

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

**FAO No.3414 of 2014 (O&M).
Date of Decision: 27.04.2016.**

Future Generali India Insurance Co. Ltd.

....Appellant.

VERSUS

Kella Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Vishal Aggarwal, Advocate for the appellant.

Mr. Surinder Gaur, Advocate for respondents No.1 to 6.

Mr. S.S. Khurana, Advocate for respondents No.7 and 8.

SNEH PRASHAR, J.

Assailing the award dated 05.04.2014 passed by learned Motor Accident Claims Tribunal, Sonipat (for short, “the Tribunal”) in MACP No.540 of 2013, by virtue of which the claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, “the Act of 1988”) filed by Kella Devi and others (respondents No.1 to 6 herein and claimants in the petition) being legal representatives of deceased Sanjay, was allowed and compensation was awarded to them, the appellant-insurer of canter bearing registration No.HR-47A-2444 said to be the offending vehicle which caused the accident, had filed the present appeal.

The facts extracted from the record indicate that on 24.07.2011 Sanjay son of Ram Kumar (since deceased) was returning from the house of his relative. When he reached near bus stand Amadapur, District Jhajjar, he saw Pushpender Hotel and thought of taking meals at the said hotel. Just when he was standing in front of the hotel, a canter, being driven rashly, negligently and in a high speed, came from the side of Jhajjar and directly hit him. Due to the impact, Sanjay sustained multiple injuries on various parts of the body. Vikram Singh son of Mahender Singh, owner of the hotel, witnessed the accident. He called the ambulance and shifted the injured to General Hospital, Jhajjar where he was declared dead by the attending doctor.

A First Information Report No.436 dated 24.07.2011 under Sections 279/304-A of the Indian Penal Code was registered at Police Station Jhajjar against an unknown vehicle and driver on the statement of Vikram Singh son of Mahender Singh. During investigation, i.e. 25 days after the accident, the name of the driver as 'Ashok Kumar' and the registration number of the offending vehicle being 'HR-47A-2444' were detected.

A petition seeking compensation under Sections 166 of the Motor Vehicles Act, 1988 (for short, "the Act of 1988") was filed by Kella Devi and others (respondents No.1 to 6 herein and claimants in the petition) being legal representatives of deceased Sanjay, on the ground that the accident occurred entirely due to rash and negligent driving of the offending canter by respondent-Ashok Kumar.

The owner, driver and insurer of the offending canter were impleaded as respondents who contested the petition denying the accident in question. Respondent No.3 pleaded that the drivers of the offending vehicles were not holding a valid driving licence at the time of accident. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence to discharge the onus of the issues on them. Considering the evidence available on record and the submissions made on behalf of the parties, learned Tribunal partly allowed the petition and awarded Rs.10,43,000/- as compensation to the claimants alongwith interest at the rate of 7.5% per annum from the date of filing the petition till realization and held respondents No.1 to 3 jointly and severally liable for payment of the compensation and further held that the first charge shall remain on respondent No.3-insurance company (appellant herein).

Feeling aggrieved, the appellant-insurance company preferred the instant appeal.

The submissions made by Mr. Vishal Aggarwal, learned counsel for the appellant, Mr. Surinder Gaur, learned counsel for respondents No.1 to 6 and Mr. S.S. Khurana, learned counsel for respondents No.7 and 8 have been read and record perused.

To begin with, learned counsel for the appellant-insurance company submitted that he had filed an application CM No.17808-CII of 2014 under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure for placing on record by way of additional evidence statement of Vikram Singh son of Mahender Singh, the eyewitness of the accident and

lodger of the First Information Report made by him before Chief Judicial Magistrate, Jhajjar and the judgment dated 04.02.2013 passed by the said Court acquitting driver of the offending canter (respondent-Ashok) of the charge of causing the accident in question levelled against him in the criminal case. Learned counsel contended that the documents are necessary for proper and complete adjudication of the instant appeal.

Since the documents relate to the accident in question and are certified copies of judicial record, there is no reason why the appellant should not be allowed to place the same on record. However, there evidentiary value shall be considered while scrutinizing the ocular and documentary evidence already available on record with the help of learned counsel for the appellant and learned counsel for the respondents.

Learned counsel for the appellant-insurance company pointed out that only one eyewitness of the accident was named by the claimants as well as the police during investigation of the criminal case namely Vikram Singh, who lodged the First Information Report Ex.P3. In his statement, which formed the basis of First Information Report, Vikram Singh did not spell out a word stating the particulars necessary for identification of the vehicle which caused the accident and also stated nothing about identity of the vehicle. In other words, the First Information Report was lodged against an unknown vehicle and driver. No evidence was led by the claimants to prove when and from whom the claimants or the Investigation Officer of the criminal case came to know that the offending canter was the vehicle involved in the accident. Neither Vikram Singh said to be eyewitness of the

accident was examined during evidence nor any other eyewitness of the accident was produced by the claimants to prove their allegation that the accident had taken place with the offending canter or that the accident was result of rash and negligent driving on part of the said vehicle.

Learned counsel urged that Vikram Singh was examined during the trial of the criminal case registered in respect of the accident in question. In his statement made on 04.02.2013 before Chief Judicial Magistrate, Jhajjar, he stated that the deceased was standing in the middle of the road and was hit by a white coloured canter which came from the side of Jhajjar and was heading towards Rewari. He specifically stated that he could not see the registration number of the vehicle but at the same time he stated that he can identify the driver of the offending vehicle if brought before him and that Ashok Kumar (respondent No.1 in the petition) who was present in the Court during his statement was not the driver of the canter that caused the accident. Learned counsel contended that from the statement of Vikram Singh made before Chief Judicial Magistrate, Jhajjar neither identity of the alleged canter which caused the accident was proved nor identity of driver of that vehicle was established. On that ground respondent-Ashok Kumar, who was facing trial in the criminal case was acquitted by learned Chief Judicial Magistrate, Jhajjar vide judgment dated 04.02.2013. In the backdrop of said facts and the claimants having failed to produce any eyewitness of the accident before the Tribunal, learned Tribunal legally erred in holding simply on the basis of the First Information Report, which too was registered against an unknown vehicle

and driver that it stood established that the offending canter was the vehicle which caused the accident due to its rash and negligent driving by respondent-Ashok Kumar.

Refuting the above arguments of learned counsel for the appellant, learned counsel for the respondents-claimants argued that during evidence before the Tribunal, in addition to the First Information Report Ex.P3 registered in respect of the accident the claimants examined PW2 Head Constable Krishan Kumar, the Investigation Officer of the criminal case who testified that his enquiry revealed that the offending canter was the vehicle which had caused the accident. The said vehicle was seized by the police and its driver was arrested. The father of the deceased, PW4 Ram Kumar also deposed that he also conducted enquiry at his personal level at the site of accident and was told by the drivers/cleaners of the vehicles present at nearby Dhaba about the identity of the offending canter which had caused the accident. From the statement of Vikram Singh recorded during the trial of the criminal case, it was clear that he had been won over by respondent-Ashok Kumar because of which he did not identify him as the driver of the offending canter and got him acquitted. Learned counsel emphasized that the claim petition was to be decided on the basis of the evidence available before the Tribunal and the evidence led before the Court trying the criminal case was of no evidentiary value.

For claiming compensation under the provisions of the Act of 1988 on the ground that Sanjay, husband of Smt. Kela Devi (respondent No.1), father of respondents No.2 to 4 and son of respondents No.5 and 6,

had lost his life due to the injuries sustained in a motor accident, the claimants were required to prove three important facts, (i) occurrence of the accident; (ii) identity of the vehicle involved in the accident; and (iii) that the accident occurred due to rash and negligent driving of the offending vehicle by its driver. In the case in hand, it can be said without hesitation that though the factum, that deceased Sanjay died due to the injuries sustained by him in a motor accident, stood established from the First Information Report Ex.P3 proved by PW2 Head Constable Krishan Kumar and the postmortem report Ex.P1 tendered in evidence by the claimants, however, the said documents were insufficient and incompetent to prove identity of the offending vehicle which caused the accident. Admittedly, in the First Information Report Ex.P3 registered on the statement of Vikram Singh son of Mahender Singh, the vehicle involved in the accident was referred to as “a white coloured canter” but neither its registration number was mentioned nor anything was stated to identify its driver. The case was registered against an unknown vehicle and unknown driver.

Neither any eyewitness of the accident was examined by the claimants nor any witness, who could disclose the source from which identity of the offending vehicle came to light, could be examined by the claimants during evidence before the Tribunal. The only witness examined to prove involvement of the offending canter is PW2 Head Constable Krishan Kumar who recorded the statement of Vikram Singh which formed the basis of First Information Report Ex.P3; got the dead body postmortemed at General Hospital, Jhajjar; and inspected the site of the

accident. In his examination in chief, he stated that during enquiry he found that the offending canter had caused the accident but on being cross examined he stated that when he visited the site of accident he tried to know from the persons present at the spot the registration number of the vehicle which was involved in the accident but nobody was able to disclose the same. He further stated that the registration number of the offending canter was disclosed by the relatives of the deceased on 17.08.2011 to Sub Inspector Pop Singh, who was the subsequent investigation officer of the case and who recorded their statement to that effect.

From the statement of PW2 Head Constable Krishan Kumar, it is apparent that the registration number of the offending canter being the vehicle involved in the accident was disclosed by some relatives of the deceased. Neither he named those relatives in his statement nor PW4 Ram Kumar, father of the deceased, named them. In his statement explaining the reason for disclosing the registration number of the offending canter as the vehicle involved in the accident he stated that he at his own level conducted enquiry after few days of the accident and the registration number of the offending canter was told to him by drivers/cleaners of some passerby vehicles, present at nearby Dhaba. He also stated that the person who disclosed the registration number refused to disclose his name and other particulars to him.

PW4 Ram Kumar could not state the date or time when he went at the site of accident to conduct enquiry at his own level. He could also not state how he came to know about the drivers/cleaners of the passerby

vehicles who were present at the nearby Dhabas at the time of accident. Just by stating that the person who disclosed the registration number to him did not tell him his name and address etc. his statement about identity of the vehicle cannot be relied upon especially when he has intentionally withheld the relevant and important information. Apart from the fact that the statement of PW2 Head Constable Krishan Kumar with regard to source of information regarding the offending vehicle was contradictory, it is also noteworthy that PW2 stated that the relatives of the deceased disclosed the registration number to Sub Inspector Pop Singh on 17.08.2011. Even Sub Inspector Pop Singh was not examined. The information regarding registration number of the vehicle was given by the relatives after 25 days of the accident. In such circumstances, it was necessary for the claimants to prove how and from whom they or the relatives came to know identity of the vehicle involved in the accident. There being no substantive and reliable evidence on that aspect, the only conclusion that can be drawn is that the claimants had utterly failed to prove identity of the vehicle involved in the accident. In other words, the claimants could not establish that the offending canter was the vehicle involved in the accident.

In addition to the above, as pointed out by learned counsel for the appellant, in her affidavit Smt. Kella Devi stated that her deceased husband was working as a labourer in a cement store. PW4 Ram Kumar, father of the deceased, stated in his cross-examination that the passerby did not tell him about the make, model or colour of the vehicle but he was told that vehicle belonged to a cement dealer. It was apparent from his statement

that the vehicle in question, of which a cement dealer, with whom probably the deceased was working, was falsely implicated after 25 days of the accident only with a motive to grab compensation.

Thus, the appeal filed by the appellant-insurance company is allowed, the award dated 05.04.2014 passed by learned Tribunal is set aside and the claim petition bearing MACP No.540 of 2013 filed by the claimants shall stand dismissed.

(SNEH PRASHAR)
JUDGE

27.04.2016.
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