

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

FAO No. 4838 of 2012 (O&M)
Date of Decision: November 21, 2017

IFFCO Tokio General Insurance Co. Ltd. ...Appellant
Versus

Kailash Devi and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Neeraj Khanna, Advocate
for the appellant.

Mr. R.S. Hooda, Advocate
for respondents no.1 to 4 and 7 to 10.

ANITA CHAUDHRY, J.

Record has been received.

Respondents no.5 & 6 were represented in the beginning but thereafter no-one had appeared on their behalf. A counsel was appearing for the other respondents but he too failed to appear after 15.09.2015.

The present appeal is filed by the insurance company disputing its liability.

Kailash Devi and others had filed a claim petition seeking compensation for the death of Rattan Singh, a conductor with DTC. The case set up by the claimants was that on 26.12.2009 Rattan Singh came to Palwal bus stand in a bus and thereafter started his journey on a motorcycle which was parked on the bus stop. He was to go to village

Amru. When he reached near Chaupal Restaurant which is on the bye-pass road Palwal, a motorcycle bearing registration No. HR-30E/5584 came and hit him from behind and Rattan Singh fell down and sustained multiple injuries and it resulted in his death. The matter was reported to the police on the same day. It was pleaded that during investigation one Narbir Singh, a resident of Palwal who was a witness to the accident, disclosed to the police on 06.02.2010 about the accident and his statement was recorded.

Notice was given to the respondents and respondents no.1 & 2 appeared but failed to file their written statement and their defence was struck off.

The insurance company took the plea that the vehicle has been planted and there was collusion and the witness had been procured and the claim was false. It was pleaded that the deceased himself was at fault and he fell down from the motorcycle on his own.

The Tribunal relied upon the statement made by Narbir who was stated to be an eyewitness and observed that the driver was facing trial. It rejected the evidence led by the respondents that the counsel who was representing the accused in the criminal trial was the same who was representing the claimants to show that it was a case of hit and run and there was collusion. The Tribunal rejected the evidence led by the respondents i.e. the zimni orders and the applications filed on behalf of the accused in the criminal trial. It awarded a compensation of Rs.8,46,600/-.

The submission on behalf of the appellant is that the FIR was against a unknown person and a unknown vehicle and even the description of the vehicle had not been given and after two months a statement is made and the supplementary statement of the complainant is recorded. It was urged that the author of the FIR was not examined and he was intentionally kept away as it would have exposed him and the only statement on the record with respect to the accident is of Narbir. It was urged that according to him, he had reached one minute after the accident had taken place. It was vehemently urged that the accident had taken place in the month of December and it gets dark after 5:00 PM and it is difficult that he could have noted the number. It was urged that his presence on the spot gets falsified. It was urged that he did not know the injured person. He did not shift him to the hospital. He did not report the matter to the police though the police station was a kilometer away and it is surprising that he catches up with the complainant somewhere in the city and mentions about the fact that he was a witness to the accident and then the matter is reported to the police. It was urged that the family had received a call from some unknown person and the name of that person was not disclosed by the claimant and all the circumstances goes to show that a vehicle had been introduced later on and the claim petition has been filed to extort compensation from the insurance company.

A perusal of the record shows that though the owner-driver were served, they chose not to file the written statement as they did not want to commit anything.

A perusal of the FIR shows that it was lodged at 9:25 PM, though the accident occurred at 6:00 PM. The FIR was lodged on the statement made by Prem Singh son of deceased. The supplementary statement is made by him after two months of the accident. Narbir had stated that he had reached the place of occurrence after one minute of the accident and the accident occurred towards the right side of the GT Road. According to him when he reached the spot, he found a number of persons already present and the person who had caused the accident was on the spot for some time and he noted the number and he had given his name as Rajender, resident of Ballabgarh and after that enquiry, he left for his village as the deceased was not known to him. He stated that the accident had occurred at 6:00 PM and it was dark at that time. He stated that after a month of the occurrence, he met the son of the deceased at Palwal Chowk and he inquired about the accident and then disclosed to him the registration number of the vehicle and the name of the driver. The witness admitted that there were two police stations within a distance of two kilometers from Awalpur Chowk and the distance between the chowk and bus stand chowk was only 100 meters. He admitted that a traffic constable remained permanently at bus stand chowk. He stated that he did not make any effort to inform the police.

On examination of the statement made by Narbir, it comes out clearly that he was not present on the spot and he is a witness who has been introduced. He did not know the deceased and for him to say

that he met the son and disclosed to him about the accident after a month by chance, does not have a grain of truth. The witness has been introduced after two months of the accident. If Narbir had taken the pains to stop and inquire from the offender, there was no reason why he would not have called the police or report the matter in the police station on the same day. The place of accident is a busy area and police is stationed at the main chowk during rush hours and if it is accepted, he had reached the spot but after a minute, there was no occasion for him to witness the accident. The story put forward by the claimants was false. The Tribunal had gone wrong in accepting the statement of Narbir. There was collusion between the accused and the claimants and that is the reason why the counsel who had filed applications on behalf of the accused were found to be from the same chamber.

The appeal is allowed and the claim petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 21, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No