IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO No. 2200 of 2009
Date of decision-15.02.2016.

Jaswant Kaur and another ..**Appellants**
Vs.
Jyoti and others ..**Respondents**

CORAM:- HON'BLE MR. JUSTICE K.KANNAN

Present: Mr. J.S.Cooner, Advocate
for the appellants.

Mr. Subhash Goyal, Advocate with
Mr. Nitin Mittal, Advocate
for respondent No.3.

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K.KANNAN, J(Oral)

The appeal is against the dismissal of the petition for compensation of death of a man claimed to be 60 years of age as per the post-mortem certificate but stated as 65 years in the ration card issued in 2005 just before his death.

The accident said to have taken place on 08.01.2007 at 7.00 p.m. when the motorcycle driven by the first-respondent hit against him from behind, felled him on the road and taken to the hospital immediately. Police examined him on 09.01.2007 but the doctor certified him to be unfit and the statements were recorded on 14.01.2007 in which he referred to the details of the accident and also stated the name of the driver of the vehicle as Jyoti who was a person belonging to the same village as having caused the accident. He succumbed to injuries on 24.01.2007.

At the trial, the brother of the deceased gave evidence and stated that he was an eye-witness but his version was not believed since he admitted in the cross-examination that he arrived at the spot a few minutes after the accident. Since there was no other evidence available, the Tribunal rejected the plea that the

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insured's vehicle has been involved. The driver and the owner of the vehicle although served and represented through a counsel, did not give any evidence. The Insurance Company had filed petition under Section 170 of Motor Vehicles Act to contest the case on all grounds on a plea that the owner was not supporting the Insurance Company.

If a person at the hospital in an injured state had given a statement to the police identifying a particular person as having caused the accident, under the normal circumstances the statement ought to be taken as only telling the truth on the same principle of a person who gives a dying declaration. In this case, the statement given by the person becomes relevant under Section 32 of the Evidence Act and if there was a corroboration necessary, it has been spoken to by a person who arrived at the scene a little later. He may not be eye-witness in the real sense but it is not too artificial a construct that he arrives at the place, knows about who had been involved in the accident and who had caused it and gives the evidence in Court. If the evidence of the deceased's brother is hearsay, I stretch the limits to a reasonable degree to accommodate the claim in a case that involves only summary procedure before Motor Accident Claims Tribunal. The mere statement by the insurer that the owner and driver were colluding would never have been sufficient. The insurer had a duty to obtain necessary information from the owner of the vehicle said to have been involved in the accident. There is statutory duty under Section 133 for an owner to give information and the application under Section 170 of the Motor Vehicles Act ought to have provided details for a Court together that the Insurance Company made an effort to collect the details of the accident to ensure whether the vehicle was involved or not. The actual nature of non-cooperation of what the Insurance Company demanded and how the driver and the owner did not cooperate with must have been given at least minimal by some

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evidence by the insurer or stated in the affidavit of a responsible officer.

I do not think the Tribunal was justified in discarding the version of the deceased person whose statement was taken to be the basis of lodging the FIR. The power of the Tribunal to set its own procedure and not being trammeled by strict rules or procedure laid down under CPC ought to have been exercised and called for the evidence of the driver of the vehicle. If the driver who has been represented by counsel and was very much amenable to the process of the Court, there was a scope for Tribunal to invoke its powers under Section 165 of the Evidence Act to gather this evidence. Without gathering appropriate evidence for collusion between the claimants and the insured and driver, the Tribunal could not here shut the doors against the claimants; and more so, without examining what the police investigation revealed and how the investigation led to registration of FIR.

I do not think it is necessary for me to undertake that exercise now and I will let the case rest on the statement of the deceased before his death imputing the first-respondent as having caused the accident. I set aside the finding of the Tribunal and hold the first-respondent as responsible for the accident.

The deceased was said to be an agriculturist and owning about one acre of land. His estate is still available and considering that the deceased was 60 years plus, I would take the average income of its supervisory skills at ₹4,000/- ,provide for 1/3rd deduction and take his age as what he stated in the Post Mortem Report (PMR) at 60 and apply a multiplier of 8. The loss of dependence will be ₹2,88,000/-. I will add another ₹ 1,00,000/- towards loss of consortium to the wife, ₹50,000/- for loss of love and affection for the son and make a further addition of ₹25,000/- for funeral expenses and ₹5,000/- towards loss of estate. The aggregate will be ₹4,68,000/-. The amount shall be distributed in the ratio of 2:1

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between the widow and son.

The liability shall be on the Insurance Company. The award of dismissal is set aside and the appeal is allowed to the above extent with interest @ 9% from the date of petition till date of payment.

(K.KANNAN)
JUDGE

February 15, 2016
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