

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

**FAO No.2389 of 2015 (O&M)
Date of Decision: April 10, 2015**

The New India Assurance Co. Limited

.. Appellant

vs.

Smt. Kamlesh Gupta and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.K. Bashamboo, Advocate for the appellant.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh J.

The Insurance Company has filed this appeal against the Award dated 28.11.2014 passed by Motor Accident Claims Tribunal, Patiala (in short 'the Tribunal').

As per the case of the claimants, on 07.10.2011, Jawahar Lal Gupta along with his friend Chaman Lal was going towards Patiala. Jawahar Lal Gupta was driving scooter No.PB-39D-7311 and Chaman Lal was riding the pillion. At about 3.00 p.m., when they reached near PRTC Workshop on Nabha-Patiala Road and took a turn towards Model Town, Patiala after giving signal, a Swift Car No.HR-20R-9040, being driven by Moti Lal-respondent came rashly and negligently from the side of Thapar College, Patiala and struck against the aforesaid scooter. As a result of the accident, both the occupants of the scooter fell down and received grievous injuries.

They were removed to Rajindra Hospital, Patiala by some unknown person. From there, Jawahar Lal Gupta was referred to PGI, Chandigarh and remained admitted in PGI Chandigarh from 07.10.2011 to 08.11.2011 and ultimately succumbed to injuries. FIR No.175, dated 07.10.2011, under Sections 279, 337, 427 and 304-A IPC was registered against respondent No.1.

Respondent Nos.1 and 2 in their joint written statement took the plea that respondent No.1 has been acquitted by the Magistrate. No alleged accident ever took place with the vehicle of the respondents.

Respondent No.3-Insurance Company also denied its liability and stated that vehicle was not involved in the accident.

After recording the evidence of the parties, the Tribunal awarded a sum of ₹11,81,000/- along with interest @ 7.5% per annum from the date of filing of the claim petition till its realization to the claimants.

I have heard learned counsel for the appellant and have also carefully gone through the case file.

Learned counsel for the Insurance Company has argued that in this case, the offending car was not involved in the accident. It has also been argued that Chaman Lal, the author of the FIR, tendered his affidavit in his examination-in-chief but did not appear for cross-examination. Therefore, respondents did not get any opportunity to cross-examine the author of the FIR. The claimant examined one Mohinder Singh, eye witness as CW-4.

It has been argued that Mohinder Singh had admitted that he was deposing about the accident for first time in the court and he had not made any statement to the police.

A perusal of the Award shows that in this case, to rebut the statement of Mohinder Singh, the driver of offending car himself did not stepped himself into the witness box to claim that he was not driving the offending vehicle and his vehicle was not involved in the accident. Therefore, the Tribunal correctly held that in the absence of denial by the driver of offending car, the statement of eye witness is to be accepted.

It is further noticed that the place of accident is a thorough fare and the time of the accident is 3.00 p.m., when so many persons from the public are available. The FIR was lodged promptly on the same day where the number of the offending car is mentioned. The respondents merely produced the copy of the judgment of the criminal court and the statement of Chaman Lal made before the criminal court to rebut the claim. However, there could be other clinching evidence to show that the car was not involved in the accident and same could have been produced before the Tribunal.

It could be in the form of site plan prepared at the spot, photographs taken on the spot and report of the mechanic that there was no damage to the car.

Therefore, in these circumstances, I agree with the conclusion of the Tribunal that the statement of the eye witness has

to be relied upon and the mere acquittal by a criminal court is no ground to discard the claim.

Learned counsel for the appellant has further argued that medical bills amounting to ₹2,66,000/- were wrongly allowed, some of which are advance bills.

The deceased was first removed to Rajindra Hospital and then to PGI, Chandigarh, where he remained admitted for two days.

In these circumstances, so much expenses are likely to be incurred and there is nothing to dispute the correctness of the bills.

In view of the foregoing discussion, I do not find any illegality and infirmity in the impugned Award.

Accordingly, the present appeal is dismissed.

April 10, 2015
sarita

(KULDIP SINGH)
JUDGE