

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

FAO No.2902 of 2011

Date of Decision.30.11.2017

United India Insurance Company Ltd.

.....Appellant

Vs

Angoori Devi and others

.....Respondents

2. FAO No.6092 of 2011

Angoori Devi and another

.....Appellants

Vs

Subhash and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the appellant in FAO No.2902 of 2011 and
for respondent No.3 in FAO No.6092 of 2011.

Mr. A.K. Bishnoi, Advocate
for the appellants in FAO No.6092 of 2011 and
for respondent Nos.1 and 2 in FAO No.2902 of 2011.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two appeals bearing No.2902 and 6092 of 2011. The former is preferred by the insurance company challenging the liability fastened upon it to satisfy the compensation of ₹3,90,000/- and the latter at the instance of the claimants seeking enhancement of the compensation on account of death of Rajender Kumar, aged 22 years, who unfortunately died in a motor accident on 2.2.2010.

Mr. Vikas Mohan Gupta, learned counsel appearing on behalf of the appellant-insurance company submits that as per the statement of the eye witness, PW3, if read in conjunction of the FIR, Ex.P1, it did not

disclose the number and make of the vehicle on account of which the alleged accident took place, resulting into death of Rajender Kumar. The accident had occurred on 2.2.2010 whereas the vehicle was introduced on 5.3.2010, which is evident from the statement of PW4, Rajinder son of Het Ram. No explanation has come forth of not disclosing about the number of the vehicle immediately to police or to the claimants once he noted down the number of the vehicle, thus, there was a collusion between the owner, driver and claimants to cause wrongful gain to themselves and wrongful loss to the insurance company, being insurer of the vehicle bearing registration No.DL-3CG-3011. He has drawn attention of the Court to the statement of PW3, Rajesh Kumar son of Het Ram, who stated that he came to know about the accident of his brother deceased-Rajender on account of receipt of phone call from Sunil son of Subhash whereas neither Sunil nor the owner Sanjeev appeared in the witness box. Mere admission in the written statement does not prove the involvement of the vehicle, much less, the claimants have not been able to prove that the offending car was involved in the accident. In the absence of the same, the award of the Tribunal fastening the liability upon the insurance company is liable to be set aside. Even presence of Sunil is reflected from post-mortem report Ex.P4.

On the contrary, learned counsel appearing on behalf of the appellants-claimants submits that Ex.P3, mechanical report of the maruti vehicle proved on record through the testimony of criminal ahlmad, PW1, Satish Kumar to the effect that the maruti car was involved in the accident and therefore, the accident of maruti car with the motor cycle of the deceased cannot be ruled out. No suggestion has been put to PW4 with

regard to the maruti vehicle having been driven rashly and negligently. Even compensation awarded to the extent of ₹3,90,000/- is paltry amount. The income of the deceased has been taken as ₹3000/- per month whereas the minimum wages in the year 2003 were much more, therefore, the compensation is liable to be increased including the future prospects and other conventional heads.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of learned counsel appearing for the insurance company, much less, of the claimants for seeking enhancement of the compensation, for the statement of PW4, if read in entirety reveals that there is a specific evidence with regard to the involvement of the maruti car bearing registration No.DL-3CG-3011 driven in a zig zag manner and no suggestion was put in cross-examination that the vehicle was not being driven in the manner and mode as explained above. Non-examination of Sunil and the owner of the vehicle would not be fatal to the case owing to involvement of the vehicle, in the written statement, filed on behalf of owner and driver. Relevant portion of of the same reads as under:-

“That the claim petition is mere a bundle of lies and has been presented with distorted facts. The cause of accident attributed to the respondent No.1 is not at all justifiable. In fact, it was deceased who was driving his motor cycle in a rash and negligent manner, without adhering to the principles of traffic and was riding the motor cycle in a zig zag manner. Apprehending the danger of collision, the respondent No.1 took his vehicle towards extreme left side of the road but the

head on collision could not be avoided. It is how and in what manner the accident took place. Therefore, the claim having been presented with distorted facts to fetch the claim, is liable to be dismissed with costs.”

One line here and there in the cross-examination cannot be read in isolation. For the sake of brevity, the statement of Rajinder son of Het Ram, PW4 and cross-examination reads as under:-

“PW-4 on SA

Rajinder son of Het Ram Godara (Bishnoi), 28 years, Agriculturist r/o Adampur.

Stated that on 2.2.2010 I was going from my house to village Budha Khera on motor cycle. When I reached 2 k.m. ahead of my house, near Gaushala on Bhadra Road, I have seen one accident between motor cycle and car. The No. of the car was DL-3CG/3011. The car was being driven in zig zag manner. I have noted the number of the car as the driver of the car wants to flee away. I have seen the said accident by my open eyes. I left the place of accident and gone to village Budha Khera. I have informed on the next day to the family members of the deceased regarding the involvement of the abovesaid car. Thereafter, I went to the police station along with the family members of the deceased. The police recorded my statement. Thereafter on 3.5.2010 I was standing on Kranti Chowk, Mandi Adampur and at that time abovesaid vehicle was going from Bhadra Phatak to Bazaar of Mandi Adampur. I informed the police that this is the same vehicle which was involved in the abovesaid accident. Police has taken into possession the said car.

xxxxxmn by the counsel for the respondents.

Subhash is the owner of car No.DL-3CG/3011. I do not know Subhash prior to this accident. Police recorded my statement on 5.3.2010 in police station, Adampur. I was alone

in the police station when the police recorded my statement. I was going to village Budha Khera in order to meet my relative Radhey Sham son of Neki Ram r/o Budha Khera, who was going to shift in a private hospital in village Budha Khera. I cannot tell the name of the hospital. I reached in village Budha Khera at 9.30 p.m. When I reached in village Budha Khera, my relative Radhey Sham was already shifted to private hospital, Budha Khera. Thereafter I also went to that private hospital in village Budha Khera. My relative remained there for about 2 days. I returned back on the next day i.e. 5.3.2010. I started my journey from my house at 8.00 pm. The number of my motor cycle was HR/20-A/6829. The owner of motor cycle is Satpal son of Sh. Jagdish. I left the place of occurrence after the said accident and then went to village Budha Khera. I told the number of the abovesaid car to Rajinder on 3.2.2010. I visited the house of Rajinder on the next date of the occurrence. I made the statement before the police on 3.2.2010. It is incorrect to suggest that car No.DL-3CG/3011 was not involved in the accident. It is incorrect that I was not the eye witness of the said accident. The family of the deceased is my distant neighbourer. It is incorrect that I have made this story regarding the involvement of the car on the asking of the claimant. It is incorrect that I am deposing falsely.

RO&AC

Rajinder Kumar

sd/-

MACT, Hisar, 6.10.2010.”

On examination of the aforementioned statement, it surfaced that PW4 had remained coherent and consistent both in the examination in chief and cross-examination. Therefore, I am of the view that argument of Mr. Gupta qua non-involvement of the vehicle, much less, collusion of the owner with the claimants is not sustainable and hereby rejected. Even FIR has also been registered against the driver of the vehicle, much less,

Court.

As regards the enhancement of compensation, I am of the view that the compensation awarded by the Tribunal is fair and just and there is no scope for further enhancement, in the absence of the proof of income of the deceased.

The award passed by the Tribunal is upheld. Resultantly, both the appeals stand dismissed.

(AMIT RAWAL)
JUDGE

November 30, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	Yes