

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.140 of 2012 (O&M)
Date of Decision: January 08, 2015

Reliance General Insurance Co. Ltd.

..Appellant(s)

Versus

Munshi Singh and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? No

Present: Ms. Vandana Malhotra, Advocate
for the appellant.

Mr. M.S. Randhawa, Advocate
for respondent Nos.1 to 3.

Respondent Nos.4 & 5 already ex parte.

ANITA CHAUDHRY, J.

CM No.521-CII of 2012

For the reasons set out in the application, same is allowed and delay of 40 days in filing the appeal is condoned.

FAO No.140 of 2012

1. This appeal has been filed by the insurance company laying challenge to the award dated 26.08.2011, passed by the Motor Accident Claims Tribunal, Narnaul (here-in-after referred to as the Tribunal).

2. Briefly touching the facts first: An accident took place on 01.05.2010. Bir Singh resident of Gujjarwas got the FIR registered the following day and mentioned that he was returning from work at 10:00 PM on his motorcycle and was little ahead of Bal School when he heard the loud noise. He saw an unknown car being driven by unknown driver which stopped for a moment and then fled towards Mahindergarh. Bir Singh reached the spot and found two persons lying on the ground in an injured condition. Subhash was dead, Satbir was lying in an unconscious state. Several persons from the village had collected. Satbir was taken to CHC, Ateli for treatment. The FIR was registered against an unknown vehicle and an unknown driver. It was clearly mentioned that the registration number of the car could not be seen due to darkness and there was a lot of distance between Bir Singh and the place where the accident occurred. The description of the vehicle was not given.

3. A claim petition was filed by the legal heirs of Subhash Chand against the driver and owner of the Maruti Van bearing registration no.DL-9CJ-3115 which was insured with Reliance General Insurance Company Ltd.

4. The Tribunal relied upon the statements made by Bir Singh PW-4 and Satbir PW-5 and finding that the statements of the witnesses had gone un-controverted, it recorded a finding in favour of the claimants and taking the income to be Rs.13,780/- per month, applying the multiplier of 14 and making a deduction of 1/3rd, awarded compensation of Rs.23,25,000/-. An argument had been made before the Tribunal that as the deceased was a Haryana Government Employee, the Haryana Compassionate Assistance to the Dependents

of Deceased Government Employees Rules, 2006 were applicable, therefore, appropriate adjustment should be made. The Tribunal noted the relevant rules but was of the view that the deceased though had been appointed as a teacher in 2008 but had not completed two years of service and in all probability he had not cleared his probation period and as the benefit was only available to a regular employee, therefore, no deduction was made and the contention made by respondents was repelled.

5. Notice of the appeal had been sent to the owner and driver but they failed to appear and were proceeded ex parte.

6. Counsel for the appellants has broadly made two submissions. Firstly that the FIR had been lodged against an unknown driver and an unknown vehicle and the driver had been arrested after one and a half month and there was no occasion for Bir Singh or the injured to note the details of the offending vehicle and it was the case of hit and run and a convenient vehicle had been introduced with a view to grab compensation. The second submission was that the Tribunal had calculated the compensation without deducting tax and the last pay certificate on the record was available and the deceased was getting salary in the Pay Band of 9710 and he was a regular employee and calculations should have been made as per the decision approved by the Division Bench of this Court in ***Oriental Insurance Company Ltd. Vs. Saroj Devi & others*** in FAO No. 1322 of 2010, decided on 21.12.2012. Reliance was also placed upon ***United India Insurance Co. Ltd. Vs. Smt. Mahadevi and Orthers 2008 ACJ 1252*** and ***Konda Anuradha Vs. Gopi Reddy Venkat Reddy and another 2009 ACJ 708***.

7. Per contra, the submission made on behalf of the respondents was that though the FIR was lodged by Bir Singh but since the accident had taken place in a inhabited place the accident was seen by other persons and Bir Singh came to know the details of the vehicle from others and the information was passed on to the police who had later filed a challan against the driver. It was urged that the statement made by Bir Singh gets support from the statement made by Satbir who gave a detailed account of the accident. Reliance was placed upon ***The New India Assurance Company Ltd. Vs. Suresh Rani 2014(13) RCR (Civil) 1847.***

8. The record of the Tribunal had been summoned. I find that Bir Singh, the author of the FIR had submitted an affidavit, Ex.PA by way of evidence and had described the accident giving details of the vehicle which had caused the accident. He had stated that the accident took place at 9:00 PM and he also gave the name of the driver as Mam Chand. He stated that the police had recorded his statement at about 8:30 - 9:00 PM. He stated that he had not noted the registration number of the vehicle at the first instance but after enquiry he had come to know the details. He stated that the accident took place near the houses of Subhash and Babu Lal and they had provided the details of the vehicle.

9. Satbir Singh PW-5 had suffered injuries in the accident deposed that he was sitting on the pillion of the motorcycle driven by Subhash. He gave the details of the vehicle which had caused the accident as well as the name of the driver. In the cross-examination he explained that he was perplexed after the accident on account of trauma and pain. He stated that he had noted the registration number

of the offending vehicle and his statement was recorded after 10 days. A perusal of the record prepared under Section 173 Cr.P.C. (Ex.P3) shows that the driver was arrested on 19.07.2010. The report prepared under Section 173 Cr.P.C. is also silent as to who had provided the details of the driver. It only refers to the statement made by Satbir.

10. The limited question to be considered in this appeal is whether the Tribunal was justified in allowing the claim petition and awarding compensation having regard to the facts and circumstances of the case.

11. It is seen from the material made available on record that the deceased was going on a motorcycle with another person on the pillion. A vehicle had hit them from behind at about 10:00 PM. The FIR was lodged by Bir Singh who stated that he was following the motorcycle a distance away and could not note the details of the vehicle nor could see the driver. The FIR had been registered against an unknown vehicle and an unknown driver. It is interesting to note that not even the make of the vehicle or the colour of the vehicle was provided to the police. The supplementary statement made by Bir Singh was not adduced in evidence. Bir Singh in his statement in the Court had deposed that the details of the vehicle had been provided to him by Subhash and Babu. It was not shown that Subhash and Babu had made any statement to the police. It was the duty of the claimants to adduce reliable evidence. The accident had taken place when it was pitch dark. It was a loud thud which led Bir Singh to the spot who saw the injured lying on the road. He did not see the speeding vehicle. This was the tenor of the First Information Report. No particular vehicle was identified by him. It was in a later version that it was claimed that a

third person had noted the details and had passed it on to Bir Singh and he informed the police. Interestingly the pillion rider made a statement in the Court that he had noted the details of the offending vehicle when the evidence is that he had fallen unconscious after the accident. He was not in a condition to note the details or provide any information to the police and it appears that the claimants with the help of the informant had provided the details of a vehicle which was convenient and the accident clearly was a hit and run case involving an unknown vehicle. The fact that the police had filed a challan against the driver is not sufficient. The police invariably puts in the challan on the basis of the statement without getting into the truthfulness of the statements. The presence of any other witness at the accident site is also suspicious and is artificial and is not believable and no liability could have been placed upon the insurance company as the claimants could not establish the involvement of the offending vehicle.

12. In view of the above and for the reasons disclosed there, the appeal is accepted and the award passed by the Tribunal is set aside. It would not be necessary to go into the question whether the Haryana Compassionate Rules should have been applied for calculating the compensation as involvement of the vehicle/driver has not been proved.

(ANITA CHAUDHRY)
JUDGE

January 08, 2015
sunil