

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

FAO No. 1926 of 2003 (O&M)

Decided on: 18.5.2015.

Oriental Insurance Company Limited

... Appellant

Versus

Smt. Kamla and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ashwani Talwar, Advocate,
for the appellant.

Mr. P.R. Yadav, Advocate,
for the respondents.

K.C.PURI.J.

This is an appeal directed by Oriental Insurance Company Limited against the Award dated 4.2.2003 passed by Sh. V.S. Malik, the then Presiding Officer, Motor Accident Claims Tribunal, Narnaul (for short “the Tribunal”) vide which the claim petition was partly accepted and a sum of Rs.6,09,500/- was allowed to the claimants.

Briefly stated, Smt. Kamla widow, Pardeep minor son, Raghubir Singh father and Smt. Mishri Devi mother of deceased Vijay Singh filed claim petition claiming compensation to the tune of Rs.25 lacs in respect of death of Vijay Singh in a motor vehicular accident.

The case of the claimants set forth in the claim petition is that on 30.7.2001 Vijay Singh deceased started from his village Mirjapur for Jaipur to bring medicines for his brother-in-law Krishan Kumar. He was to go to Dr. Shiv Gautam Mental Hospital, Jaipur for that purpose. After taking medicines, he was returning and on the way he reached Kotputli. From Kotputli he took jeep No. HR-35-A-2291 for Narnaul. The jeep was driven at a very high speed and in a rash and negligent manner. The jeep was driven by Roshan Lal in such a way that it turned turtle on kacha berm of Narnaul-Goneda road. Vijay Singh died at the spot. His dead-body was concealed in the field of Sanwal Ram Sharma having a gawar crop. The jeep driver with the help of a tractor brought his jeep back on the road and fled away from the spot. Vijay Singh did not return home on 30.7.2001. A search for him was made in the relations and a missing report was lodged at Police Station Ateli on 7.8.2001. On that day, the claimants came to know that dead body of an unknown person was found in village Goneda. The claimants went to Police Station Kotputli where they identified the deceased by his shoes, medicines and the slip of medicines. The accident was seen by Bishamber Dayal Yadav who was also travelling in jeep No. HR-35-A-2291. The deceased was aged 40 years. He was doing agricultural work. He was working as a Salesman with Haryana Feed Mill, Pataudi road, Gurgaon and was getting Rs.5000/- per month as salary. Besides it, he was having an income of

Rs.2 lacs per annum from his agricultural land. The case about this

accident was registered at Police Station Kotputli by way of FIR No. 590 under Sections 279, 304-A, 201 and 197 IPC.

Respondent No.1 resisted the claim. Respondent No.2 appeared through counsel on 5.2.2002. None appeared for respondent No.2 on 17.10.2002 and he was proceeded ex parte. On behalf of respondent No.3 Shri Jitender Kumar, Advocate filed Memo of Appearance but he has not filed written statement so his defence was struck off on 17.10.2002.

Respondent No.1 has denied the averments of the claimants made in the claim petition. According to him, the deceased was not doing any work. He was an old person and had retired from his work. Conducting of post-mortem examination on the dead body was denied. The mode of accident was denied. Other averments made in the claim petition were denied.

No replication was filed in respect of written statement filed by respondent No.1.

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

(i) Whether the motor vehicle accident that took place on 30.7.2001 is an outcome of rash and negligent driving of jeep No. HR-35-A-2291 by respondent No.1 ?OPP

(ii) Whether the petitioners are entitled to compensation for the death of Vijay Singh in the

aforesaid accident. If so, in what amount and from whom ?OPP

(iii) Relief.

The claimants examined PW-1 Kamla Devi, PW-2 Subedar Bishamber Dayal Yadav, PW-3 Partap Singh, PW-4 Raghbir Singh and closed the evidence.

In rebuttal, no evidence was led by the respondents.

After appraisal of the evidence, issue No.1 was decided in favour of the claimants. Under issue No.2, a sum of Rs.6,09,500/- was awarded by the Tribunal to the claimants as compensation vide Award dated 4.2.2003.

Feeling dis-satisfied with the Award dated 4.2.2003 passed by the Tribunal, insurance company has directed this appeal. This Court on 11.2.2010 passed the following order:-

“The appeal is by the insurance company challenging the award inter alia on the ground that there had been a fraud practiced by the claimants in collusion with the insured and even later who had been engaged to defend the insurance company did not file the statement and the case had been decided without a proper defence being taken to protect the interest of the insurer. It is stated that there are interesting materials to show that there had been a fraud and learned counsel wants to therefore make reference to

the fact that the post mortem certificate itself was inconsistent since the body had been in a decomposed condition at the time when the post mortem had been done. The death itself had been reported in the state of Rajasthan nearly 10 days after the alleged death due to the accident. By interim orders, I find that the amount has already been deposited by the insurance company and there is a direction for renewal of these deposits. If the award is also mature there had been renewals of the deposits beyond the period of maturity.

I am of the view that the insurance company cannot be heard without calling upon the insurer to state his defence. There has been an extraordinary delay and the insurance company itself had contributed to such a delay though it has an explanation as to how due to laxity on the part of the counsel engaged by the insurer, it has come to such a pass.

I afford to the insurer an opportunity to file a written statement before this Court.

Adjourned to 4.3.2011. No further opportunity shall be given.”

Thereafter, the insurance company has filed the

written statement denying all the facts. The plea of fraud has been

taken that respondents No.1 & 2 have connived with the claimants in order to get compensation. It is further pleaded that post-mortem examination on the dead body was conducted and there is no opinion that Vijay Singh died on account of the accident. His body eaten by animals was found.

Admittedly, the written statement by insurance company was not filed before the Tribunal and the same has been filed before this Court. Plea of fraud has been taken. As per post mortem examination report, no cause of death has been pointed out. So, in these circumstances, since this Court has allowed the insurance company to file written statement and as such the stand taken by the insurance company is required to be adjudicated by the Tribunal.

This Court is conscious of the fact that the Motor Vehicles Act, 1988 is a welfare legislation and has been enacted to grant speedy relief and to provide just compensation to the road victims. However, at the same time, this Court is of the opinion that no one should get the amount by playing fraud. The rights of the claimants have already been protected as the amount has been deposited before the Tribunal in the shape of FDR and successful party shall get this amount along with interest. The said amount shall not be paid to any of the parties till adjudication of the matter.

So, in these circumstances, the findings of the Tribunal regarding all issues stands set aside and the case is remanded to the Tribunal to decide afresh after allowing both the parties to lead

evidence. Since it is a old case and claimants have not received any amount and as such, the Tribunal is directed to dispose of the case within 6 months from the date of appearance of the parties. The parties through their counsel are directed to appear before the Tribunal on 1.7.2015 and the Tribunal shall proceed in accordance with law. The file of the Tribunal be sent back immediately.

18.5.2015.
SN

(K.C.PURI)
JUDGE