

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC No. 50-CII of 2015 in/&
FAO No. 791 of 1998 (O&M)
Date of decision: February 4,2016

The National Insurance Company Limited and another

.....Petitioners

VS.

Chander Kala and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. L.M.Suri, Senior Advocate with
Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. Ashit Malik, Advocate
for respondent Nos. 1 to 7.

1. Whether Reporters of local papers 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?

K.KANNAN,J (Oral)

1. The appeal is against the award passed by the Tribunal finding the insured vehicle as having been involved in the accident. The person who died was a police official, who on the night of 11.04.1995, was found dead on the road with the scooter lying by his side. One Mange Ram had given a statement on the basis of which FIR was recorded on the following day. The statement referred to the fact that he found the deceased body at 2.30 am when he was proceeding towards the bus stand from Dhaba situate at G.T.Road, near Zamindara Dhaba. The claimants

sought to support to the involvement of the insured vehicle through the evidence of PW3, who gave evidence to the effect that he was travelling in yet another car along with his friend and they had started from Pipli at 3.30 am and saw an accident taking place at 3.45 am. He made reference to the fact of the insured vehicle bearing Registration No. HNL-21 as having caused the accident after overtaking that car at a very high speed. He gave evidence also to the effect that they stopped the car at Taraori and informed the police post. This evidence was accepted by the Tribunal and compensation was assessed and made the insurer liable to pay.

2. The appeal before this court has been filed by the insurer joining along with the owner. It is the contention that the Tribunal proceeded on an assumption that the accident had taken place involving the insured vehicle. The appreciation of evidence was clearly faulty in that Tribunal failed to notice an important contradiction between the statement of Mange Ram and the statement of PW3 the alleged eye-witness as regards the time of occurrence. It is also the contention that nobody else from the police was examined that PW 3 did infact give a complaint about the accident at Taraori police post.

3. I am prepared to give weightage to an argument that the Tribunal could not have proceeded, as though the insured vehicle was shown to be involved through any documentary evidence or it could be presumed so. The case stood anchored on the evidence of PW3, I will not make much of the fact that there is a discrepancy about the time of accident viz. PW-3 stated that he saw the occurrence at 3.45 am, when the FIR had made reference to the dead body as having been noticed at 2.30 am. It could be merely a matter of orientation as to time in the early morning and there is no serious difference when we consider that the date and the incident as only making reference to an accident in the wee hours. If the Tribunal

has made the approach to secure what is a preponderance of probability unlike a criminal case, where proof of guilt of the accused has to be brought on evidence beyond reasonable doubt to act on the statement of a person claiming to be an eye-witness who gave also his statement recorded to the police. There was not even a suggestion to the witness that he did not immediately report to the police, as stated by him in court. The owner or driver of the car which is said to be involved was, under the circumstances, surely required to give contra evidence. The case cannot merely be taken as not established when the best evidence of the driver or owner was not placed before court. The Tribunal was bound to draw an adverse inference for non-examination of the driver or the owner. There is simply no explanation given as to why the evidence was withdrawn from the trial. After all, it is not a case of the owner colluding with the claimants. The owner has actually joined with the insurer in the appeal.

4. The learned Senior counsel would argue that the postmortem certificate would reveal that the body of deceased had been crushed, which could not have happened if it was a car. I cannot take such an inference in the absence of expert evidence that the car of the particular make could not have caused a crushing injury. It depends on several factors, such as the impact at which the person fell down and the speed of the vehicle which over ran the body. If the deceased had been tossed up by a speeding vehicle, the body could have been seriously damaged on crashing to ground. Unless the best evidence was given about the features of injuries to make improbable that a car could not caused such extensive injuries by running over him, I will not discredit the testimony already given or the inference that it was only the insured car that was responsible.

5. The award is confirmed and the appeal is dismissed.

6. There is a cross objection for enhancement of claim for compensation

assessed at ₹ 5,00,000/-. Before even allowing for the counsel to argue on merits, I asked the counsel as to how the claimants placed no evidence than the evidence of PW-3 and what was the basis for the police to take the involvement of the insured vehicle as established. There was simply nothing brought on record before the Tribunal except the fact that the driver was challaned. When I have discarded the case of the appellant I was doing so on what was probable and how the non-examination of the driver or the owner would impact the quality of evidence. The same ought not to be understood as there was a positive proof that the claimants had placed the best evidence. It is the case of a policeman coming by fatal injuries and it is anybody's guess of how the case was prepared and lodged before the criminal court. I will not take this to be merely an occasion where on the failure of the appellant to succeed, the respondent must secure an enhancement without placing a appropriate evidence of what could justify the manner of evidence placed by the claimants already before the court or proving his involvement and securing more compensation. The amount of compensation decided in even taking a fragile character of evidence by the Tribunal must itself be a satisfaction that the claimants have been rewarded with compensation instead of completely dismissing it. The cross objection is also dismissed.

FEBRUARY 04, 2016

Rajeev

**(K.KANNAN)
JUDGE**