

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

FAO No.3595 of 2012

Date of decision : 29.11.2016

Udham Singh and another

.....Appellants

Versus

Satya Dev and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Onkar Rai, Advocate for appellants.

Ms. Vandana Malhotra, Advocate with
Ms. Monika Jangra, Advocate for respondent No.3.

DARSHAN SINGH, J.

The present appeal has been preferred against the award dated 28.09.2011, passed by learned Motor Accidents Claims Tribunal, Faridabad (hereinafter called the “Tribunal”), vide which the claim petition filed by the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”) for grant of compensation to the tune of ₹10,00,000/- on account of death of their son Brijesh in the motor vehicular accident which took place on 28.10.2009, has been dismissed.

2. I have heard learned counsel for the parties and gone through the record of the case meticulously.

3. Learned counsel for the appellants-claimants contended that the learned Tribunal has dismissed the claim petition on the ground that the

involvement of the alleged offending vehicle *i.e.* motorcycle bearing registration No.HR-29M-8906 is not proved and the negligence on the part of respondent No.1 is also not proved. He contended that the claimants have examined Udham Singh (claimant No.1), father of the deceased as PW-1. He was the witness of the occurrence and has categorically deposed with respect to the involvement of the motorcycle bearing registration No.HR-29M-8906 in the present accident and that respondent No.1 has caused the accident by driving the said vehicle in a rash and negligent manner. His statement is also corroborated by PW-3 Mahender Singh the another witness of the occurrence. Even the criminal case was got registered against respondent No.1 vide FIR Ex.P1 and respondent No.1 was facing trial in the criminal Court for causing this accident. Respondent No.1 Satya Dev the motorcyclist has also admitted the accident while appearing in the witness box as RW-1. Thus, he contended that there was admission on the part of the respondent No.1 with respect to the accident. The evidence led by the claimants clearly establishes the rashness and negligence of respondent No.1 and the involvement of motorcycle bearing registration No.HR-29M-8906 in this accident and that he was the sole author of this accident, who is also facing the criminal trial for causing this accident. He contended that learned trial Court was not justified to brush aside the aforesaid substantive evidence simply on the ground of documents Ex.R5, Ex.R7 and Ex.R8. Thus, he contended that the learned Tribunal has wrongly dismissed the claim petition.

4. On the other hand, Ms. Vandana Malhotra, Advocate assisted by Ms. Monika Jangra, Advocate for the respondent-Insurance Company contended that it was a case of collusion between the claimants and respondent No.1, who happens to be their close relative. She contended that in fact the deceased has fallen from his bike and suffered the injuries. At that time he was in drunken condition. Later on, a false story was concocted to extract the compensation from the respondent-Insurance Company. Thus, she contended that learned Tribunal has rightly dismissed the claim petition.

5. I have duly considered the aforesaid contentions.

6. As per the case of the appellants-claimants on 28.10.2009 at about 10:00 p.m. deceased Brijesh along with his father Udham Singh was returning from the house of Sukhdev, Lambardar, Uchagaon and was going to his house situated in Sector-3 Ballabgarh. In the street, respondent No.1 came from the opposite side while driving his motorcycle bearing registration No.HR-29M-8906 in a rash and negligent manner and hit Brijesh. As a result of which he fell down and sustained injuries including the head injury. After telling his name, respondent No.1 fled away from the spot along with the offending vehicle. Deceased Brijesh was taken to Civil Hospital, Ballabgarh, then to B.K. Hospital, Faridabad and, thereafter, to Dr. Ram Manohar Lohia, Hospital, New Delhi where he succumbed to the injuries on 31.10.2009. In the written statement filed by respondents No.1 & 2, it was pleaded that the deceased suddenly came in front of the

motorcycle driven by respondent No.1. He tried to avoid the accident but due to negligence of the deceased the accident had taken place. The respondent-Insurance Company has taken the specific plea that the offending vehicle and respondent No.1 had no connection with the alleged accident. There is a collusion between the claimants and respondents No.1 & 2. All other pleas raised in the claim petition were controverted.

7. It is settled principle of law that in order to succeed in a claim petition under Section 166 of the Act, the claimants are required to establish the involvement of the vehicle and the negligence on the part of the driver. Reference can be made to case ***Minu B. Mehta and another Vs. Bal Krishan Ram Chandra Nayan and another AIR 1977 SC 1248*** and ***Oriental Insurance Co. Ltd. Vs. Prem Lata Shukla and others 2007 (4) PLR 93 (SC)***.

8. No doubt the provisions of the Act are beneficial to the victim/legal representatives of the victim of the motor vehicular accident but at the same time in order to become entitled for getting the amount of compensation, the stand of the claimants must be honest and *bona fide*. It is the duty of the Court to check the fraudulent claims to unscrupulous claimants in collusion with the driver and owner of the vehicle just to extract the amount of compensation from the Insurance Companies. The instant case is a classic example of the collusion between the claimants and respondents No.1 & 2 the driver and owner of the vehicle. From the documentary evidence brought on record it is evident that the entire story

regarding the involvement of the motorcycle bearing registration No.HR-29M-8906, the manner of the accident and negligence on part of respondent No.1 has been later on concocted just to get the compensation in an illegal manner.

9. No doubt appellant-claimant No.1 Udham Singh the father of the deceased and PW-3 Mahender Singh the alleged eye witness of the occurrence have deposed with respect to the involvement of the vehicle and negligence on the part of respondent No.1 for causing this accident but the appreciation of the documents *i.e.* the medico legal report Ex.R5 issued by Dr. Ram Manohar Lohiya, Hospital, New Delhi on 29.10.2009, bed head ticket Ex.R7 and the clinical notes Ex.P8 totally rules out the mode of accident as pleaded by the claimants and even the presence of the witnesses of the occurrence. The first document is Ex.R8 which is clinical notes prepared by the doctors of C.R.H.S. Project, Ballabgarh which shows that deceased was brought to that hospital by PCR-30 by Constable Sat Parkash from DP Door street, Adarsh Nagar with history on fall from his bike. At that time the deceased was unidentified. He was admitted in that hospital on 28.10.2009 at 11:00 p.m. It shows that in fact the deceased had fallen from his own bike. At that time he was under alcoholic intoxication and he was taken to hospital by the police. There is another note in Ex.R8 which shows that the attendants of the deceased came to that hospital at 08:30 a.m. on 29.10.2009 and identified the deceased. Thereafter, he was referred to B.K. Hospital, Faridabad. Ex.R7 is the bed head ticket prepared by B.K.

Hospital, Faridabad, wherein also it has been categorically mentioned that the deceased had a fall from his own bike. The same note has been given in the medico legal report Ex.R5 prepared by the doctors of Dr. Ram Manohar Lohiya Hospital, New Delhi on 29.10.2009 at 4:30 p.m. These documents consistently shows that as per the first version of the accident the deceased had a fall from his bike at that time he was under alcoholic intoxication and was taken to the hospital by the police. If PW-1 Udham Singh the father of the deceased would have been accompanying him at the time of the accident, there was no reason for him not to accompany the deceased to the hospital for treatment. In that situation there was no reason for the police to take the deceased to the hospital and there was also no reason that the deceased would have remained unidentified in the hospital for the whole night. This fact totally rules out the presence of PW-1 Udham Singh and PW-3 Mahender at the place of the accident. So, their testimonies cannot be relied upon.

10. Moreover, it is also established from the evidence on record that it is a clear case of collusion between the claimants and respondents No.1 & 2. In the FIR Ex.P1 it has been projected as if respondent No.1 was an unknown person to PW-1 Udham Singh, the informant of the criminal case, and it has been mentioned therein that the motorcyclist disclosed his name, his father's name and address and when the complainant was taking care of his injured son, he fled away from the spot but the cat is out of the bag when PW-1 Udham Singh and RW-1 Satya Dev respondent No.1 were

cross-examined. PW-1 Udham Singh admitted in the cross-examination that his wife's brother's daughter is married to respondent No.1 Satya Dev. He has again taken the dishonest stand that he was not earlier known to Satya Dev respondent No.1. RW-1 has also stated in the cross examination that he only came to know deceased and his father on 30.10.2009 when the compromise was effected with claimant No.1 and he does not know deceased and his father prior to that. This version put forward by RW-1 Satya Dev and PW-1 Udham Singh establishes the collusion between them. It is an admitted fact that respondent No.1 Satya Dev is none else than the husband of the daughter of brother-in-law of appellant-claimant No.1 Udham Singh. RW-1 Satya Dev has further admitted in the cross examination that he was married 20 years ago. So, both Satya Dev and Udham Singh are married in the same family. Both of them might be attending the social functions in the family of their in-laws, so it is not believable that for a long span of 20 years respondent No.1 Satya Dev and appellant-claimant Udham Singh had no occasion to meet and have acquaintance with each other. Thus, respondent No.1 Satya Dev the motorcyclist is proved to be close relative of the appellants-claimants. Hence, there is no escape from the conclusion that motorcycle bearing registration No.HR-29M-8906 and respondent No.1 the alleged motorcyclist have only been planted by the appellants-claimants in collusion with respondents No.1 & 2 to extract the compensation from respondent No.3-Insurance Company in an illegal manner.

11. Thus, I have no reason to differ with the findings recorded by the learned Tribunal. The learned Tribunal has rightly dismissed the claim petition.

12. Consequently, the present appeal has no merits and the same is hereby dismissed.

29.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No