

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

FAO No.1091 of 2002 (O&M)

Date of decision : 16.09.2016

United India Insurance Company Ltd.

.....Appellant

Versus

Om Pati and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Gopal Mittal, Advocate for appellant.

None for respondents No.1 to 4.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 09.11.2001 passed by the learned Motor Accidents Claims Tribunal, Kaithal (hereinafter called the “Tribunal”), vide which respondents No.1 to 4-claimants have been awarded compensation to the tune of Rs.2,80,000/- on account of death of Naib Singh in the motor vehicular accident, which took place on 10.08.2000.

2. Initially, the appellant-Insurance Company filed the civil revision No.425 of 2002, which was ordered to be treated as first appeal against order vide order dated 13.02.2002.

3. The appellant-Insurance Company has filed this appeal to assail the award.

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

5. Initiating the arguments, learned counsel for the appellant-

Insurance Company contended that there was one day delay in lodging the FIR. Even the name of the driver and the registration number of the vehicle were not mentioned in the FIR. He contended that later on due to collusion with the respondents No.5 and 6, the driver and owner of the car bearing registration No.CHK-2729, the vehicle insured with the appellant-Insurance Company was introduced. He contended that the owner of the car in which the deceased was travelling has filed own damage claim with his Insurance Company. In the claim form (copy Ex.R1), the registration number of the vehicle which caused the accident is mentioned. The driver and owner of the car bearing registration No.CHK-2729 have not come forward to depose before the Tribunal. Thus, he contended that the collusion between the claimants and respondents No.5 and 6 is established.

6. He further contended that a specific additional issue was framed by the learned Tribunal with respect to the collusion vide order dated 08.08.2001 but in the impugned award, no findings have been given on this issue. Thus, he contended that the impugned award is not sustainable in the eye of law.

7. I have duly considered the aforesaid contentions.

8. The appellant-Insurance Company has assailed the award on the grounds that there was a collusion between the claimants and respondents No.5 and 6, the driver and owner of the car bearing registration No.CHK-2729 and secondly, that the additional issue No.3A framed by the learned Tribunal does not find mentioned in the impugned

award.

9. The present accident has taken place on 10.08.2000 at about 10:00 p.m. FIR No.138 has been lodged at Police Station Kaithal on 11.08.2000 with respect to this accident *i.e.* on the next day of the occurrence. So, it cannot be stated that there was inordinate delay in lodging the FIR. It is a fact of common knowledge that the utmost concern of the relatives of the victim is to make the efforts to save his life than to indulge in the legal technicalities. In these circumstances the delay of one day in lodging the FIR is almost explained.

10. This fact is not disputed that the registration number of the offending car and the name of its driver were not mentioned in the FIR, which is evident from the statement of RW-1 Hem Chand ASI. But mere this fact that the registration number of the car and name of the driver are not mentioned in the FIR is also not a ground to ignore the substantive evidence brought on record by the claimants, particularly when the factum of the accident has been admitted in the written statement filed by respondents No.5 and 6, the driver and owner of car bearing registration No.CHK-2729. This Court in case ***National Insurance Company Limited Vs. Bala Devi and others 2006(3) PLR 134*** has laid down that there is nothing unnatural if the registration number of the offending vehicle and name of the driver transpires in the course of the investigation. PW-2 Ramesh the witness of the occurrence has categorically deposed that he had given the registration number of the Fiat car (offending car) as CHK 2729 and the Maruti car (in which the

deceased was travelling) as HR-21-6979. In the cross-examination he has categorically deposed that he has seen the vehicles coming from a distance of 20 feet. The Fiat car was driving at a very fast speed. He further deposed that the driver of the Fiat car has stopped for a while after the accident and, thereafter, he ran away from the spot and he had noted down the registration number of the Fiat car at the spot from the backside. There is nothing to doubt the aforesaid statement of PW-2 Ramesh the witness of the occurrence which is further corroborated from the fact that the police has filed report under Section 173 Cr.P.C. against respondent No.5 Krishan, the driver of Fiat car bearing registration No.CHK 2729, after through investigation of the case and he is facing the criminal trial.

11. Moreover, as already mentioned respondents No.5 and 6, the driver and owner, have not disputed the factum of accident in their written statement.

12. The plea raised by learned counsel for the appellant that there was a collusion between the claimants and respondents No.5 and 6 is also not supported from any cogent and reliable evidence. This fact is not disputed that the owner of Maruti car has filed the claim for the damage caused to the car and in the said claim form, which has been proved by RW-2 Ram Kumar, Senior Assistant, Oriental Insurance Company, Kaithal the identity of the vehicle which caused the accident is not mentioned but that will also not advance the case of the appellant Insurance Company. The said claim papers were submitted by the owner

of the Maruti car to claim the compensation for the damages caused to his vehicle. The present claimants were not signatories to the said claim form/documents. They are not bound by the contents mentioned therein. Moreover, the purpose of filing the said claim papers was only to claim money for the damages caused to the car. Only material fact required to be mentioned in the said claim form was the damage caused to the car. The learned Tribunal has categorically mentioned that the Maruti car was surveyed by the surveyor appointed by the Insurance Company and the claim was settled as per the damage. Thus, mere omission of the identity of the vehicle, which caused the accident, in the claim form submitted by the owner of the Maruti car is not a ground to presume any collusion between the claimants and respondents No.5 and 6. In case ***National Insurance Company Ltd. Vs. Bala Devi and others*** (supra) the registration number of the car and the name of the driver was not mentioned in the FIR but this Court has held that if the registration number of the offending vehicle and the name of the vehicles transpired in the course of investigation that will not prove the plea of collusion.

13. The appellant-Insurance Company has also relied upon the report of its investigator i.e. RW-3 Deepak Gorver. The said investigator has not joined any Panch, Sarpanch, Lamberdar or respectable person of the village in his investigation. His report was not accompanied by any document/statement of any person. Said report submitted by the investigator cannot override the statutory investigation carried out by the police in the criminal case wherein it was found that

the accident has taken place due to rash and negligent driving of car bearing registration No.CHK-2729 by respondent No.5.

14. The appellant-Insurance Company has not made any effort to summon the driver of the Fiat car and produce him in the witness box to prove that the said car was not actually involved in the accident. Thus, in these circumstances the plea of collusion raised by the appellant-Insurance Company is not established.

15. This fact is not disputed that the learned Tribunal has framed the additional issue No.3A vide order dated 8.8.2001, which reads as under:-

Issue 3A Whether challan against respondent No.1 has been filed by the police in collusion with respondent No.1 and 2 as alleged in para No.3 of preliminary objection to the written statement, if so to what effect?
Onus respondent No.3.

16. It is also not disputed that there is no reference of this issue in the impugned award, but it is mere an omission and has not resulted in any prejudice to the appellants when the learned Tribunal has taken note of the contentions raised by learned counsel for the appellant-Insurance Company and has also discussed the evidence brought on record by it and had negated the plea of collusion.

17. Thus, keeping in view the aforesaid discussion, there is no merits in the present appeal and the same is hereby dismissed.

16.09.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No