

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

FAO No. 5378 of 2015 (O&M)
Date of Decision: December 06, 2017

Magma HDI General Insurance Co. Ltd.

...Appellants

Versus

Mukesh Devi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajneesh Malhotra, Advocate
for the appellant.

Mr. SK Yadav, Advocate
for respondent nos.1 to 5.

Mr. S.K. Gupta, Advocate
for respondent nos.6 & 7.

ANITA CHAUDHRY, J.

The record of the Tribunal has been received.

This appeal is by the insurance company disputing the award allowed to the claimants not only on the quantum but challenge has also been made to the finding recorded on issue no.1 as the FIR was against a unknown vehicle and a unknown driver.

Ankit, just 15 years old and a student of 10th Class was going for his tuition on his scooty along with some other boys of the same village. He met with an accident near Omwati Hospital on Mewat – Narnaul Road. A claim petition was filed pleading that a truck driven by respondent no.1 had struck against the scooty and Ankit died on the spot. It was pleaded that the accident was witnessed by Rakesh Kumar who was on a morning walk.

Respondents no.1 & 2 pleaded that false case had been filed and they were not involved. The insurance company took the plea that the vehicle was not involved and the driver did not have a valid and effective licence.

The Tribunal rejected the argument raised by the insurance company that the vehicle had been introduced and held that the driver had been challaned and charge had been framed and prima facie there was ground to hold that the vehicle was involved and the driver was at fault and awarded compensation of Rs.7 lacs.

The submission on behalf of the insurance company is that the FIR is against an unknown vehicle and unknown person and it was lodged by the father and as per the case put forward by the claimants, Rakesh and Rajinder were eye-witnesses but both of them informed the police and gave the details of the vehicle on 05.05.2014 i.e. after 10 days. It was urged that had they been present on the spot, Rajinder who was related to the deceased would have shifted the injured to the hospital but it was the police who had shifted him. It was urged that Rakesh is said to be a stranger and he did not inform the family and his version cannot be accepted that he found the police near his house and informed them about the incident. It was urged that had Rajinder been present he would have informed the father and the details of the vehicle would have been given to the police the same day or the next day. It was urged that the driver fled from the spot and there is a contradiction in the statement of two witnesses. It was urged that the deceased did not have a driving licence

and was under age and could not drive and the amount allowed was also on the higher side.

The submission on behalf of the claimants is that considering the present times no person would like to involve himself in police cases and that would be the reason that Rakesh did not go to the police but he did make a statement to the police on 05.05.2014 and the delay is not long and the police had investigated the matter and had filed the challan and charges were framed and all these aspects had been dealt with by the Tribunal. The counsel appearing for the owner-driver stated that they were not aware of the fate of the trial.

The accident had occurred at about 4:30 AM on 26.04.2014. Anil father of the deceased had made a statement to the police at about 7:15 AM that his son along with some other boys of the village had gone for tuition. He had also stated that Rajinder son of Ram Partap had informed him that an accident had taken place in front of Omwati Hospital and he arranged a vehicle and went to the spot and found that his son had died and the people present there had informed him that there were some other children as well on two vehicles who were also going to Narnaul for tuition. According to him an unknown vehicle had caused the accident.

As per the first version in the FIR it was Rajinder son of Ram Partap who is related to the claimants had informed the father about the accident but it is strange that he did not give the details of the vehicle or its model or make. He could not give any reason as to why he did not

make any statement to the police. He had stated that he did not give the registration number of the offending vehicle at that time as the driver had fled. He was certain that police had reached the spot while he was there. In that case there was no reason why he could not give the details to the police on the spot and why he took 10 days to pass on the details. It is a clear case where a vehicle had been introduced. The mere fact that the challan had been filed or charge had been framed is not enough. Rakesh PW-3 is also a witness who had been introduced, who lent support to the statement made by Rajinder. Rakesh was not known to the family. He did not take him (injured) to the hospital and there was no reason why he could not disclose the details to the police earlier. He had stated that the police had come to the spot which was near his house and made enquiries and then he informed them of the accident. The story is concocted. It is a clear case of collusion. The appeal is allowed, the finding recorded on issue no.1 is set aside. The claim petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

December 06, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No