

Sr. No. 107

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

**FAO No. 5472 of 2017(O&M)
Decided on:22.08.2017**

Royal Sundaram Alliance Insurance Company Ltd.

.....Appellant

versus

Harvinder Kaur @ Harwinder Kaur and others

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

**Present: Mr. Amit Goyal, Advocate
for the appellant.**

Rajbir Sehrawat, J.(Oral)

CM No. 17510-CII of 2017

This is an application for condonation of delay of 50 days in filing the appeal.

For the reasons mentioned in the application, the delay of 50 days in filing the appeal is condoned.

Civil misc application is allowed.

FAO No. 5472 of 2017

This is an appeal filed by the Insurance Company challenging the Award dated 16.03.2017 passed by Motor Accident Claims Tribunal, Patiala (for short, 'MACT') whereby compensation of ₹9,16,000/- was awarded to the claimants in the claim petition on account of death of one Bhupinder Singh @ Bhinder Singh.

Shorn off the unnecessary details, the facts of the case are that on 18.02.2015, the deceased; after closing his shop was returning to his

village Bal Majra on his motor cycle. At about 6:30 pm when the deceased crossed the village Jhansla on Rajpura-Banur road, the offending vehicle came from the opposite side and hit the motor cycle of the deceased. Resultantly, the deceased Bhupinder Singh fell on the road and sustained the injuries, to which he ultimately succumbed. As per the claim petition, the accident was witnessed by the son of the deceased Harpreet Singh and besides him many other people had gathered on the spot and the driver of the offending vehicle ran away from the spot leaving his vehicle there. Thereafter, the deceased was got admitted at Gian Sagar Hospital, Banur from where he was referred to PGI, Chandigarh. But the injured Bhupinder Singh died on 20.02.2015. It is further plea of the claimant that Harpreet Singh could not inform the police as he was busy in attending his injured father and he was assured by the hospital authorities that they would inform the police. The claim of the petitioners was that Bhupinder Singh was 49 years of age and was running a tailor shop at BCI Market, Rajpura and was earning ₹ 25,000/- per month. The claimants in the case are Harvinder Kaur @ Harwinder Kaur-widow, Harpreet Singh-son, Manpreet Kaur-daughter of the deceased.

Driver and the owner denied the accident and involvement of the vehicle in the manner alleged in the claim petition. Respondent No. 3 also denied the occurrence in the written statement. It was further pleaded by the insurance company that the offending car was being plied without any valid documents and its driver was not holding valid and effective driving license.

Parties led their respective evidence.

MACT, Patiala after appreciating the evidence of the parties,

awarded the above said amount to the claimants in the claim petition.

The present appeal has been filed by the insurance company challenging the Award passed by the MACT, Patiala on the ground that the vehicle in question was not involved in the accident at all and that it is a collusive case in which the claimants are colluding with the driver and owner of the vehicle. To buttress his claim, the counsel for the appellant has submitted that the deceased was brought to the hospital by one Navneet Singh and not by the son of the deceased Harpreet Singh. Therefore, it shows that Harpreet Singh was not present on the spot.

Next contention of learned counsel for the appellant is that the FIR was registered after 2 days of the accident and this period of 2 days was utilized by the claimants in arranging for an insured vehicle, which has been branded as an offending vehicle in this case.

The next argument of learned counsel for the appellant is that, in fact, it is a hit and run case and the vehicle in question is not involved in the present case.

The last and final argument raised by learned counsel for the appellant is that Harpreet Singh, who is the claimant in the claim petition and has claimed to be an eye witness, has not come forward to depose in the criminal case arising out of this accident. This, as per the counsel for the claimants, shows that he is colluding with the driver of the offending vehicle.

A perusal of the award passed by the MACT, Patiala shows that all these pleas raised by counsel for the appellant have been duly dealt with by the MACT, Patiala. There is no infirmity in the findings recorded by the MACT in this regard. The award passed by the learned MACT is quite

reasoned and based upon correct appreciation of the evidence.

The fact that the deceased was not brought to the hospital by Harpreet Singh, the son of the deceased, but was brought by Navneet Singh, does not, per se, prove the fact that Harpreet Singh was not present on the scene of occurrence. The said Harpreet Singh has appeared as a witness before the MACT during the evidence. It was for the insurance company to extract from his deposition; the material which goes to show his absence from the scene of occurrence. However, admittedly, nothing substantial could be brought out during the cross examination of Harpreet Singh to show or even to suggest that he was not present on the scene of occurrence. So far as the name of Navneet Singh being recorded in the record of the hospital; as a person who brought Bhupinder Singh to the hospital; is concerned, suffices it to say that this is not an abnormal situation. The family members of the injured persons who is seriously injured, care more for the treatment of the person and less for the hospital formalities. Therefore, it is quite possible that Navneet Singh who might be accompanying Harpreet Singh had got his name recorded as the person who brought Bhupinder Singh to the hospital. Nothing has been placed on record by the insurance company; even regarding the credentials of Navneet Singh. Hence, MACT, Patiala is very right in coming to the conclusion that Harpreet Singh CW2 was an eye witness to the accident.

The next contention of learned counsel for the appellant is that the FIR was registered after 2 days and in the FIR itself it was recorded that it is a hit and run case. This argument of learned counsel for the appellant is also irrelevant for the present case. The registration of the FIR is not necessary for maintaining claim petition for the accident in question under

Motor Vehicles Act, 1988. Still further the explanation has been given by the eye witness Harpreet Singh that he was busy in getting his father treated and the hospital authority had assured him that they would inform the police. Otherwise also the number of the vehicle was duly mentioned in the FIR. Therefore, merely the fact that the FIR was lodged after 2 days of the accident does not prove the fact that the vehicle was not involved in the accident in question. It was for the insurance company to extract something to the contrary in the cross examination of the eye witness produced by the claimant or to lead independent evidence to show that the vehicle in question was not involved in the accident. However, the insurance company has not even examined the driver of the offending vehicle as its witness. Therefore, they cannot be heard to say that the accident in question did not occur with the vehicle named in the case.

The last contention of learned counsel for the appellant is that Harpreet Singh who is the complainant in the criminal case, has not appeared in the criminal case as a witness for a long time. Therefore, it is the contention of learned counsel for the appellant that this shows the collusion of Harpreet Singh with the driver of the vehicle.

As stated above, there was nobody to prevent the insurance company to examine the driver of the vehicle as witness in the case and to prove that the vehicle in question was not involved in the accident. The stages of proceedings of the criminal case are not relevant for the purpose of claim petition which are the independent proceedings before the competent court of law. However, the fact remains that the driver of the offending vehicle is facing the criminal trial. This, itself is sufficient in the claim petition to show that his involvement in the accident in question cannot be

ruled out. This was for the insurance company to establish by leading the evidence that driver and the claimants were colluding with each other. However, no such evidence was led by the insurance company except placing on record the documents relating to the criminal proceedings. It deserves mention here that, as has been held by the Hon'ble Supreme Court, since the insurance company was a party in the claim petition, therefore, it did not require even the permission under Section 170 of the Motor Vehicles Act, 1988 from the Tribunal to contest the claim petition on the ground of collusion between the claimants and the driver/owner. In its own right it could have led the evidence to prove collusion between the claimants and the driver/owner. However, it has chosen not to lead such evidence.

No other argument is raised by learned counsel for the appellant.

In view of the above, the present appeal fails and the same is hereby dismissed.

22nd August, 2017

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*