondents, but delay itself is no ground to reject the claim petition. If claimants had intention to implicate the respondents, then immediately, after the accident, claim petition could easily be filed, but immediately claim petition was not filed. Claim petition was filed when after investigation accused was challaned. Investigation was done by the police. After investigation, accused was challaned. This fact is clear from the copies of charge-sheet, recovery memo and order of sapurdari Ex. A-3 to Ex. A-6. Allegation of the respondents is that Darbara Singh Guru, IAS, Secretary to Punjab Government, is related to the deceased and at his instance, respondents were falsely implicated, but contention of the respondents seems to be not correct one. If at the instance of Mr. Guru, respondents were to be implicated, then after the occurrence, respondents could easily be got arrested and could easily be named in the FIR, but in the FIR respondents were not named. If the deceased is related to any IAS, IPS officer or any politician, then it does not mean that case is false. If case was registered at the instance of a senior IAS Officer or any politician, then complaints could be sent to the different authorities. Till today, no complaint was sent against Mr. Guru, on the allegation that state case was registered at his instance. One of the respondents namely Sukhdev Singh appeared as RW1, but he did not state a single word, that State case was registered against him, at the instance of Mr. Guru, who is related to

the deceased. Before occurrence, Mr. Guru was not inimical towards the respondent. When Mr. Guru was not inimical towards the respondents, then there was no idea to implicate the respondents. As discussed earlier, without filing any complaint, regarding false implication particularly when respondent did not state a word that State case was registered at the instance of Mr. Guru, respondents cannot argue that State case was registered at the instance of Mr. Guru and to claim compensation, claim petition was filed. If the claim petition is to be dismissed on the allegation that deceased was related to a Senior Officer or any politician, then no relation of any officer or politician is safe. By murdering or causing injuries to the relation of senior officer or politician, assailants cannot be expected to go scot-free, on the allegation that case was planted at the instance of senior officer or politician. When there is a genuine murder or accident, and after investigation case is registered, then case is not to be dismissed on the simple allegation that, deceased was related to senior officer. Delay rather shows that after thorough investigation, state case was registered. After registration of criminal case, claim petition was filed to get compensation under law.

18. Next contention of the Counsel for the respondents was that presence of eye witnesses is doubtful. Kuldeep Singh and Bogar Singh were not present on the spot. If they were present on the spot, then they could inform the police. No doubt, Kuldeep Singh is resident of village Bathoi Kalan and Bogar Singh is resident of village Kokar. Kuldeep Singh and Bogar Singh are not related to the petitioners. They were not inimical towards the respondents. Eye witnesses did not obtain undue favour from Mr. Guru at any stage. Relations of Bogar Singh were residing at village Pharwahi. So, possibility of presence of Kuldeep Singh and Bogar Singh at the time of occurrence cannot be ruled out. Common experience shows that when there is an accident and accident is witnessed by the strangers, then to avoid litigation, with the accused, strangers avoid to come forward and inform the police. Eye witnesses are not to get anything, if petition is accepted or rejected. When eye witnesses did not have undue favour from Mr. Guru, then they cannot be expected to depose falsely. If false case was to be got registered, then after few days, Mr. Darbara Singh Guru can get the case registered, but he did not pressurise the police or any officer for the false implication of the respondents. In every village, there are number of tractors, cars and scooters. If the intention of the claimants were to get compensation, then claimants could easily name their close relative or friend with the allegation that he was driving the offending vehicle. In a criminal case, accused could easily be got acquitted either by not appearing in the Court or by not supporting the prosecution story, while appearing in the Court. Close relative or friend named as driver of the offending vehicle, while appearing in the claim case was expected to admit the accident to help the claimants. Close relation was not named as driver of the offending vehicle. In claim case, compensation of Rs. 5,00,000 or 10,00,000 was expected to be granted. If Mr. Guru had intention to claim compensation, through illegal means, then I am of the opinion that there was no difficulty for a senior IAS Officer to arrange payment of Rs. 5,00,000 or

10,00,000. So, respondents cannot argue that they were falsely implicated to get compensation through unfair means.

19. Admittedly, immediately after the occurrence, report was not lodged by the eye witnesses. Sadhu Singh was on the same scooter, driven by the deceased. Sadhu Singh was not examined by the claimants, then story is not to be ignored. Sadhu Singh could easily be examined by the respondents, to state that there was no accident with the tractor, driven by Sukhdev Singh. Sadhu Singh is not related to the petitioners. Darshan Singh was the third eye witness, but he was not examined. Non-examination of Darshan Singh is also not fatal, because when there are number of eye witnesses, then all are not required to be examined. Quality of evidence is to be seen and not quantity of evidence. Balwant Singh Sarpanch had seen the dead body lying on the place of occurrence and at his instance, FIR was registered. If Balwant Singh did not notice the dead body lying on the spot, then he could easily be produced by the respondents, to state that intimation was not given to the police. As per claimants, driver of the offending vehicle had made extra-judicial confession before Didar Singh. If allegation of the petitioners is not correct one, then Didar Singh could easily be produced by the respondents. While deciding claim petition, summary procedure is to be adopted. Accident is not to be proved by the claimants as in State case.

20. Next allegation of the respondents is that identification parade was not arranged, but allegation of the respondents carries a little weight. In state case, accused can request to arrange test identification parade, but in the claim case, no provision to arrange test identification parade. After filing the claim petition, notice is to be sent to the respondents, who can appear personally or through Counsel. When respondents are not in custody, then no question of test identification parade. In State case, accused could easily apply for arranging the test identification parade. No police officer was summoned by the respondents to state that test identification parade was not arranged and whether accused had requested to arrange test identification parade.

21. Further argued that name of driver of the offending vehicle and number of the offending vehicle were not mentioned in the FIR. I agree that name of driver and number of the offending vehicle were not mentioned in FIR, but contention of the Counsel for the respondents would have carried weight if FIR would have been recorded at the instance of eye witness. Balwant Singh informant had simply seen the dead body, lying on the spot and then reported the matter to the police. In case of accident during night time, when there was no eye witness and after accident, driver of the offending vehicle succeeded in running away, from the spot then whether it means that there was no accident. If the number of the vehicle and name of the driver are the main ingredients of the FIR, to convict the accused, then in claim case, when accident had occurred during night time and witnessed by the stranger, then no question of rejection of the claim petition. Even on the basis of circumstantial evidence, accused can be convicted. Only point is why respondents were implicated. If there was false implication, then

why respondents kept mum. Sukhdev Singh respondent on oath stated that he was not knowing to drive the tractor. As per written statement, tractor is owned by Avtar Singh, who failed to appear in the Court to state on oath as to who was the driver of the tractor and whether Sukhdev Singh was the driver or somebody else was the driver. Tractor is on Sapurdari and this fact was not denied by the Counsel for the respondents. Owner of the tractor did not file any complaint at any stage that tractor was falsely implicated in State case. In Rakesh Soni and Another Vs. Krishan Lal and Another, it was held that if eye witnesses were able to identify the driver, car and colour of the car, driver fled away after accident and name of the driver could not be given in the FIR, then an inference can be drawn that vehicle was involved in the accident. In the present case, driver of the offending vehicle was identified by the eye witness namely Kuldeep Singh. Second eye witness also stated on oath that he can identify the driver of the tractor. In II (2000) ACC 265 Lorry number not given in FIR nor in statement before the police. Owner of the lorry denied involvement of his lorry. Then, it was held that offending lorry was involved in the accident. In II (2000) ACC 737 it was held that after appreciation of evidence, Tribunal concluded that offending vehicle was involved in the accident. In Rajanti and Others Vs. Nihal Singh and Others, bus crushed a person and he sustained fatal injuries. Bus driver denied accident. Bus was seized and bus driver was challaned by police, but acquitted in criminal trial. Claimants produced FIR, charge-sheet, site plan, post-mortem report, etc. along with the statement of eye witness before the police. Eye witness appearing before" the Claims Tribunal failed to support the claimant. Driver failed to explain the circumstances and situation of the accident. Finding of the Tribunal was reversed and it was held that principle of *res ipsa loquitur* is applicable as the facts and documents prove that deceased had died because of accident by the bus and mere denial of driver is not believable. Bus driver was rash and negligent and caused the accident. In Smt. Laxmibai Vs. Karnataka State Road Transport Corporation, Bangalore, respondent denied involvement of bus in the accident, but another passenger in the bus supported the injured's version respondent did not produce long-sheet and control charts to show that the bus was not plied on that road on that date. Claim petition was accepted. In the present case, deceased was resident of Khuddi Kalan. Respondents are resident of Pharwahi. So, presence of Sukhdev Singh while driving the tractor in the area of Pharwahi, cannot be ruled out. The Counsel for the respondents cited 1987 PLR 563 wherein it was held that application filed after about a year from the original claim petition. Then, it was held that claimants were not sure as to whether the said truck was involved or not. This authority is not helpful to the respondents, because no limitation to file claim petition. The Counsel for the respondents further cited 1994 PLR 695:1993 PLR 709: 2001 PLR 832 and 2001 PLR 391. In all these authorities, dispute was regarding the identity of vehicle and driver. Name of the driver not mentioned in the FIR. Number of the vehicle also not mentioned. Eye witness did not accompany the injured to hospital. Then, it was held that accident was not due to rash and negligent driving of the respondent. Claim petition was dismissed. The facts of the present case differ

from the facts of the aforesaid authorities. The accident was not witnessed by the petitioners. In fact accident was witnessed by strangers, who were requested to leave the place of accident, because driver of the offending vehicle had requested to bring the Sarpanch for shifting the injured to hospital. Mohinder Singh was not examined by the respondent to state on oath that on the day of occurrence, he was not contacted by Sukhdev Singh to shift the injured to hospital for medical aid. Owner of the offending vehicle failed to appear in the Court to state on oath that vehicle was not involved in the accident and on 25.5.2000, tractor was away to some other state or was in police custody in any case. Secondly, Sukhdev Singh was not driver. In fact such and such person was the driver. The Counsel for the respondents further cited Kanan and Others Vs. State of Kerala, wherein it was held that identification parade not held. Identification of accused for the first time in the Court is no identification in the eyes of law. No dispute about the law, laid down in the above cited authorities, but the same are in the cases registered under I.P.C. No authority under Motor Vehicles Act was cited to the effect that when there is no identification parade, then claim petition is to be dismissed. In a case of petition under Motor Vehicles Act, summary procedure is required to be adopted. Technicalities and niceties are not to be taken into consideration to opine that claimants have failed to prove beyond doubt that accident was due to rash and negligent driving of the offending vehicle by the respondent. When accident is witnessed by strangers, then strangers are not to come forward immediately to lodge report to avoid litigation with the driver of the offending vehicle. Matter is also not reported to the police to avoid humiliation by appearing in the Court. All discussed above show that accident was due to rash and negligent driving of tractor by respondent No. 1. In that accident, Sukhpal Singh, had died. Issue is accordingly decided in favour of claimants.

14. Issue No. 2 was decided in favour of the claimants, whereas on issue No. 3 the learned Tribunal came to the conclusion that the claimants would be entitled to a sum of Rs. 7,51,635 by applying multiplier of 14 on the assessed dependency.

15. On issue No. 4 the learned Tribunal came to the conclusion that the claim petition could not be said to be belated as the identity of the real culprit was only disclosed in June 2001 and the claim petition was thereafter filed.

16. Learned Counsel for the appellants has challenged the findings of the learned Tribunal on issue No. 1 mainly on the ground that the presence of alleged eye witnesses was not probable. The contention of the learned Counsel was that though the accident is alleged to have taken place on 25.5.2000, the alleged eye witnesses failed to disclose the name of the driver or registration number of the tractor till March, 2001. His contention further was that the probability of their presence at the spot was to be doubted as the alleged eye witnesses were from far off places and their presence was suspicious.

17. It was also contended that the alleged eye witnesses had failed to identify

the driver, neither he was named in the statement made before the police nor the registration number of the vehicle was given. Even the reason given for the presence of the eye-witnesses was doubtful.

18. It was further argued that while Bogar Singh gave some reasons for his presence, Kuldeep Singh did not disclose any such reason. It was also contended that Sadhu Singh, who was the most natural witness, was not examined. Learned Counsel for the appellants placed reliance on the judgment of the Hon'ble Supreme Court in Kanan and Others Vs. State of Kerala, , to contend that once the identification parade was not held, therefore, the statements of the claimants' witnesses could not have been relied upon. This argument of the learned Counsel for the appellants has been duly considered by the learned Tribunal and it has been rightly held that was a case under the criminal law, where the findings have to be recorded beyond any reasonable doubt. This authority, therefore, would not apply as the learned Tribunal was to decide it on the probabilities of the matter. Even otherwise, it would be noticed that Kuldeep Singh PW-2, had identified Sukhdev Singh, driver of the tractor, in the Court and, therefore, the contention of the learned Counsel for the appellants cannot be accepted.

19. Thereafter, the learned Counsel for the appellants by placing reliance on the judgment of this Court in Lachhmi and Others Vs. Baljit Singh and Others, contended that once the name of driver was not mentioned in the FIR, then it has to be presumed that the driver was involved only on suspicion. The contention of the learned Counsel was that as in the present case, the name of the driver and the registration number was not given in the FIR, it was not safe to conclude that the accident had occurred due to rash and negligent driving of the appellant-driver. This contention of the learned Counsel could not be accepted as in that case this Court came to the conclusion that the eye witness was said to be a distance of one killa when the accident took place and it was dark at that time. It was on account of this fact coupled with the non-naming of driver in the FIR that this Court had come to the conclusion that the involvement of the driver was suspicious. However, in the present case, it would be noticed that the eye witnesses had not only seen the accident, but in fact had a talk with the driver of tractor namely Sukhdev Singh, rather the case of the eye witnesses was that he had promised to look after the injured after meeting the Sarpanch. Therefore, no benefit can be drawn by the appellants from this authority.

20. Learned Counsel for the appellants thereafter placed reliance on the judgment of this Court in the case of Kartar Singh v. Udham Singh Shani and Anr. (1987) PLR 563 to contend that once the claim petition was filed after delay of more than one year, then it has to be presumed that the claimants were not sure as to whether the tractor was actually involved in the accident or not. The reading of the said judgment shows that the claim petition was filed, and it was one year thereafter that the number and name of the driver of the vehicle were mentioned. But in the case In hand, positive evidence has come on record that

the claim petition was only filed after it was affirmed on the statements of the eyewitnesses that the accident had occurred en account of rash and negligent driving of Sukhdev Singh, rather the claimants did not file the claim petition hurriedly and waited till the real offender was found out and, therefore, this authority Is also of no help to the appellants.

21. Learned Counsel for the appellants also placed reliance on the judgment of this Court reported in *Surinder Kaur and Ors. v. Raj Kumar* (1993) PLR 709 to contend that when name of driver as well as the number of vehicle was not mentioned in the FIR, it could not be safely said that the vehicle was involved in the accident. However, this authority also does not advance the case of the appellants as in the said case, there was no convincing evidence to prove the involvement of the alleged offending vehicle, whereas in the instant case there is positive evidence by way of eye witnesses to connect the appellants with the alleged accident.

22. The next reliance by the learned Counsel was placed on the judgment of this Court in *Smt. Chand Kaur Vs. Mohinder Singh*, to contend that once the witness gave the number of the tractor, but his presence on the spot was doubtful as he was not an eye witness named in the FIR, therefore, the claim petition was liable to be dismissed. In my opinion, the said authority too does not advance the case of the appellants as in the present case, the FIR was lodged by Balwant Singh, Sarpanch of Village Jhalur on finding the dead body on the road when the eye witnesses had already left, he was not aware of the name of the driver or the registration number of vehicle which was subsequently disclosed by the eye witnesses. Therefore, the said authority cannot be made applicable to the facts of the present case.

23. Lastly, learned Counsel for the appellants relied upon the judgment of this Court in the case of *Ram Karan Vs. Zile Singh*, to contend that once in the FIR, number of the vehicle was not mentioned, giving of number in the statement amounts to improvement and, therefore, could not be believed. I fear this authority also cannot advance the case of the appellants as in the present case eye witnesses at the very initial stage when they appeared before the Police or before the Court disclosed the name of the driver as well as the registration number of the vehicle. The witnesses were not informants, therefore, it could not be said that they failed to disclose the name and registration number of the vehicle.

24. Mr. Ashok Singla, learned Counsel appearing on behalf of the claimant-respondents, made reference to the statement of eye witness i.e. Kuldeep Singh, PW-2, to contend that details of the accident and the manner in which it occurred, were duly disclosed. He further made reference to the statement of this witness to contend that he even identified the driver in the Court. According to the learned Counsel for the respondents, the testimony of this witness was not shaken in the cross-examination. He also made reference to the statement of PW-3 Bogar Singh to explain the delay in moving the claim petition. This witness

explained that on 3.3.2001 when he again visited Farwahi village to meet his relations and when he came to know that so far the police was searching for culprit, he went to the Police Station Sadar and made statement about involvement of Sukhdev Singh @ Gorla.

25. The learned Counsel also pointed out that the stand of the appellants that the case has been instituted at the instance of Shri Darbara Singh Guru was rightly disbelieved by the learned Tribunal, especially when it was admitted case that there was no enmity of Shri Darbara Singh Guru with the appellants nor there was any motive to falsely implicate them in the case. It was admitted that Shri Darbara Singh Guru is only a cousin brother and not the real brother of the deceased so as to attribute motive to him.

26. Learned Counsel for the respondents relied upon the judgment of the Hon'ble Andhra Pradesh High Court reported in Gouripala Manemma Vs. APSRTC, to contend that the arguments of the learned Counsel for the appellants are contrary to doctrine of res ipsa loquitur as once the accident was proved, it was for the appellants to show by cogent evidence that they were not involved.

27. Learned Counsel for the respondents thereafter placed reliance on the judgment of the Andhra Pradesh High Court in the case of K. Sankaramma and another Vs. Venkateswara Engineering and Construction Limited and another, , to contend that mere non-mention of name in the FIR was not fatal to the case once the factum of accident was mentioned.

28. I have considered the arguments of the learned Counsel for the parties and find no force in the present appeal.

29. The reading of the findings recorded by the learned Tribunal would show that the learned Tribunal has based its findings on the statements of the eye witnesses to the accident, who not only explained as to how the accident had taken place, but had also explained the delay in making the application.

30. It is not in dispute that there was no enmity between the parties to have false implication of the appellants. Once it was proved that the death had occurred due to accident and the injuries on the body of the deceased showed that the same was the result of the accident, there was no reason to disbelieve them and the learned Tribunal rightly decided issue No. 1 in favour of the respondent-claimants and against the appellants.

31. Learned Counsel for the appellants also challenged the findings of the learned Tribunal on issue No. 3 to contend that the compensation awarded was highly excessive. According to the learned Counsel for the appellants, the claimants were mother and brother of the deceased and, therefore, multiplier of 14 was not justified. I find no force in this contention as the deceased was 23 years at time of death and normally multiplier in such cases is of 17. However, keeping in view the fact that the claimants were mother and brother of the deceased, the learned Tribunal had applied multiplier of 14, which is quite

reasonable and cannot be said to be excessive by any stretch of imagination. Therefore, no fault can be found with the findings recorded by the learned Tribunal on this issue and the same are affirmed. The findings recorded on other issue have not been challenged.

32. Consequently, I find no force in this appeal and the same is accordingly dismissed.

33. In view of the findings recorded on issue No. 3 in this appeal, vide which findings on this issue have been affirmed, there is no merit in the cross-objections which are also dismissed.