

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.324 of 2007(O&M)

Date of Order:8th September, 2017

Smt. Babita Devi and others

...Appellants

Versus

Pawan Kumar and others

...Respondents

CORAM: HON'BLE MR. JSUTICE ANIL KSHETARPAL

Present: Mr. Rahul Dev Singh, Advocate, for
Mr. Rakesh Gupta, Advocate,
for the appellants.

Mr.Navin Kapoor, Advocate,
for respondent no.3-Oriental Insurance Company.

ANIL KSHETARPAL, J.

The appeal before me presents a very unfortunate position. The fountain of justice is sought to be polluted by unscrupulous litigants in collusion with their counsels. It is said that “fraud and justice never dwell together.”

Luckily, in this case the Motor Accidents Claims Tribunal, Kaithal (hereinafter referred to as 'the Tribunal) recalled its earlier award dated 10.04.2001 passed while deciding two claims petitions, after finding that the award passed by the Tribunal was result of a fraud played with the Court as well as with the Insurance Company.

Brief Facts

An accident is alleged to have taken place on 10.10.1998 at 10.00 PM at night. Madan Singh lodged an FIR No.246 dated 10.10.1998, stating that when he was going on the Guhla Cheeka Road, he saw a

motorcycle bearing registration No.HR-09-6546 lying on the road after having met with an accident and two persons were also lying by the side. In the meantime, one Nayab Bahadur, Chowkidar, reached. Madan Singh left the spot for lodging a police report.

In the FIR, neither the make of the vehicle nor type of vehicle or its registration number was disclosed. Madan Singh himself stated that he reached at the spot later in point of time. Unfortunately, one of the injured Virender Singh died, whereas other injured Dharamvir survived. The police after investigation filed an un-traced report as the injured was not able to disclose either the make of the vehicle or type of vehicle or registration number of vehicle involved in the accident.

Two claim petitions were filed, one by the widow and minor children of deceased Virender Singh and the other by Dharamvir, the injured. It was stated in the claim petition that the accident took place with a Maruti Car bearing registration No.CH-01P-7906 being driven by one Pawan Kumar (who later on also became an advocate). Parveen Kumar was impleaded as owner of the offending car and the Oriental Insurance Company was impleaded as insurer of the car. It may be significant to note here that Parveen Kumar is also an Advocate in the office of Mr. Ranvir Prashar, Advocate, Kaithal. A written statement was filed on behalf of the driver and owner, admitting the accident. Although, the Insurance Company contested the claim petition denying the involvement of Maruti Car No.CH-01P-7906 in the accident. However, award came to be passed against the Insurance Company.

In claim petition No.51 of 1999, filed by legal heirs of Virender Singh, the Court awarded Rs.5,10,000/- on account of death of late Sh.

Virender Singh, whereas in claim petition No.7 of 2000, compensation of Rs.80,000/- was awarded on account of injuries sustained by Dharamvir Singh in the accident.

The Oriental Insurance Company filed a petition under Sections 151, 152 and 153 of the Code of Civil Procedure read with Section 169 of the Motor Vehicle Act for re-calling/setting aside of the award dated 10.04.2001 with the assertion that the Divisional Office of the Insurance Company received information through reliable sources that the award in question have been obtained by fraud and misrepresentation. The Insurance Company on receipt of the said information, deputed Grover Associates for detail investigation. The Grover Associates after thorough investigation submitted a report that the award has been obtained in collusion by the claimants, owner and driver of the Maruti Car and a fraud has been played on the Court. The aforesaid application has been allowed by the learned Tribunal, vide judgment dated 22.09.2006 after recording a finding that the award passed on 10.04.2001 were a result of fraud, misrepresentation and collusion.

The report submitted by the Grover Associates, Independent Investigator is Ex.A4 on the file. The Insurance Company produced Head Constable Ajit Singh as PW1 who produced the record to prove that in the FIR an un-traced report was filed as injured failed to disclose either the make of the vehicle or the registration number of the vehicle involved in the accident. The un-traced report was filed before the learned Judicial Magistrate, Guhla, on 01.03.1999. The Insurance Company also produced Deepak Grover, as AW2, who had investigated the case on behalf of the Insurance Company. Mr. Deepak Grover also produced statement written

by Parveen Kumar Sardana, Advocate, Kaithal, in his own hand, who is the alleged owner of the vehicle. In that statement, Parveen Kumar Sardana, Advocate, the alleged owner of the car, had stated that his car never met with an accident on 10.10.1998 and he never went on Guhla Cheeka Road on the day accident took place. He further stated that Pawan Kumar was never employed by him as a driver. The learned Tribunal after receiving the reply, framed issues and thereafter gave opportunity to the claimants as well as to the owner and driver of the vehicle to produce evidence for proving the factum of accident with the Maruti Car. However, neither the claimants nor owner and driver led any evidence.

The learned Tribunal has returned a finding that the consolidated award while deciding two claim petitions on 10.04.2001 is result of fraud, misrepresentation and collusion and therefore, re-called/set aside the order passed on 10.04.2001.

The legal heirs of Virender Singh have filed the present appeal, challenging the judgment passed by the learned Tribunal.

Learned counsel for the appellant has submitted as under:-

- (i) The learned Tribunal has no power to review as the Act does not enable the Tribunal to review its judgment;
- (ii) In an application under Sections 151, 152 and 153 of the Code of Civil Procedure, the learned Tribunal has no power to review its judgment;
- (iii) The application for review was filed after a period of 7 months, although the limitation is only 30 days;
- (iv) The contents of the FIR cannot be relied upon;
- (v) The investigator had no authority to carry out the

investigation;

(vi) Respondents no.1 and 2, namely, the driver and the owner had admitted the accident in reply filed originally;

(vii) New facts have been pleaded in the application.

On the other hand, learned counsel for the Insurance Company supported the judgment passed by the learned Tribunal.

I have heard learned counsel for the parties at length and with their able assistance gone through the judgment as well as the record.

With regard to arguments no.(i) and (ii) raised by counsel for the appellant, it is sufficient to notice that although the learned Tribunal does not have power to review in absence of enabling statutory provision, however, every Court has power to recall its judgment/order/proceeding, if it is found by the Court that the judgment/order/proceedings are result of fraud. It has been held by the Hon'ble Supreme Court of India in the judgment reported as **S.P.Changalvaraya Naidu (dead) by L.Rs v. Jagannath (dead) by L.Rs.,(1994) 1 SCC, 1** as under:-

“13.No one can possibly fault the Insurance Company for persistently pursuing the matter up to this Court because they are dealing with public money. If they have discovered that such public fund, in a whopping measure, would be knocked off fraudulently through a fake claim, there is full justification for the Insurance Company in approaching the Tribunal itself first. At any rate the High Court ought not have refused to consider their grievances. What is the legal remedy

when a party to a judgment or order of Court later discovered that it was obtained by fraud?”

The jurisdiction of the learned Tribunal in the context of powers of the Tribunal under Motor Vehicle Act, 1939 was examined by the Hon'ble Supreme Court of India in the judgment reported as **United India Insurance Co. Ltd. v. Rajendra Singh and others etc.,2000(3) SCC, 581.**

Hon'ble Supreme Court of India has held that the learned Tribunal have power to correct an error caused by fraud.

Power of review and power to recall judgment/order/proceeding, on the ground of fraud, are entirely different. The power to recall the judgment/order/proceeding on the ground of fraud, cannot be equated with power of review. It has been held that any judgment/order/proceeding obtained by playing fraud can even be avoided by the Court or set aside by the Court in the collateral proceeding.

In the present case, the fraud is apparent on the face of the file. Once the unimpeachable evidence has come on the record to prove that the claimants in collusion with the driver and the owner of the Maruti Car played fraud with the Court and the Insurance Company, the Court was justified in re-calling/setting aside the order.

Next submission of learned counsel is with respect to application being barred by limitation. In case of fraud, the limitation starts from the date of knowledge. In case of fraud with the Court, the Court would be liberal in condoning the delay even if the application is barred by time. In the present case, the Insurance Company immediately on coming to know of the fraud, appointed investigator. After the receipt of the report of the investigation, the application was filed before the Court, without any

further delay.

The next submission of learned counsel is that the investigator had no authority and his report also liable to be rejected. Deepak Grover, Investigator appeared in the witness box and stated that he was directed by the Insurance Company to carry out the investigation. The Insurance Company filed an application for recall on the basis of the investigation report. In the application, it was asserted that Grover Associates were appointed as Investigator. Merely, because Sh. Deepak Grover when appeared in the witness box, did not bring the order appointing him Investigator would not vitiate the meritorious application filed by the Insurance Company.

Next submission of learned counsel is that the accident has been admitted by respondents no.1 and 2 in the claim petition i.e. owner and driver. From the facts narrated above and as per the finding of the learned Tribunal, respondents no.1 and 2 had colluded with the claimants. Owner of the vehicle has already given a writing in his own hands that his car was not involved in the accident.

The claimants have not led any evidence to prove the accident. The claimants have failed to disclose as to how and in what manner they came to know that the Maruti Car owned by Parveen Kumar, Advocate and driven by Pawan Kumar, Advocate, was involved in the accident. It is further not disclosed as to why the claimants did not disclose this fact to the police authorities or before the Court when an untraced report was submitted. Therefore, there is no force in the argument of learned counsel for the appellant.

Still further neither the claimants nor the owner or the driver of

the vehicle have produced any evidence in the proceedings before the learned Tribunal to prove the involvement of the Maruti car.

In view of the above discussion, there is no force in the submission of learned counsel for the appellant.

Learned counsel for the appellant has in last submitted that new facts have been placed before the Court in the application for re-call. He submits that while deciding a review application new material cannot be placed.

I have considered the submission. However, I do not find any force in the same.

In the present case, the Court was not exercising the power of review in the strict sense. The Court was faced with the situation, when the Insurance Company had brought to the notice of the Court that a fraud has been played not only with the Court but also with the Insurance Company. In such circumstances, the Court is entitled to rely upon all the evidence brought on the file. The claimants as well as owner and driver were given opportunity to rebut the aforesaid evidence, however, they failed to lead any evidence.

In view of the discussion made hereinabove, I do not find any ground to interfere with the judgment passed by the learned Tribunal, dated 22.09.2006. The appeal is ordered to be dismissed.

8th September, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: YES/NO
: YES/NO